BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 16-1387
CODE CHAPTER 5.01 TO ADD, REMOVE, AND)	
AMEND CERTAIN SOLID WASTE FACILITY)	Introduced by Chief Operating Officer Martha
REQUIREMENTS AND MAKING OTHER)	Bennett in concurrence with Council
HOUSEKEEPING CHANGES)	President Tom Hughes

WHEREAS, the Metro Solid Waste Code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Solid Waste Code Chapter 5.01 contains the requirements for Solid Waste Facility Regulation; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.01, that chapter has become unnecessarily complicated, and in some places it contains duplicative and contradictory provisions; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.01, the section numbering contains unnecessary gaps in some places, while in other places the numbering prevents easy insertion of new sections in the logical and appropriate place for that new section; and

WHEREAS, the proposed updates to Metro Code Chapter 5.01 renumber many code sections, thus improving section numbering for easier referencing; and

WHEREAS, updating Metro Code Chapter 5.01 with various other housekeeping changes will also improve its readability and its ease of use for agency staff, regulated entities, and the public at large; and

WHEREAS, the various amendments to this chapter include removing licensing exemptions for certain solid waste reload and yard facilities, prohibiting the outdoor storage of electronic device waste in the region, removing certain licensing and franchising requirements, authorizing the Chief Operating Officer to administratively grant limited term extensions for licenses and franchises, and establishing an improved administrative rule process; and

WHEREAS, staff engaged in extensive public outreach regarding these proposed Code changes, including presentations to the Solid Waste Alternatives Advisory Committee (SWAAC) on multiple occasions and a 60-day public comment period during March and April 2016; and

WHEREAS, on July 13, 2016, staff presented to SWAAC both the public's comments and staff's responses to those comments, whereupon SWAAC recommended presenting the proposed Code changes to the Metro Council for consideration; and

WHEREAS, the Chief Operating Officer also recommends that the Metro Council adopt these amendments to Chapter 5.01 to improve the chapter's clarity, consistency and readability, and to build greater transparency and predictability in how Metro implements its requirements to protect the environment and the public's health; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.01 further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.01 is amended as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this $\underline{/0}$ day of November 2016.

Tom Hughes, Council President

APPROUVE APPROVED AND THE STORY OF THE STORY

Attest:

Nellie Papsdorf, Recording Secretary

Approved as to Form:

Alison R. Kean, Metro Attorney

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

SECTION TITLE

GENERAL PROVISIONS

	5.01.010	Definitions (Repealed & Replaced Ord. 14 1331) Purpose
	5.01.020	Purpose
	5.01.025	-Authority and Jurisdiction
•	5.01.030	Prohibited Activities
	5.01.040	Exemptions to Prohibited Activities
	5.01.045	License and Franchise Requirements (Repealed Ord. 14 1332)
- 1		

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees
5.01. 051 060 Pre-Application Conference for Licenses
5.01. 052 070 Applications for Licenses
5.01. 053_ 080 License Issuance and
5.01.090 License Contents of Licenses
5.01. 054 100 Record-keeping and Reporting for Licenses
5.01. 055 _110 License Renewal of Licenses
5.01. 056 120 Transfer of Ownership or Control of Licenses
5.01. 057 130 Change of Authorizations for Licenses
5.01. 058 140 Variances for Licenses
5.01.060 Applications for Licenses or Franchises
(Repealed Ord. 14 1332)
5.01.062 Application Fees (Repealed Ord. 14 1332)
5.01.065 Issuance and Contents of Certificates (Repealed Ord.
03 1018A §7)
5.01.067 Issuance and Contents of Licenses (Repealed Ord. 14
1332)

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01. 070 150	Franchise Requirements and Fees		
5.01. 071 _160	Pre-Application Conference for Franchises		
5.01. 072 _170	Applications for Franchises		
5.01. 073 180	Franchise Issuance and		
5.01.190 Franchise Contents of Franchises			
5.01. 074 _200	Record-keeping and Reporting for Franchises		
5.01. 075 _2 <u>10</u>	Franchise Renewal of Franchises		
5.01. 076 220	Transfer of Ownership or Control of Franchises		

```
5.01.<del>077</del>—230 Change of Authorizations for Franchises
5.01.<del>078</del> 240 Variances for Franchises
5.01.080 Term of Franchise (Repealed Ord. 98 762C §21)
          Franchises for Major Disposal System
          (Repealed Ord. 98 762C §21)
5.01.087 Renewal of Licenses and Franchises (Repealed Ord. 14
          1332)
5.01.090 Transfer of Ownership or Control (Repealed Ord. 14 1332)
5.01.095 Change of Authorizations (Repealed Ord. 14 1332)
5.01.100 Appeals
5.01.110 Variances (Repealed Ord. 14 1332)
```

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

General Obligations of All Regulated Parties 5.01.120250 Obligations and Limits for Selected Types of 5.01.125260 Activities 5.01.127270 Direct Haul of Putrescible Waste

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

```
Administrative 280 Authority of Chief Operating
           Officer to Adopt Rules, Standards, Procedures for
           Franchisees (Repealed Ord. 98 762C §29)
           Designation, and Review of Service
           (Repealed Ord. 12 1272 § 4) Forms
           Adoption & Amendment of Administrative Procedures and
           Performance Standards
<del>5.01.135</del>5.01.290
                      Inspections and, Audits, and other
           Investigations of Solid Waste Facilities
5.01.<del>137 Record keeping and Reporting</del>
5.01.140 License and Franchise Fees
               Regional System Fees
<del>5.01.150</del>300
5.01.\frac{160}{}
           $42)
<del>5.01.170</del>310
                Determination of Rates
```

ENFORCEMENT AND APPEALS

```
5.01.<del>180</del>320
                Enforcement of Franchise or License Provisions
5.01.190 Right to Purchase (Repealed Ord. 98 762C §46)
<del>5.01.200</del>330
                Penalties
5.01.210 Acceptance of Tires at a Disposal Site (Repealed Ord.
98 762C §48) 340 Appeals
5.01.220 Additional Provisions Relating to Issuance of a
          Franchise for a Facility Processing Petroleum
          Contaminated Soil (Repealed Ord. 98 762C §48)
```

ADDITIONAL PROVISIONS RELATING TO THE LICENSING OF YARD DEBRIS PROCESSING FACILITIES AND YARD DEBRIS RELOAD FACILITIES

5.01.230 .380 (Repealed Ord. 98 762C §49)

MISCELLANEOUS PROVISIONS

5.01.400 Treatment of Existing Licenses and Franchises (Repealed Ord. 03 1018A §23)

5.01.410350 Miscellaneous Provisions

GENERAL PROVISIONS

5.01.020_010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to protect:
 - (1) Protect and preserve the health, safety and welfare of Metro's residents; to
 - (2) <u>iImplement the Regional Solid Waste Management Plan</u> cooperatively with federal, state and local agencies; the Regional Solid Waste Management Plan; to
 - (3) pProvide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and to
 - (4) *Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes.

(Ordinance No. 81-111, Sec. 3; Ordinance No. 95-621A, Sec. 2. Repealed by Ordinance No. 98-762C, Sec. 2; replaced by Ordinance No. 98-762C, Sec. 3; and Ordinance No. 02-974, Sec. 1.)

5.01.025-020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is established underderived from the Oregon Constitution of the State of Oregon, ORS Chapter 268 for solid waste and the Metro Charter and It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) 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.

(Ordinance No. 98-762C, Secs. 4-5; and Ordinance No. 02-974, Sec. 1.)

5.01.030 —Prohibited Activities

Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it shall be unlawful for:

- (a) For aAny person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) For aAny person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.
- (c) For a recipient of a licenseA licensee or franchise franchise to receive, process or dispose of any solid waste notunless authorized underby the recipient's license or franchise.
- (d) For aAny person to deliver or transport any solid waste to or to dispose of any solid waste at any place other than a solid waste facility or disposal site that is operated by a holder of a license license or franchise franchise or is otherwise exempt under Section 5.01.040 of this chapter.
- (e) For a holder of a license or franchise franchise to fail to comply with the administrative procedures violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to Section 5.01.132 of this chapter 280.
- (f) For aAny person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.
- (g) Any person to store electronic device waste uncovered and outside of a roofed structure.

(Ordinance No. 81-111, Sec. 4; Ordinance No. 87-217, Sec. 1; Ordinance No. 95-621A, Sec. 3; Ordinance No. 98-762C, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 2; and Ordinance No. 06-1102, Sec. 1.)

5.01.040 -Exemptions to Prohibited Activities

(a) In furtherance of the purposes set forth in this chapter, except as provided in Sections 5.01.040(b) through (d) below, the Metro Council declares the The provisions of this chapter shalldo not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, transfer stations, or solid waste facilities owned or operated by Metro, except that Metro must pay regional system fees per Section 5.01.300.
- (3) Facilities that (A) exclusively receive non-putrescible source-separated recyclable materials, and (B) reuse or recycle suchthose materials, or transfer, transport or deliver suchthose materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of inert waste.
- (5) The following operations, which do not constitute yard debris facilities:
- (A (5) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (<u>B6</u>) Residences, parks, community gardens and homeowner associations.
- (67) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
- (8) (D) An Ooperations or facilityies that chip or grindprocesses wood wastes, unless:
 - (i) The such chipped or ground wood wastes are processed for composting; or
 - (ii) The such operations or facilityies is are other-wise regulated under Metro Code Section 5.01.05045this chapter.
- (6(98)) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process solid waste—if, provided that Metro finds an emergency situation exists.
- (7) Any reload facility that:

- (A) Accepts solid waste collected under the authority of a single solid waste collection franchise granted by a local government unit, or from multiple solid waste collection franchises so long as the area encompassed by the franchises is geographically contiguous; and
- (B) Is owned or controlled by the same person granted franchise authority ascribed in subsection (A); and
- (C) Delivers any putrescible waste accepted at the operation or facility to a transfer station owned, operated, licensed or franchised by Metro; and
- (D) Delivers all other solid waste accepted at the facility except inert waste to a Metro designated facility authorized to accept said solid waste, or to another solid waste facility under authority of a Metro non-system license issued pursuant to Chapter 5.05.
- (8 (109) Persons who own or operate a mobile facility that processes petroleum contaminated soil at the site of origin and retains any treated petroleum contaminated soil on the site of origin.
- (b) Notwithstanding Section 5.01.040(a), all persons shallmust comply with Sections 5.01.030(a), (b), (d) and (f).
- (c) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shallmust comply with Section 5.01.150 of this chapter300.
- (<u>cd</u>) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the The provisions of Section 5.01.135 of this chapter shall 290 apply to operations the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter. 109).

(Ordinance No. 81-111, Sec. 5; Ordinance No. 82-136, Sec. 1; Ordinance No. 91-422B, Sec. 2; Ordinance No. 95-621A, Sec. 4; Ordinance No. 98-762C, Sec. 7; Ordinance No. 00-866, Sec. 2; Ordinance No. 02-933, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.3; Ordinance No. 06-1102, Sec. 2; and Ordinance No. 07-1147B, Sec. 2.)

(5.01.045 License and Franchise Requirements. Repealed Ord. 14 1332.)

LICENSING REQUIREMENTS

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 -License Requirements and Fees

- (a) A Metro solid waste license shall be is required of the any person owning or controlling a facility at which the person performs any of the following activities are performed:
 - (1) Processing of non-putrescible waste.
 - (2) Processing of petroleum contaminated soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.
 - (3) Processing or reloading of yard debris. A local government that owns or operates a or yard debris facility may enter into an intergovernmental agreement mixed with Metro under which the local government will administer and enforce yard debris standards at the facility in lieu of compliance with this chapter residential food waste.
 - (4) Operating a reloadReloading solid waste.
 - (5) Chipping or grindingProcessing wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.
- (b) The annual fee for a solid waste license shall not exceed three hundred dollars (\$300.00). The Council may revise these fees upon 90 days written notice to each licensee and an opportunity to be heard.may not exceed \$300.00.
- (c) Upon the filing of an The application, every applicant fee for a license, new or for renewal of an existing license, shall submit an is \$300.00. The application fee of three hundred dellars (\$300.00). is due at the time of filing.
- (d) The <u>annual solid waste</u> license fee <u>shall beis</u> in addition to any other fee, tax or charge imposed upon a licensee.
- (e) The licensee shallmust pay the license fee in the manner and at the time required by the Chief Operating Officer.

(Ordinance No. 81-111, Sec. 15; Ordinance No. 98-762C, Sec. 40; Ordinance No. 98-767, Sec. 5; and Ordinance No. 02-974, Sec. 1.)

(Ordinance No. 98-762C, Secs. 8-9; Ordinance No. 00-866, Sec. 3; Ordinance No. 02-933, Sec. 2; Ordinance No. 03-1018A, Sec. 4; and Ordinance No. 14-1332, Sec. 1.)

(5.01.050 Administration. Repealed Ord. 98 762C §10.)

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.051 060 Pre-Application Conference for Licenses

- (a) All prospective An applicants for a new license shall participate inmust attend a pre-application conference. The purpose of such the conference shall be to provide the prospective applicant with information regarding the applicable requirements for the proposed facility and to obtain from have the prospective applicant a description of describe the proposed facility's location, site conditions and operations of the proposed facility.
- (b) If a prospective an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, such the participate inmust attend a subsequent pre-application conference prior to before filing another application.

(Ordinance No. 98-762C, Secs. 11-12; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.052_070 Applications for Licenses

- (a) Applications An applicant for a license new or for renewal of an existing license shall be filed must file the application on forms or in the format provided required by the Chief Operating Officer.
- (b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall The applicant must include a description of the activities proposed the applicant proposes to be conducted conduct and a description of wastes sought waste it seeks to be accepted.accept.
- (c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a license shall A license application must also include the following information to the Chief Operating Officer:
 - Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the license term;
 - (2) A duplicate copy of all applications for necessary DEQ permits and, any other information required by or submitted to DEQ, and a copy of any DEQ permits;

- (3) A duplicate copy of any closure plan required to be submitted to DEQ, or ifthat DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEO demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit a proposal for providing financial assurance prior to the commencement of Metro regulated activities for the costs of closure of the facility. The proposal shall include an estimate of the cost to implement the closure plan required in Section 5.01.052(c)(3). If an application is approved, the license shall require that financial assurance is in place prior to beginning any activities authorized by the license. However, regarding applications for licenses, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the closure plan required in Section 5.01.052(c)(3) will be less than \$10,000.00;
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the licensee, the duration of that interest and shall(4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter 320(f) if Metro revokes the license is revoked or refuses any license renewal is refused;
- (65) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval has not been obtained, then a written recommendation of the planning director of

the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

(7) Identify any other known or 6) Any current permit and a list of anticipated permits required from any other that a governmental agency. may require. If application for such other permits the applicant has been previously made, applied for a permit, the applicant must provide a copy of such that permit application and any permit that has been any other government agency granted shall be provided.

(Ordinance No. 81-111, Sec. 7; Ordinance No. 82-136, Sec. 2; Ordinance No. 91-422B, Sec. 3; Ordinance No. 95-621A, Sec. 5; Ordinance No. 98-762C, Sec. 13; Ordinance No. 00-866, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 5; Ordinance No. 04-1056, Sec. 1; Ordinance No. 05-1093, Sec. 1; Ordinance No. 06-1101; Ordinance No. 07-1139, Sec. 1; Ordinance No. 07-1161, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.053_080 License Issuance—and Contents of Licenses

- (a) Applications for licenses filed in accordance with Section 5.01.052 shall be subject to approval or denial by the The Chief Operating Officer, with such may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer may deem considers appropriate.
- (b) The Chief Operating Officer shallmay make such any investigation concerning regarding the application information as the Chief Operating Officer deemsOfficers considers appropriate including. This includes the right of entry onto the applicant's proposed site.
- (c) Prior to determining whether to approve or deny eachBefore approving or denying a license application, the Chief Operating Officer shallmust provide public notice and thean opportunity for the public to comment on the license application.

- (d) On the basis of The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:
 - (1) the Submitted application submitted,
 - (2) the Chief Operating Officer's investigation concerning regarding the application information, and
 - (3) public Public comments., the Chief Operating Officer shall determine whether the proposed license meets the requirements of Section 5.01.052 and whether to approve or deny the application.
- (e) Notwithstanding the authority to approve or deny application for a solid waste license set forth in subsection (d), the Chief Operating Officer (i) decides to approve an application for a new license for any facility whose operations will have a substantial effect on any adjacent residential neighborhood, or (ii) decides to approve an amendment to existing solid waste license to allow for a substantial change in the configuration used at a site for processing solid waste or to allow for a substantial change in the type or quantity of solid waste processed at the facility, the Chief Operating Officer shall inform the Council President in writing no fewer than ten (10) days before the Chief Operating Officer approves any such solid Council application. immediately cause copies of the notice to be furnished to all members of the Council. Thereafter, the majority of the Council determine whether to review and consider the application within ten (10) days of receipt of the notice from the Chief Operating Officer. If the Council determines to review and consider the application for the license, execution by the Chief Operating Officer shall be subject to the Council's authorization. If the Council determines not to review and consider the application, the Chief Operating Officer may execute the license. For the purpose of this subsection (e), a "substantial effect" shall include any occurrence that arises from the solid waste operation conditions that are regulated under the license and affects the residents' quiet enjoyment of the property on which they reside.
- (f(e)) If the Chief Operating Officer does not act to grant approve or deny a new license application within 18020 days after the filing of applicant files a complete application, the license shall is be deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then and the Chief Operating Officer

shall issue athe license will contain license containing the standard terms and conditions included in other comparable licenses issued by Metro.

- $(g\underline{f})$ If the applicant substantially modifies the application during the course of the review, the review period for the decision shall beis restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:
 - (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or
 - (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (g) An applicant may withdraw its application at any time prior tobefore the Chief Operating Officer's decision and may submit a new application at any time thereafter.

(hhg) If a request for the Chief Operating Officer denies a license is denied, no request, the applicant may not file a new application for this the same or substantially similar license shall be filed by the applicant for at least six (6) months from the date of denial date.

(i) Licenses shall 5.01.090 License Contents

- (a) A license will specify the activities authorized to be performedactivities, the types and amounts of wastes authorized to be accepted at the solid waste facility may accept, and any other limitations or conditions attached by the Chief Operating Officer. imposes.
- (b) In addition to all otherthis section's requirements of section, if a license authorizes the licensee to accept approving acceptance of mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be, the license is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Section 5.01.132, and shall280.
- (c) The license must require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. (1) Environment. Facilities shall be It is designed and operated to preclude the creation of avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
- (2) <u>Health and Safety</u>. <u>Facilities shall be</u>It is designed and operated to <u>preclude the creation</u> <u>ofavoid</u> conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) <u>Nuisances</u>. <u>Facilities shall be It is</u> designed and operated to <u>preclude the creation of avoid</u> nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities conducting that conduct material recovery on non-putrescible waste shallmust be designed and operated to assure recover materials are recovered in a timely manner, to meet standards in Section 5.01.260125, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities conducting reloading of that reload non-putrescible waste shallmust be designed and operated to assure that the reloading rapidly and efficiently reload and transfer of non-putrescible that waste to a Metro authorized processing facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record-keeping. (6) Record keeping. Facilities shall A licensee must keep and maintain complete and accurate records of the amount of all solid waste and recyclable materials received, recycled, reloaded and disposed.
- (j) The term of a newthat it receives, recycles, reloads or reneweddisposes.
- (h) A license shall be term may not more than exceed five (5) years, except that the Chief Operating Officer may extend the license term for up to one year.

(Ordinance No. 98-762C, Secs. 16-17; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 8; Ordinance No. 06-1098B, Sec. 2;

Ordinance No. 07-1138, Sec. 1; Ordinance No. 07-1139, Sec. 2; and Ordinance No. 14-1332, Sec. 1.)

5.01.054-100 Record-keeping and Reporting for Licenses

- (a) Licensees shallA licensee must maintain accurate records of the information required bythat the Chief Operating Officer and shallrequires. A licensee must report such the required information on the forms—or, in the format and within the reporting periods and deadlines established bythat the Chief Operating Officer. Reports shall be signed and certified as accurate by an establishes. The licensee or its authorized representative of the licensee or franchiseemust sign the report and certify it as accurate.
- (b) Licensees shall maintain evidence of all financial assurance mechanisms unless or until the licensee is released from the financial assurance requirements as specified in this chapter.
- (c) Licensees shallA licensee must provide copies of any correspondence or information received from or provided towith any federal, state or local government agency related to the regulation of a solid waste facility within five (5)—days of the receipt or provision of the correspondence or information.
- (d) Licensees shall (c) A licensee must maintain records of any written complaints received from the public or a customer, including and retain them for not less than one year. This includes, but is not limited to, information on regarding the nature of the complaint, the complainant's name, address and phone number of, the complainant, date the licensee received the complaint was received, and any action taken to respond response by the licensee to the complaint.
- (e) All (d) A licensee must retain all records required by this chapter shall be retained by the licensee, or its operator for three (3) years and shall be (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.
- (fe) All Any information submitted by the licensee shall be submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such that portion of the information that records and reports for which the licensee requests exception from disclosure consistent with Oregon Law.

(Ordinance No. 98-762C, Secs. 38-39; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.055_110 License Renewal—of Licenses

- (a) The Chief Operating Officer shall renew a solid waste facility license is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.
- (b) A licensee must request a renewal license not less than 120 days before the license's expiration date. The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.
 - (c) A licensee requesting a license renewal must:
 - File a completed application for renewal;
 - (2) Pay a \$300.00 application fee; and
 - (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.
- (d) The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed renewal is not in the public interest, provided that the licensee files a completed application for renewal accompanied by payment of an application fee of three hundred dollars (\$300.00) not less than 120 days prior to the expiration of the license term, together with a statement of proposed material changes from its initial application for the license and any other information required by the Chief Operating Officer. The Chief Operating Officer may attach conditions or limitations to any renewed license.

_(Ordinance No. 98-762C, Secs. 22-23; Ordinance No. 98-767, Sec. 3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.11; and Ordinance No. 14-1332, Sec. 1.)

5.01.056-120 Transfer of Ownership or Control of Licenses

(a) Any person in control of a license may not lease, assign, mortgage, sellA licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfer, either in whole or in part, transfers control of the license to another person unless an application therefore has been filed in accordance with Section 5.01.050 and has been granted. The proposed, whether whole or in part. The transferee of a license must meet the requirements of this chapter.

- (b) The Chief Operating Officer shall not unreasonably deny an application for transfer of a license. If the Chief Operating Officer does not act on the application for transfer within 120 days after filing of a complete application, the application shall be deemed granted.
- (c) The term for any transferred license shall be is for the remainder of the original term unless the Chief Operating Officer establishes a different term based on the facts and circumstances at the time of transfer.

(Ordinance No. 81-111, Sec. 10; Ordinance No. 98-762C, Sec. 24; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 12; and Ordinance No. 14-1332, Sec. 1.)

5.01.057_130 Change of Authorizations for Licenses

- (a) A person holding a license shall licensee must submit an application pursuant to Section 5.01.052070 when said person seeks authorization the licensee requests authority to:
 - (1) Accept wastes other than those authorized by the applicant's license authorizes, or
 - (2) Perform activities other than those authorized by the applicant's license authorizes, or
 - (3) Modify other limiting conditions of the applicant's license.
- (b) Applications The licensee must file an application for a change in authorization or limits shall be filed on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations or limits to the applicant's license <u>shalldoes</u> not substitute for an application that <u>Metro</u> would otherwise <u>be requiredrequire</u> under Section 5.01.050 of this chapter.
- (d) A person holding a license shall licensee must notify Metro in writing when said personthe licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The <u>application</u> fee for applications for changes of authorizations or limits shall be one hundred dollars (\$is \$100.00).

(Ordinance No. 98-762C, Secs. 25-26; Ordinance No. 98-767, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 13; and Ordinance No. 14-1332, Sec. 1.)

5.01.058_140 Variances for Licenses

- (a) The Chief Operating Officer, may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees upon such conditions as is necessary to protect public health, safety and welfare, if.
- (b) In order to grant a variance, the Chief Operating Officer findsmust find that the licensee or applicant can achieve the purpose and intent of the particular license requirement can be achieved without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the control of the applicant, or licensee requesting the variance applicant's or licensee's control; or
 - (2) Due to special physical conditions or causes, willWould be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (bc) A variance must be requested by a licenselicensee or applicant, or must request a licensee, variance in writing and must concisely state in a concise manner facts to show cause why such variance the Chief Operating Officer should be grantedgrant the variance. The Chief Operating Officer may make such investigation investigate the request as the Chief Operating Officer deems considers necessary and shall.
- (d) The Chief Operating Officer must approve or deny the variance coincident with any recommendation made on approval or denial of any license application; or, upon a request for variance from an existing licensee, request within 60 days after receipt of the variance request.
- (<u>ee</u>) A request for a variance <u>shalldoes</u> not substitute for an application that <u>Metro</u> would otherwise <u>be required require</u> under Section 5.01.050 of this chapter.
- $(\frac{df}{d})$ If the Chief Operating Officer denies a variance request, the Chief Operating Officer $\frac{shallmust}{d}$ notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.
- (eg) If the Chief Operating Officer denies a request for a variance is denied, no, the requesting party may not file a new application for this the same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

(Ordinance No. 81-111, Sec. 12; Ordinance No. 98-762C, Sec. 27; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

FRANCHISING REQUIREMENTS

5.01.070_150 Franchise Requirements and Fees

- (a) A Metro solid waste franchise shall be series required for the of any person owning or controlling a facility at which the person performs any of the following activities—are performed:
 - (1) Processing of putrescible waste other than yard debris and yard debris mixed with residential food waste.
 - (2) Operating a transfer station.
 - (3) Operating a disposal site or an energy recovery facility.
 - (4) Any process using chemical or biological methods whose primary purpose is reduction of solid waste weight or volumes.
 - (5) Any other activity not listed in this section or exempted by Metro Code Section 5.01.040.
- (b) The annual fee for a solid waste franchise shall not exceed five hundred dollars (\$\frac{is}{5}\$500.00\$). The Council may revise these fees upon 90 days written notice to each franchisee and an opportunity to be heard.
- (c) The franchise fee shall-beis in addition to any other fee, tax or charge imposed upon a franchisee.
- (d) The franchisee shallmust pay the franchise fee in the manner and at the time required by the Chief Operating Officer.
- (e) Upon the filing of an The application, every applicant fee for a franchise, new or for renewal of an existing franchise, shall submit an is \$500.00. The application fee of five hundred dollars (\$500).is due at the time of filing.

(Ordinance No. 98-762C, Secs. 8-9. Ordinance No. 00-866, Sec. 3; Ordinance No. 02-933, Sec. 2; Ordinance No. 03-1018A, Sec. 4; and Ordinance No. 14-1332, Sec. 1.)

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.071_160 Pre-Application Conference for Franchises

- (a) All prospective An applicants for a new franchise shall participate inmust attend a pre-application conference. The purpose of such the conference shall be to provide the prospective applicant with information regarding the applicable requirements for the proposed facility and to obtain from have the prospective applicant a description of describe the proposed facility's location, site conditions and operations of the proposed facility.
- (b) If a prospective an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, such the applicant shall participate inmust attend a subsequent pre-application conference prior tobefore filing any application.

(Ordinance No. 98-762C, Secs. 11-12; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.072_170 Applications for Franchises

- (a) Applications An applicant for a franchise new or for renewal of an existing franchise shall be filed must file the application on forms or in the format provided required by the Chief Operating Officer.
- (b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall The applicant must include a description of the activities proposed the applicant proposes to be conducted conduct and a description of Wastes sought waste it seeks to be accepted accept.
- (c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications An application for a franchise shallmust include the following information to the Chief Operating Officer:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the franchise term;
 - (2) A duplicate—copy of all applications for necessary DEQ permits—and, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A duplicate copy of any closure plan required to be submitted to DEQ, or if that DEQ requires, including

- documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
- A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit a proposal for providing financial assurance prior to the commencement of Metro regulated activities for the costs of closure of the facility. The proposal shall include an estimate of the cost to the closure plan required in Section 5.01.072(c)(3). If an application is approved, the franchise shall require that financial assurance is in place prior to beginning any activities authorized by the franchise. However, regarding applications for franchises, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the closure plan required in Section 5.01.072(c)(3) will be less than \$10,000.00;
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall (4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter320(f) if Metro revokes the —franchise is revoked or refuses any franchise renewal—is refused;
- (65) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval has not been obtained, then a written recommendation of the planning director of the local governmental unit having land use

jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (7) Identify any other known or (6) Any current permit and a list of anticipated permits required from that any other governmental agency may require. If application for such other permits the applicant has been previously made, applied for other permits, the applicant must provide a copy of such permit application and any the permit that has been application and any permit that another governmental agency granted shall be provided as a result.
- (d) An application for a franchise shall be accompanied by an-analysis of the factors described in Section 5.01.073180 (f) of this chapter.
- (e) Notwithstanding any other provision in this section, Metro shall not acceptmust accompany an application for a new franchise for authority to operate a transfer station until January 1, 2016.

(Ordinance No. 81-111, Sec. 7; Ordinance No. 82-136, Sec. 2; Ordinance No. 91-422B, Sec. 3; Ordinance No. 95-621A, Sec. 5; Ordinance No. 98-762C, Sec. 13; Ordinance No. 00-866, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 5; Ordinance No. 04-1056, Sec. 1; Ordinance No. 05-1093, Sec. 1; Ordinance No. 06-1101; Ordinance No. 07-1139, Sec. 1; Ordinance No. 07-1161, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.073 Issuance and Contents of180 Franchise Issuance

- (a) Applications for franchises The Chief Operating Officer will review franchise applications filed in accordance withunder Section 5.01.072 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro 170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer shallmay make such any investigation concerning regarding the application information as

the Chief Operating Officer deemsconsiders appropriate. 7 including This includes 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 will make a recommendation regarding whether the applicant is qualified, whether:
 - (1) Applicant is qualified,
 - (2) the pProposed franchise complies with the Regional Solid Waste Management Plan, whether
 - (3) the pProposed franchise meets the requirements of Section 5.01.072170, and whether or not
 - (4) the aApplicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer shallwill provide the recommendations required by subsection (c) of this section—to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application—should be granted or denied. If the Chief Operating Officer recommends that Council grant the application—be granted, the Chief Operating Officer shallmay also recommend to the Council specific conditions of the franchise.
- (e) Subsequent to receiving the recommendation of After Council receives the Chief Operating Officer Officer's recommendation, the Council shallwill 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 the order shall be seffective immediately.
 - (f) In determining whether to authorize the issuance of a franchise, the The Council shallwill consider, but not be limited by, the following factors when determining whether to issue a franchise:
 - (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 is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
- (4) Whether granting a franchise to the applicant would be unlikely to unreasonably is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
- (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 chapter280 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.
- deny a new franchise application within 12180 days after the applicant files filing of a complete application the franchise is be deemed granted for the solid waste facility or disposal site requested in the application. —The deadline for the Council to act to grant approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro. 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 an applicant files a complete franchise application, the deadline for the Council to act to grantapprove or deny the application shall be extended if:
 - (1) The Council acts to extendextends the deadline for up to an additional 60 days, which the Council may do one timeonly once for any single application;
 - (2) The applicant substantially modifies the application during the course of the review period, in which case the 120 180 days review period for the Council to act shall be restarted as of the

- date Metro receives the applicant's modifications;
- (3) The applicant and the Chief Operating Officer mutually agree to extend the deadline for the Council to act for a specified time period of time.
- (i) An applicant may withdraw its application at any time prior tobefore the Council's decision and may submit a new application at any time thereafter.
- (j) If a the Council denies a franchise request for a franchise is denied, no , the applicant may not file a new application for this the same or substantially similar franchise shall be filed by the applicant for at least six (6) months from the date of denial date.
- (k) The term of a new or renewed A franchise shall be term may not more than exceed five $\frac{(5)}{(5)}$ years, except that the Chief Operating Officer may extend the term of a franchise for up to one year.

(15.01.190 Franchise Contents

- <u>(a)</u> The franchise shall constitute ais the Council's grant of authority from the Council to accept the waste(s) and perform the activity(ies) or activities described therein the franchise, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority may be revoked.
- (\underline{mb}) Franchises $\underline{approved}$ by the Council shall \underline{must} be in writing and \underline{shall} include the following:
 - (1) The term of the franchise;
 - (2) The specific activities authorized to be performed the franchisee may perform and the types and amounts of waste authorized to be accepted the franchisee may accept at the solid waste facility;
 - (3) SuchAny other conditions as the Council deemsconsiders necessary to insure thatensure the franchisee complies with the intent and purpose of this chapter will in all respects be observed; and
 - (4) Indemnification of Metro in a form acceptable to the Metro Attorney.
- (n) In addition to all other requirements of this section, a c) A franchise approving acceptance of that authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be subject to the rules, procedures, performance standards, design requirements,

and operating requirements adopted as administrative procedures pursuant to Section 5.01.132, and shall 280. The franchise must require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. Facilities shall be It is designed and operated to preclude the creation of avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
- (2) <u>Health and Safety</u>. <u>Facilities shall beIt is</u> designed and operated to <u>preclude the creation</u> <u>ofavoid</u> conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) <u>Nuisances</u>. <u>Facilities shall be It is</u> designed and operated to <u>preclude the creation of avoid</u> nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities conducting that conduct material recovery on non-putrescible waste shall must be designed and operated to assure recover materials are recovered in a timely manner, to meet standards in Section 5.01.125260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities conducting reloading of that reload non-putrescible waste shallmust be designed and operated to assure that the reloading rapidly and efficiently reload and transfer of non-putrescible that waste to a Metro authorized processing facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record-keeping. Facilities shall A franchisee must keep and maintain complete and accurate records of the amount of all solid waste and recyclable materials received, recycled, reloaded and disposed that it receives, recycles, reloads or disposes.

(Ordinance No. 98-762C, Secs. 19-20; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.10; Ordinance No. 07-1138, Sec. 2; and Ordinance No. 14-1332, Sec. 1.)

(5.01.080 Term of Franchise. Repealed Ord. 98 762C §21.)

(5.01.085 Franchises for Major Disposal System Components. Repealed Ord. 98 762C §21.)

5.01.074-200 Record-keeping and Reporting for Franchises

- (a) Franchisees shallA franchisee must maintain accurate records of the information required by the Chief Operating Officer requires and shall report such required that information on the forms or in the format and within the reporting periods and deadlines established by that the Chief Operating Officer. Reports shall be signed and certified as accurate by an establishes. A franchisee's authorized representative of must sign the licensee or franchisee report and certify it as accurate.
- (b) Franchisees shall maintain evidence of all financial assurance mechanisms unless or until the franchisee is released from the financial assurance requirements as specified in this chapter.
- (c) Franchisees shallA franchisee must provide copies of any correspondence or information received from or provided towith any federal, state or local government agency related to the regulation of a solid waste facility within five (5)—days of the receipt or provision of the correspondence or information.
- (dc) Franchisees shall franchisee must maintain records of any written complaints received from the public or a customer, including and retain them for not less than one year. This includes, but is not limited to, information on regarding the nature of the complaint, the complainant's name, address and phone number of, the complainant, date the complaint was franchisee received the complaint, and any action taken to respond response by the franchisee to the complaint.
- (e) All (d) A franchisee must retain all records required by this chapter shall be retained by the franchisee or its operator (except for the complaint records in subsection (c)) for three (3) years and shall be available for inspection by allow the Chief Operating Officer to inspect them.
- (fe) All information submitted by that the franchisee shall be submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such that portion of the information records and reports for which that

franchisee requests exception from disclosure consistent with Oregon Law.

(Ordinance No. 14-1332, Sec. 1.)

5.01.075_210 Franchise Renewalof Franchises

- <u>(a)</u> The Council <u>shall approveaupproves</u> or <u>deny renewals</u> <u>of denies</u> solid waste facility <u>franchises franchise renewals</u>. A franchisee seeking renewal of a franchise <u>shall must</u>:
 - (1) <u>fFile</u> a completed application for renewal: accompanied by payment of an
 - (2) Pay a \$500.00 application fee of five hundred dollars (\$500.00) not less than 120 days prior to the expiration of before the franchise term, together with expires; and
 - (3) Provide a statement of proposed material changes from its initial application for the franchise—and, along with any other information required by the Chief Operating Officer or by—the Council-requires.
- (b) The Chief Operating Officer shall formulate recommendations will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.073 of this chapter.180. The Council shallmust approve renewal of a solid waste facility franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained outlined in Section 5.01.073180. The Council may attach conditions or limitations to the renewed franchise.
- (c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires.

(Ordinance No. 98-762C, Secs. 22-23. Ordinance No. 98-767, Sec. 3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 11; and Ordinance No. 14-1332, Sec. 1.)

5.01.076-220 Transfer of Ownership or Control of Franchises

(a) Any person in control of a franchise may not lease, assign, mortgage, sell (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise transfer, either in whole or in part, transfers control of the franchise to another person unless an application therefore has been filed in accordance with Section 5.01.072 and

has been granted. The proposed, whether whole or in part. The transferee of a franchise must meet the requirements of this chapter.

- (b) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within 120 days after filing of a complete application, the application shall be deemed granted.
- (c) The term for any transferred franchise shall be is for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

(Ordinance No. 81-111, Sec. 10; Ordinance No. 98-762C, Sec. 24; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 12; and Ordinance No. 14-1332, Sec. 1.)

5.01.077-230 Change of Authorizations for Franchises

- (a) A person holding a franchise shall franchisee must submit an application pursuant to Section 5.01.072170 when said person seeks authorization the franchisee requests authority to:
 - (1) Accept wastes other than those authorized by the applicant's franchise authorizes, or
 - (2) Perform activities other than those authorized by the applicant's or franchise authorizes, or
 - (3) Modify other limiting conditions of the applicant's franchise.
- (b) Applications—The franchisee must file an application for a change in authorization or limits shall be filed—on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations authorization or limits to the applicant's franchise shalldoes not substitute for an application that Metro would otherwise be required require under Section 5.01.070 of this chapter 150.
- (d) A person holding a franchise shallfranchisee must notify Metro in writing when said personthe franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The <u>application</u> fee for applications for changes of authorizations or limits shall be one hundred dollars ($\frac{1}{5}$).

(Ordinance No. 98-762C, Secs. 25-26; Ordinance No. 98-767, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 13; and Ordinance No. 14-1332, Sec. 1.)

5.01.078-240 Variances for Franchises

- (a) The Council, upon recommendation of (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon such conditions as the Council may deemconsiders necessary to protect public health, safety and welfare, if.
- (b) In order to grant a variance, the Council findsmust find that the franchisee can achieve the purpose and intent of the particular franchise requirement can be achieved without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the control of the applicant, or franchisee requesting the variance applicant's or franchisee's control; or
 - (2) Due to special physical conditions or causes, willWould be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (bc) A variance must be requested by a franchise franchise or applicant, or must request a franchise, variance in writing and must concisely state in a concise manner facts to show cause why such Council should grant the variance should be granted. The Chief Operating Officer may make such investigation as the Chief Operating Officer deemsconsiders necessary and shall make a recommendation.
- (d) The Chief Operating Officer must recommend to the Council whether to approve or deny the variance coincident with any recommendation made on approval or denial of any franchise application; or, upon a request for variance from an existing franchisee, within 120 days after receipt of Metro receives the variance request.
- (c) A request for a variance <u>shalldoes</u> not substitute for an application that <u>Metro</u> would otherwise <u>be required require</u> under Section 5.01.070 of this chapter 150.
- (d) If the Council denies a variance request, the Chief Operating Officer shallmust notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(e) If the Council denies a request for a variance—is denied, no , the requesting party may not file a new application for this the same or substantially similar variance shall be filed for at least six (6) months from the denial date of denial.

(Ordinance No. 81-111, Sec. 12; Ordinance No. 98-762C, Sec. 27; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.100 Appeals

Any applicant, franchisee or licensee is entitled to a contested case hearing pursuant to Gode Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance, follows:

- (a) Except as provided in subsection (c) of this section, refusal to renew a franchise or license by the Council or Chief Operating Officer, as appropriate, shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (b) The refusal by the Council or Chief Operating Officer, as appropriate, to grant a variance, or to issue, modify or transfer a franchise or license shall be effective immediately. The franchisee, licensee or applicant may request a hearing on such refusal within 30 days of notice of such refusal.
- (c) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer, as appropriate, may refuse to renew a franchise or license and such action shall effective immediately. If a franchise refused effective immediately, the franchisee or licensee shall have 30 days from the date of such action to request a contested case hearing.

(Ordinance No. 81 111, Sec. 11; Ordinance No. 95 621A, Sec. 6; Ordinance No. 02 974, Sec. 1; and Ordinance No. 03 1018A, 14.)

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.120_250 General Obligations of All Regulated Parties

All persons regulated by this chapter shallmust:

- (a) Allow the Chief Operating Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the license or franchise, and the performance standards and administrative procedures rules adopted pursuant to Section 5.01.132 of this chapter 280.
- (b) Ensure that solid waste transferred from the facility goes to the appropriate destination under Section 5.01.132(a) of this chapter 280, under Metro Code Chapter 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- (c) Maintain <u>insurance</u> during the <u>term of the</u> license or franchise <u>the types of insurance term</u> in the amounts specified in the license or franchise or <u>suchany</u> other amounts as <u>may be required by</u> state law <u>may require</u> for public contracts, and <u>shallto</u> give 30 days' written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (d) Shall indemnifyIndemnify and save harmless Metro, the Council, the Chief Operating Officer, and any of theirMetro employees or and Metro agents and save them harmless from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the licensee's or franchisee's performance of or failure to perform any of its obligations under the license or franchise or this chapter.
- (e) <u>Shall have Agree to</u> no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:
 - (1) <u>aA</u>ny provision or requirement of the license or franchise; or because of the
 - (2) Metro's enforcement of the license or franchise; or
 - (3) Any determination that a in the event the license or franchise or any part thereof is determined to be invalid.

(Ordinance No. 81-111, Sec. 13; Ordinance No. 98-762C, Sec. 28; Ordinance No. 02-974, Sec. 1; and Ordinance No. 03-1018A, Sec. 15.)

5.01.125260 Obligations and Limits for Selected Types of Activities

(a) A holder of a license or franchise for a material recovery facility <u>licensee</u> or transfer station <u>shallfranchisee</u> must perform material recovery from non-putrescible waste

- accepted that it accepts at the facility as specified in this section or as otherwise specified in its license or franchise, or shall it must deliver such the 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 shallmust 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, Failure to maintain the minimum recovery rate dirt, and sand. specified in this section shall constitute is a violation enforceable under Metro Code Sections 5.01.180320 and 5.01.200330. After December 31, 2008, the requirements of this subsection willare not be applicable to licensees or franchisees unless Metrothe Council determines that this standard should reinstated to replace the processing residual standard established in 5.01.125260(c).
- (c) Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shallmust:
 - (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. The Pprocessing residual from such a facility shallmay 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 the sampling to Metro in the monthly report due the month following the end of that quarter.
 - (d3) Based on observation, audits, inspections and reports, Metro inspectors shallwill conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.135290(c). Failure to maintain the recovery level specified in subsection Section 5.01.260(c)(1) of this section shall constitute is a violation enforceable under Metro Code. The Metro will not impose a civil penalty on the first two violations of

this subsection by a single licensee or franchisee—shall not result in the imposition of a civil penalty.

(e4)_Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute is a violation enforceable under Metro Code.

- (\underline{fd}) A holder of a franchise for a \underline{Tt} ransfer \underline{ss} tation franchisee:
 - (1) ShallMust 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) ShallMust not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.
 - (3) Shall be Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the Metro—Council in approving the transfer station franchise application.
 - (4) ShallMust 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.
- (ge) A holder of a license for a reload facility shall licensee must deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- $(\underline{h}f)$ A holder of a license or franchise for a solid waste facility shall not licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste except when suchunless the:
 - (1) sSize reduction constitutes is a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such
 - (2) Licensee or franchisee described the size reduction is described and in a Metro-approved by Metro in an operating plan.

(Ordinance No. 98-762C, Secs. 30-31; 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; Ordinance No. 12-1272, Sec. 3; and Ordinance No. 13-1306, Sec. 3.)

5.01.127_270 Direct Haul of Putrescible Waste

<u>Franchisees A franchisee</u> authorized by Metro to deliver putrescible waste directly to a disposal site <u>shallmust</u>:

- (a) Deliver <u>saidthe</u> putrescible waste to Metro's contract operator for disposal of putrescible waste; and
- (b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to Section 5.01.132 of this chapter280; and
- (c) Provide transportation or arrange for transportation by a transportation service provider complying that complies with the following performance standards for long-haul transportation by highway:
 - (1) All solid waste transported through the city limits of Arlington, Oregon, shall be is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
 - (2) All equipment shall fulfillsatisfies all federal, state, and local regulations. In addition, the use of exhaust brakes shall be prohibited altogether.
 - (3) All solid waste shall be is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be is capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.
 - (4) The average weight of solid waste payloads transported during each calendar month shall be nois not less than 25 tons.
 - (5) Any staging areas used shall be is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
 - (6) All transport vehicles shall—use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
 - (7) Use of rest areas, turnouts, scenic vista points, and state parks shall be is limited to cases of emergency.
 - (8) Transportation shall not be conducted is prohibited in the Columbia River Gorge NSA during the following times:

- (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
- (B) Daylight hours on Saturdays in June, July, August, and September.
- (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste shall be is transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste shall be is transported by use of vehicles and equipment that shall be is suitably painted and present presents an acceptable appearance.
- (11) A <u>franchisee</u> representative <u>of franchisee</u> and its transportation carrier <u>shallmust</u> annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The franchisee shallmust report to Metro any accidents, citations, and vehicle inspections involving vehicles of their the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A <u>franchisee</u> representative <u>of franchisee</u> and its transportation carrier <u>shallmust</u> meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee <u>shallmust</u> immediately report any violations of this subsection to Metro.

(Ordinance No. 98-762C, Secs. 32-33; and Ordinance No. 02-974, Sec. 1.)

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

- (5.01.130 Administrative Procedures for franchisees. Repealed Ord. 98 762C Sec. 29)
- (5.01.131 Designation and Review of Service Areas and of Demand.
 Ordinance No. 01 916C, Secs. 2 3; Ordinance No. 02 974,
 Sec. 1; Ordinance No. 03 1018A, Sec. 17; and repealed
 Ord. 12 1272. Sec. 4.)

Performance Standards

The Chief Operating administrative procedures and performance governing the obligations of licensees and under this chapter, including but not unacceptable wastes, rations, non putrescible waste material putrescible waste reloading, transportation putrescible waste.

5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms

- (a) The Chief Operating Officer may adopt or amend rules, performance standards, and forms to implement any provision of this chapter. Any rule, performance standard, or form adopted or amended under this section has the same force and effect as any other chapter provision.
- (b) Before the Chief Operating Officer adopts or amends a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule or performance standard; the location at which a person may obtain a copy of the full text of the proposed rule or performance standard; the method for submitting public comments; and the deadline for submitting public comments.
- (c) In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. The public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.

- (d) During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period.
- (e) After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.
- (f) Any rule or performance standard adopted under this section takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.
- (g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.
- (h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.
- (i) Any form, performance standard, or administrative rule (formerly known as an "administrative procedure") that is effect on the date of this ordinance's adoption remains in effect unless otherwise repealed or amended.

- (j) For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.
- (b) The procedures and performance standards to implement all provisions of this chapter.
- (c) The Chief Operating Officer shall substantially amend the administrative procedures and performance standards issued under subsections (a) or (b) of this section only after providing public notice and the opportunity to comment on the proposed amendment.
- (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.
- -(Ordinance No. 98-762C, Secs. 34-35; Ordinance No. 01-916C, Sec. 5; Ordinance No. 02-974, Sec. 1; Ordinance No. 07-1138, Sec. 3; and Ordinance No. 12-1272, Sec. 5.)

5.01.135 290 Inspections and, Audits, and other Investigations of Solid Waste Facilities

- The Chief Operating Officer shall beis authorized to make such inspection or, audit, or other investigation as the Chief Operating Officer deemsconsiders appropriate to ensure compliance with this chapter, the Code, the franchise or license, and shall be permitted administrative rules and performance standards adopted pursuant to Section 5.01.280. Licensed or franchised facilities must allow access to the facility premises of a licensed or franchised facility, and all other solid waste facilities, at all reasonable times during business hours with or without notice or at such other times with 24 hours notice after the franchise or license is granted to assure compliance with this chapter, the Code, the franchise or license, and administrative procedures and performance standards adopted pursuant to Section 5.01.132 of this chapter, and during non-business hours with 24 hours notice.
- (b) Inspections or other investigations authorized under subsection (a) of this section shallwill occur regularly and as determined necessary by the Chief Operating Officer. Results determines necessary. The Chief Operating Officer will report the results of each inspection shall be reported on a standard form specified, audit, or other investigation in the format approved by the Chief Operating Officer.

- (c) The Chief Operating Officer shall have may access to and may examine any records during suchthe inspections or, audits any records, or other investigations if the Chief Operating Officer considers the records pertinent in the opinion of the Chief Operating Officer to the license or franchise, or to the provisions of this chapter, including. These records include but are not limited to the licensee's, franchisee's or solid waste facility operator's books, papers, records, equipment, blueprints, operation and maintenance records and operating rules and procedures of the licensee, franchisee or solid waste facility operator. Such . As part of the inspections or, audits, or other investigations, the Chief Operating Officer may include taking take samples and conductingconduct analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer shallwill coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to prevent the imposition of avoid redundant requirements on operations.
- (d) Any <u>violations</u> violation discovered by <u>thean</u> inspection <u>or</u>, audit <u>shall be</u>, or other investigation is subject to the penalties provided in Section 5.01.200330.

(Ordinance No. 98-762C, Secs. 36-37; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 18; and Ordinance No. 07-1147B, Sec. 4.)

5.01.137 Record keeping and Reporting

- (a) Franchisees and licensees shall maintain accurate records of the information required by the Chief Operating Officer and shall report such required information on the forms or in the format and within the reporting periods and deadlines established by the Chief Operating Officer. Reports shall be signed and certified as accurate by an authorized representative of the licensee or franchisee.
- (b) Licensees or franchisees shall maintain evidence of all financial assurance mechanisms unless or until the licensee or franchisee is released from the financial assurance requirements as specified in this chapter.
- (c) Licensees or franchisees shall provide copies of any correspondence or information received from or provided to any federal, state or local government agency related to the regulation of a solid waste facility within five (5) days of the receipt or provision of the correspondence or information.
- (d) Licensees or franchisees shall maintain records of any written complaints received from the public or a customer, including but not limited to, information on the nature of the

complaint, name, address and phone number of the complainant, date the complaint was received and any action taken to respond to the complaint.

- (e) All records required by this chapter shall be retained by the licensee, franchisee or its operator for three (3) years and shall be available for inspection by the Chief Operating Officer.
- (f) All information submitted by the licensee or franchisee shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portion of the records and reports for which the licensee or franchisee requests exception from disclosure consistent with Oregon law.

(Ordinance No. 98 762C, Secs. 38 39; and Ordinance No. 02 974, Sec. 1.)

5.01.140 License and Franchise

- (a) The annual fee for a solid waste license shall not exceed three hundred dollars (\$300.00), and the annual fee for a solid waste franchise shall not exceed five hundred dollars (\$500.00). The Council may revise these fees upon 90 days written notice to each licensee or franchisee and an opportunity to be heard.
- (b) The license or franchise fee shall be in addition to any other fee, tax or charge imposed upon a licensee or franchisee.
- (c) The licensee or franchisee shall pay the license or franchise fee in the manner and at the time required by the Chief Operating Officer.

(Ordinance No. 81 111, Sec. 15; Ordinance No. 98 762C. Sec. 40; Ordinance No. 98 767, Sec. 5; and Ordinance No. 02 974, Sec. 1.)

5.01.150 Regional System Fees

- (a) In accordance withPursuant to Chapter 5.02 of this title, regional system fees shall apply to solid waste facilities and disposal sites which are ewned, eperated, licensed or franchised bythat Metro owns, operates, licenses or franchises, or which are liable for payment of suchthe fees pursuant to a special agreement with Metro.
- (b) Regional system fees shall beare in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.
- (c) Regional system fees shallmust be separately stated upon records of the solid waste facility or disposal site.

(d) Regional system fees and finance charges on <u>suchthose</u> fees <u>shallmust</u> be paid as specified in <u>SectionMetro Code Chapter</u> 5.02.055 of this Title.

(Ordinance No. 81-111, Sec. 16; Ordinance No. 86-214, Sec. 1; Ordinance No. 91-422B, Sec. 4; Ordinance No. 93-509, Sec. 2; Ordinance No. 95-621A, Sec. 7; Ordinance No. 98-762C, Sec. 41; Ordinance No. 00-866, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 19; and Ordinance No. 14-1332, Sec. 1.)

(5.01.160 Reports from Collection Services. Repealed Ord. 98 7620 §42)

5.01.170 310 Determination of Rates

- (a) The Council may establish facility rates upon findingif it finds that setting such facility rates is in the public interest as a matter of metropolitan concern.
 - (b) Notwithstanding any other provision of this section,
 - (1) Licensees shall be are exempt from all rate setting; and
 - (2) Franchisees shall be are exempt from rate setting unless Metro requires rate setting is required as a franchise condition of their franchise.

(Ordinance No. 81-111, Sec. 19; Ordinance No. 82-136, Sec. 4. Renumbered by Ordinance No. 91-436A, Sec. 2, which repealed former Section 5.01.170, "Rate Review Committee." Repealed by Ordinance No. 98-762C, Sec. 43; replaced by Ordinance No. 98-762C, Sec. 44; and Ordinance No. 03-1018A, Sec. 20.)

ENFORCEMENT AND APPEALS

5.01.180-320 Enforcement of Franchise or License Provisions

- (a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.
- (b) The Chief Operating Officer may, at any time, make an investigation to determine if investigate whether there is sufficient reason and cause to suspend, modify or revoke a franchise or license as provided in this section. If, in the opinion of the Chief Operating Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Chief Operating Officer shallwill notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken steps the violator must take to correct the violation. Upon a finding that violation exists and that If the

franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after receiving writtenMetro sends notice thereof, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.200 of this chapter shall be imposed330 or that Metro will suspend, modify or revoke the franchise or license is suspended, modified or revoked.

(<u>bc</u>) The <u>notice authorized by this subsection shall be based</u> upon the Chief Operating <u>Officer's Officer will send the notice</u> upon finding that the franchisee or licensee has:

- (1) Violated the franchise or license agreement, the administrative procedures rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated thereunder under or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, or other information required to be submitted to Metrothat Metro requires the licensee or franchisee to submit;
- (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the licensed or franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of Violated a city or county ordinance if such ordinances require the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.

(ed) Except as provided in subsection (e) (d) of this section, if the Chief Operating Officer's revocation, modificationOfficer revokes, modifies or suspension of suspends a license or franchise shall, it does not become effective until the Metro gives the licensee or franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for under Metro Code 2.05.

- (e) If Metro finds a contested case hearing if one is requested.
- (d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Chief Operating Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the Chief Operating Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected franchisee for reasonable compensation in order to provide service or abate the If a franchise danger for so long as the danger continues. isMetro immediately suspended suspends a franchise, the franchisee shall have 90 has 30 days from the suspension date of such action to request a contested case hearing in accordance withunder Code Chapter 2.05.
- (e) Upon revocation f) If Metro revokes or refusalrefuses to renew them franchise or license, all rights of the franchise or licensee rights in the franchise or license shall immediately be divested become void.

(Ordinance No. 81-111, Sec. 20; Ordinance No. 82-136, Sec. 5; Ordinance No. 95-621A, Sec. 8. Renumbered by Ordinance No. 91-436A, Sec. 2. Amended by Ordinance No. 98-762C, Sec. 45; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 21; and Ordinance No. 14-1332, Sec. 1.)

(5.01.190 Right to Purchase. Repealed Ord. 98 762C §46)

5.01.200 330 Penalties

- (a) Each violation of this chapter shall be is punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. Separate Metro may join separate offenses may be joined in one indictment or complaint or information Notice of Violation in several counts.
- (b) Upon a finding If the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise agreement, or the administrative procedures rules or performance standards adopted pursuant to Section 5.01.132 of this chapter during an inspection or audit conducted pursuant to Section 5.01.135 of this chapter 280, the Chief Operating Officer shallwill provide written notice to the licensee or franchiseeviolator describing the violation at the time of the inspection, and requiring the licensee or franchiseeviolator to correct the violation within the time specified on in the notice.

- (c) UponIf a finding that the licensee or franchisee has failed fails to correct the violation within the specified time period, the Chief Operating Officer shallwill issue a citation Notice of Violation, indicating the continuing violation, the date of re-inspection and imposing athe fine imposed as specified in subsection (a) of this section on licensees or franchisees.).
- (d) If after re-inspection, the Chief Operating Officer finds the licensee or franchisee has failed to correct the violation, such the violation shall be punishable by a fine of \$1,000.00. Notice specified in subsection (a). Metro will give notice of a final deadline for correcting the violation shall be given at the time of re-inspection.
- (e) Upon a finding that If the licensee or franchisee has failed fails to correct the violation after the final deadline, the licensee or franchisee shall be required to must cease performing the activity resulting in the violation.
- (f) Further Metro will conduct further inspections shall be conducted to ensure suspension of that the licensee or franchise suspends the offending activity. If the licensee or franchisee has failed fails to suspend the offending activity, the Chief Operating Officer may: shall conduct an investigation which may result in the:
 - (1) Imposition of Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
 - (2) Suspension of Suspend all solid waste activities on site;
 - (3) Imposition of Impose a lien on the property for the amount of the fines; or
 - (4) Suspension, modification Suspend, modify or revocation of revoke the license or franchise pursuant to Section 5.01.180 of this chapter 320.
- (g) In addition to subsection (a) of this section,), Metro may enjoin any violation of this chapter may be enjoined by Metro upon suit in a court of competent jurisdiction, and shallthe violator may also be subject to a civil penalty not to exceed \$500.00 per day for each day of violation.

(Ordinance No. 81-111, Sec. 22. Renumbered by Ordinance No. 91-436A, Sec. 2; Ordinance No. 98-762C, Sec. 47; Ordinance No. 98-767, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.22; and Ordinance No. 14-1332, Sec. 1.)

98 762C \$48)

(5.01.220 Additional Provisions Relating to Issuance franchise for a Facility Processing Petroleum Contaminated Soil. Repealed Ord. 98 762C \$48)

(5.01.230 380 Additional Provisions Relating to the Licensing Yard Debris Processing Facilities Facilities. Repealed Ord. 98 762C §49)

5.01.340 Appeals

- (a) Any applicant, franchisee or licensee may request a contested case hearing pursuant to Code Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance.
- (b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.
- (c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.
- (d) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing.

(Ordinance No. 81-111, Sec. 11; Ordinance No. 95-621A, Sec. 6; Ordinance No. 02-974, Sec. 1; and Ordinance No. 03-1018A, Sec. 14.)

MISCELLANEOUS PROVISIONS

45.01.400 Treatment of Existing Licenses and franchises. Ord. 03 1018A §23)

5.01.410 350 Miscellaneous Provisions

The Chief Operating Officer shall beis responsible for the administration and enforcement of this chapter.

- (b) The Metro's granting of a license or franchise shall does not vest any right or privilege in the licensee or franchisee to receive specific quantities of solid waste during the term of the license or franchise term.
- (c) The Metro has the power and right to regulate, in the public interest, the exercise of the privileges granted it grants by a license or franchise shall at all times be vested in Metro. Metro reserves the right tomay establish or amend rules, regulations or standards regarding matters within Metro's authority and to enforce all such those requirements against holders of licenses or franchises franchises.
- (d) To be effective, aNo waiver of any termlicense or franchise condition of a license or franchise must be is effective unless it is in writing, and signed by the Chief Operating Officer. Waiver of a term or conditions of If Metro waives a license or franchise shall condition, that waiver does not waive nor prejudice Metro's right of Metro otherwise to require performance of the same term or conditions condition or any other term or condition.
- (e) A license or franchise shall be construed, appliedMetro will construe, apply and enforced enforce a license or franchise in accordance with the laws of the State of Oregon.
- (f) If any provision of a license or franchise is determined by a court of competent jurisdiction to be determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect the validity of the remaining provisions contained in the license or franchise shall not be affected.
- (g) Nothing in this chapter is intended to limitlimits the power of a federal, state, or local agency to enforce any provision of law relating to any solid waste facility or disposal site that it is authorized or required to enforce or administer.
- (h) Nothing in this chapter shallshould be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities.

(Ordinance No. 98-762C, Secs. 52-53; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 24; and Ordinance No. 14-1332, Sec. 1.)

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 16-1387 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO ADD, REMOVE, AND AMEND CERTAIN SOLID WASTE FACILITY REQUIREMENTS AND MAKING OTHER HOUSEKEEPING CHANGES

October 14, 2016 Prepared by: Warren Johnson

503-797-1836

Adoption of Ordinance No. 16-1387 will amend Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to add, remove, and revise certain solid waste facility requirements as described in this staff report. This ordinance will also make various other non-substantive technical amendments to the chapter to improve clarity, consistency, and ease of understanding.

The purposes of these proposed changes are to: 1) build greater clarity, consistency, and predictability in how Metro reviews and authorizes solid waste facilities, 2) ensure greater equity, transparency, and accountability in how Metro implements its requirements to protect the environment and the public's health, and 3) provide greater ability to adapt to changing conditions while making the Metro Code easier to understand. These changes further the objectives of making the Code more relevant and simpler to use so that all similarly situated classes of solid waste facilities are subject to the same rules. The proposed changes also help Metro become more resilient and flexible when addressing new solid waste technologies and practices.

This ordinance is a companion to three other ordinances which also propose amendments to Metro Code Chapters 5.00 (Solid Waste Definitions), ¹ 5.02 (Disposal Charges and User Fees), ² and 5.05 (Solid Waste Flow Control) ³ to further improve consistency and provide greater transparency in how Metro implements its requirements. The Metro Council will consider all of these ordinances collectively at its meetings on October 27 and November 10, 2016.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region's solid waste system for the next several years. Concurrently with this effort, staff seeks to provide a more consistent, transparent, and equitable regulatory framework for the regional solid waste system. This effort will be further supported by the development of the Regional Solid Waste Management Plan during 2017 and 2018.

¹ Ordinance No. 16-1386

² Ordinance No. 16-1388

³ Ordinance No. 16-1389

In August 2015, Metro staff proposed a wide range of changes to Metro's solid waste code (Metro Code Title V) that were published as preliminary proposals on Metro's website and subsequently presented at a public workshop in September 2015. Metro received feedback from the public requesting a more thorough and transparent process for considering the proposed code changes. In October 2015, Metro Council directed staff to implement an improved and more rigorous process for developing and soliciting feedback on proposed changes to Metro's solid waste code. As directed by Metro Council, staff implemented a new process for soliciting public input on the proposed code changes as shown in Attachment 1.

As the agency tasked with planning, management, and oversight of the region's solid waste system, Metro has an obligation to the public to ensure the waste intended for reuse, recycling and other purposes is handled properly and sent to appropriate markets and that all other waste is safely managed and disposed.

Over the years, Metro's solid waste code has become unnecessarily complicated with both duplicative and, in a few places, contradictory provisions. Cleaning up the code provides greater predictability, consistency and clarity for businesses while meeting Metro's public obligations of ensuring accountability and transparency for the public in regulating the region's waste and recycling system.

The Solid Waste Alternatives Advisory Committee (SWAAC) discussed these proposed amendments and the other proposed changes to Metro Code Title V at its meetings on January 13 and February 25, 2016. At the February meeting, SWAAC recommended that Metro solicit input from the public on the proposed changes and open a 60-day review and comment period. A formal public comment period was open from March 1 through April 29, 2016, during which time Metro received comments, questions and suggestions submitted by the public. The comments received from the public were helpful and resulted in some revisions and improvements to the proposed code changes. The comments received and staff's responses to those comments are provided as Attachment 2.

Staff presented the comments received, responses to those comments, and a revised code proposal to SWAAC at its meeting on July 13, 2016. At SWAAC's direction, the revised code changes were then presented to Metro Council at its work session on September 20, 2016, and the Metro Council directed staff to bring the proposed code changes forward for formal consideration.

PUBLIC OUTREACH AND ENGAGEMENT:

As directed by Metro Council in October 2015, staff conducted public outreach and solicited input on the proposed changes to Chapter 5.01. The public outreach for the proposed code changes included:

1. SWAAC Meetings:

- (a) January 13, 2016 Staff presented a general proposal and solicited SWAAC's input.
- (b) February 25, 2016 Staff presented draft code chapters and received SWAAC's endorsement to publish the proposal for public review and comment.
- (c) July 13, 2016 Staff reviewed the public comments that were received, staff's responses to those comments, and the proposed revisions made in response to the comments. Staff also received SWAAC's endorsement to present the revised code changes to Metro Council at a work session for further consideration.

2. Public Review and Comment Period:

- (a) Metro held a 60-day public review and comment period from March 1 through April 29, 2016.
- (b) Metro received six responses from the public during the comment period (see Attachment 2).
- (c) Staff posted a detailed response to comments for the public (see Attachment 2).

3. Other Outreach:

- (a) Metro established a dedicated web page for the proposed code change information and related documents at oregonmetro.gov/solidwasteupdates.
- (b) Staff sent routine status updates and other correspondence to interested parties via email throughout the process.

PROPOSED AMENDMENTS TO CHAPTER 5.01

Metro Code Chapter 5.01 (Solid Waste Facility Regulation) governs the regulation of solid waste facilities and disposal sites within the region. The Chief Operating Officer (COO) recommends the proposed changes to Chapter 5.01 as described below and further detailed in Exhibit A.

1. Prohibited Activities

The COO recommends establishing a new requirement that prohibits the outdoor storage of uncovered "electronic device waste" within the Metro region. The proposed prohibition is to protect the environment, ensure that electronic device wastes is managed appropriately, and provide greater predictability for businesses.

2. License Exemptions

The COO recommends removing certain licensing exemptions to protect the environment, provide greater predictability for operators, and ensure that similarly situated facilities are regulated in an equitable manner. Specifically, the proposed changes would remove licensing exemptions from the following types of facilities:

- (a) Solid waste reload facilities Currently, certain facilities that accept solid waste from their own hauling activities within a contiguous franchised-collection area and deliver such waste to a transfer station are not required to obtain a Metro license or franchise. However, Metro authorization is required if the same type of facility were to accept waste from a third-party hauler, process waste, or deliver its waste directly to a landfill. With the exception of who uses the facility and where its waste is ultimately delivered, exempt reload facilities typically accept the same types of waste and operate in a similar manner to that of a Metro-franchised transfer station. This creates inconsistent requirements for similar types of operations. The COO recommends removing the licensing exemption for such operations and requiring that all facilities that receive solid waste must obtain a Metro license or franchise.
- (b) Yard debris facilities Currently, a local government that owns or operates a yard debris facility has the option of entering into an intergovernmental agreement (IGA) with Metro, which the local government agrees to self-administer and self-enforce facility operating standards, in lieu of obtaining a solid waste facility license from Metro. Those However, Metro authorization is required if the same type of facility is privately-owned or if the local government chooses not to enter into an IGA with Metro. This creates inconsistent requirements for similar types of operations. The COO recommends removing the IGA option for local governments and requiring that all yard debris facilities must obtain a Metro license or franchise.

3. License and Franchise Application and Operating Requirements

The COO recommends amending certain license and franchise application and operating requirements to align similar administrative practices, provide greater predictability for businesses, and ensure greater consistency and coordination with other government agencies. Specifically, these proposed changes include:

- (a) Extending Metro's decision-making timeframe for new licenses and franchises from 120 days to 180 days to ensure that Metro has adequate time to thoroughly evaluate applications, coordinate decision-making with other regulatory jurisdictions, and schedule consideration by the Metro Council.
- (b) Authorizing the COO to make decisions on and issue licenses for facilities that process and reload yard debris mixed with residential food waste. The proposed change is similar to current provisions in Metro Code that authorize the COO to administratively approve licenses for other types of yard debris facilities.
- (c) Relying on the Metro Council's existing authority to review licensing decisions at any time and removing the unnecessary 10-day call-up process currently provided in code. Staff will continue to keep Metro Council informed of all public notice postings and pending authorization decisions.

⁴ Metro Code Section 5.01.040(a)(7) (Exemptions)

⁵ Metro Code Section 5.01.050(3) (License Requirements and Fees)

- (d) Establishing that the COO may administratively extend the term of a license or franchise by up to one additional year. This new provision would authorize the COO to administratively extend the term of a license or franchise by up to one year if the COO determines it to be necessary (such as to better align authorization decisions-making or to accommodate unforeseen circumstances that may impact the timely renewal of an authorization).
- (e) Aligning Metro's financial assurance requirements with the Oregon Department of Environmental Quality (DEQ). The proposed change removes Metro's financial assurance requirements for licensed and franchised solid waste facilities unless otherwise required by DEQ.
- (f) Requiring licensees and franchisee to provide Metro with notice within ten days <u>after</u> any change of ownership takes place instead of <u>before</u>.
- (g) Establishing that licensed and franchised facilities must retain all complaint records for at least one year instead of three years as provided in current Metro Code.

4. Administrative Rule

The COO recommends establishing a clear and consistent process for the COO to develop and adopt administrative rules, standards, and forms to implement the provisions of Chapter 5.01. The proposed rule-making process includes public notification and timeframe requirements to ensure regulatory transparency and provide predictability for businesses. The proposed administrative rule procedures are also included in the proposed amendments to Chapters 5.02 and 5.05.

5. General Housekeeping Changes (Non-Substantive)

In addition to the changes described above, the COO recommends the following non-substantive housekeeping changes throughout each of the chapters identified in this staff report. These general changes are intended to improve clarity, consistency, and ease of understanding and do not change or add new requirements.

- (a) Change passive voice to active voice to clearly identify the actor and the responsibility. Example: "Reports shall be filed every month" becomes "The licensee must file a report every month."
- (b) Break up long paragraphs into shorter sentences and, as appropriate, into new sections or subsections.
- (c) Change the use of plural to singular to avoid any confusion. Example: "The Council shall issue licenses to applicants that meet all criteria" becomes "The Council will issue a license to an applicant that meets the criteria."
- (d) Remove the use of the term shall and change it to "must" or "will" as the context requires (see (a) above for an example). This incorporates modern code drafting rules that are intended to make code more like normal conversation.

- (e) Change certain phrases into more conversational, modern usage. Example "prior to" becomes "before."
- (f) Remove the use of term couplets like "null and void," "cease and desist," and "due and payable," etc.
- (g) Remove unnecessary verbiage that makes the code more difficult to read. Example: "In connection with the enactment of the provisions of this Chapter 5.05 of the Metro Code (as defined below), the Council of Metro hereby finds and determines the following" becomes "The Council finds the following."
- (h) Make terms consistent throughout the code. For example, use of the term "holder of a license" versus "licensee.
- (i) Change and reorganize the section numbering and formatting for each chapter and update Metro Code citations throughout as appropriate.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed Code modifications.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 states that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapter 5.01 as provided in Exhibit A.

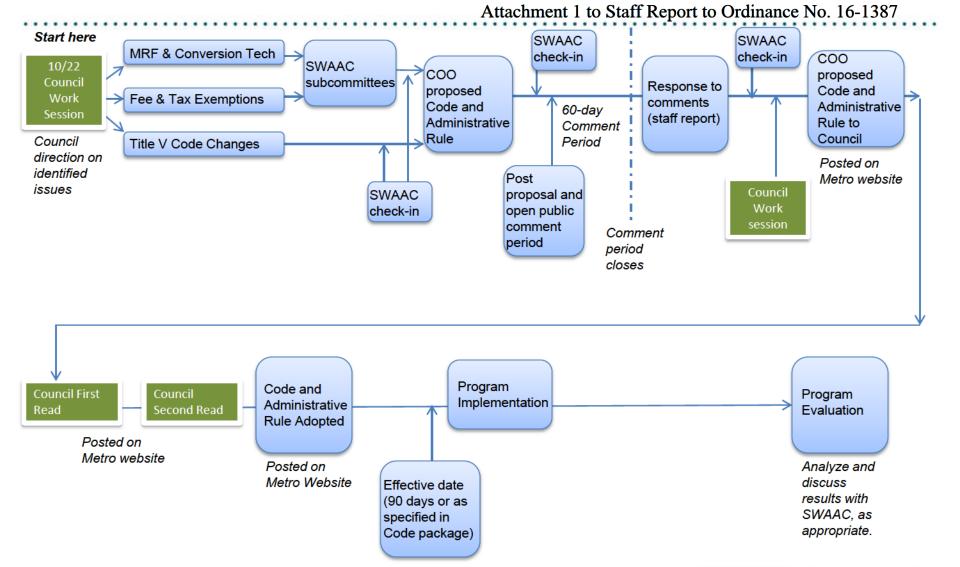
4. Budget Impacts

There are no expected budget impacts associated with the adoption of this ordinance.

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 16-1387.

WJ:bjl



Staff Activities

Metro's Response to Comments on Proposed Changes to Metro Code Title V July 6, 2016

On March 1, 2016, Metro opened a 60-day public review and comment period to solicit input on a series of proposed changes to Metro Code Chapters 5.00, 5.01, 5.02, and 5.05. The formal comment period was open from March 1 through April 29, 2016. The comments received from the public during that time and Metro's responses are summarized below.

I. Bell Comment (refer to attached email dated February 20, 2016):

 Bell Comment: Metro Code Section 5.01.310 -The one area of interest for me and for my municipal clients is the rate charged by other disposal facilities. Section 310 – Determination of Rates, starts to address the issue, but is so weak you might as well forget the changes.

Here is my proposed change: If the total rate* varies within 5% of the current Metro tip, licensee must substantiate the cost of service. The cost of service includes the costs of transfer, transport, and disposal.

* Total rate includes the posted tipping fee plus any scalehouse, environmental, or transaction fees.

The key word is must. What I am finding is the transaction fee / environmental fee charged by some licensees is adding an additional \$2 to \$5 per ton to the total cost. This charge, combined with their tipping fee, puts some facilities higher than Metro by more than 5%.

Metro Response to Bell Comment: At this time, staff does not recommend any additional changes to this section other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. This section has been renumbered and will remain as proposed.

II. Garrett Comments (refer to attached letter dated March 14, 2016):

Garrett Comment #1: Metro Code Chapter 5.00 – "Recoverable Solid Waste" attempts
to define products based upon their acceptance or rejection by Metro's facilities
without regard to the marketplace and competing facilities abilities to quite frankly
"do a better job" than Metro's facilities. This definition should be expanded to include
all system licensed or franchised facilities.

<u>Metro Response to Garrett Comment #1:</u> Staff does not recommend any additional changes to this definition other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. The term is internal to Metro's

operations and is used for the purpose of setting disposal charges at Metro's facilities. The definition does not apply to other solid waste facilities.

• Garrett Comment #2: Metro Code Section 5.01.040 (a) (D) - Comment A16 "Remove licensing exemption for wood waste processing operations and facilities." Under Council guidance the SWAC [sic] has formed a subcommittee which is charged with recommending to Council whether or not "clean MRF's" and other source-separated recycling facilities should be regulated by Metro. It would seem that Staff is circumventing the process assigned by Council to the subcommittee. This subject should be reviewed by the SWAC subcommittee as part of their process.

Metro Response to Garrett Comment #2: Staff recommends withdrawing the initial proposal and not changing the current licensing exemption for certain wood waste operations and electronic waste processing facilities at this time. Staff initially proposed to remove the exemption and require licensing of those types of facilities. Commenters raised concerns that the proposed change had not gone through the same evaluation process as that of other facilities that exclusively receive source-separated recyclable materials – which are currently being considered by a subcommittee of the Solid Waste Alternatives Advisory Committee (SWAAC). The proposed licensing change for certain wood waste processing operations and electronic waste processing facilities requires further evaluation by Metro through SWAAC. Refer to Revisions Nos. 7 through 10 in Table 1.

• Garrett Comment #3: Metro Code Section 5.01.080 (e) - Comment A52 "Remove automatic granting of a license if the Chief Operating Officer does not act on the application within 120 days." This removal removes accountability and surety that the Chief Operating Officer will act reasonably and expeditiously on applications. Yes, there is appeal to the Council President, however that appeal at minimum adds substantive time to the application process and at maximum causes the application to "die in process" due to lack of Council President action. This creates a situation of uncertainty for businesses which is unacceptable and contrary to the concept of responsible, respondent government.

Metro Response to Garrett Comment #3: Staff recommends withdrawing the initial proposal and not changing the current process of automatically granting a license if Metro fails to act within the required timeframe. Staff also recommends extending Metro's decision-making timeframe for new licenses and franchises to 180 days to ensure that Metro has adequate time to thoroughly evaluate applications and coordinate decision-making with other jurisdictions. Metro's decision-making timeframe for license and franchise renewals will remain at 120 days as currently provided in Metro Code. Refer to Revisions Nos. 11 and 13 in Table 1.

Garrett Comment #4: Metro Code Section 5.01.280 - "Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms." Conceptually, the movement of Metro toward the type of government with administrative rulemaking similar to that of State and Federal government is a good move. However, this process should be transparent. It is understood that certain administrative rules may not garner attention worthy of the cost and effort necessary for public hearing, but leaving the determination if a proposed rule is worth public hearing solely up to the Chief Operating Officer is outside the bounds of transparent government. The Chief Operating Officer is a person and subject to fault and error. There should be a "trigger" with which the public can force public hearings on proposed rulemaking, regardless of the opinion of the Chief Operating Officer. Further, there should be recognition that Metro is different than State Government, unique in the United States and elsewhere. Because of this uniqueness, Metro should adopt the good parts of Administrative Rulemaking and then look past to new levels of transparency and accountability. In doing so, Council should provide an appeal process through which decisions made by the human and therefore fallible Chief Operating Officer can be fully vetted and either affirmed or negated by the Council should adequate affected persons request such.

<u>Metro Response to Garrett Comment #4:</u> Staff recommends revising the proposed section to clarify that the Chief Operating Officer will hold a public hearing on any proposed rule or standard. Refer to Revision No. 21 in Table 1.

Staff does not recommended including a specified appeal process as part of the proposed section. Any rule or standard adopted under the proposed section would be considered a final decision; however, the public always has the opportunity to raise any issues of concern to the Metro Council as part of the standard public communication portion of each Council meeting.

 Garrett Comment #5: Metro Code Section 5.02.170 - "Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms." Please refer to 5.01.280 above.

<u>Metro Response to Garrett Comment #5:</u> Refer to Metro's response to Garrett Comment #4 above.

• Garrett Comment #6: Metro Code Section 5.05.200 - "Issuance of Required Use Orders." The removal of the ability and right of waste haulers and other persons to choose a facility to patronize based upon cost, service, products offered, and convenience is not non-substantive as purported by Staff. What this does is it removes any surety that a business which is well run and provides a superior services [sic] can be assured of market success. This is a terrible idea which should be eliminated.

<u>Metro Response to Garrett Comment #6:</u> Staff does not recommend any additional changes to this section other than non-substantive housekeeping changes to improve clarity, consistency, and ease of reading. This section has been renumbered and broken up into shorter sentences as appropriate. None of the proposed revisions to this section change or add new requirements. The section will remain as proposed.

III. Wuest Comment – the following is an excerpt from the commenter's letter (refer to attached letter dated April 27, 2016):

 <u>Wuest Comment:</u> Metro Code Section 5.01.040 - I represent Mr. Jim Smith of Jim Smith Excavating and write this letter to express opposition to the proposed removal of the existing exemption in Metro Code 5.0 I.040(a)(5)(D) (the "Exemption"). The Exemption provides that Chapter 5.01 shall not apply to "Operations or facilities that chip or grind wood wastes, unless such wastes are processed for composting."

Metro Response to Wuest Comment #1: As explained above in Metro's response to Mr. Garrett's comment #2, staff recommends withdrawing the initial proposal and not changing the current licensing exemption for certain wood waste operations and electronic waste processing facilities at this time.

IV. Cusma Comments (refer to attached letter dated April 28, 2016):

• <u>Cusma Comment #1:</u> Metro Code Chapter 5.00 - Metro proposes adding "clean fill" as a new defined term. Metro's rationale for adding this new definition is unclear, particularly given that Metro's proposed changes to Chapter 5.00 are intended to "[d]elete... unnecessary or unused terms." The only place Metro proposes to use the new term is in the revised definition of "cleanup material." Metro could achieve the same result without adding "clean fill" as a new defined term.

The issue with adding "clean fill" as a defined term is that it is unclear how clean fill would be regulated under the solid waste code. For example, it is unclear whether clean fill falls within the definition of "solid waste." Relatedly, the definition of "non-putrescible waste" explicitly includes "construction and demolition waste" but explicitly excludes "cleanup material, source separated recyclable materials, special waste, land clearing debris or yard waste." This definition leaves unclear whether clean fill is non-putrescible waste. Whether clean fill falls within the definition of "solid waste" and/or "non-putrescible waste" will affect how clean fill is treated under various provisions of the solid waste code.

Schnitzer Steel encourages Metro to reconsider its decision to add "clean fill" as a new defined term. If Metro decides to retain the proposed definition, Schnitzer

Steel encourages Metro to better explain how clean fill will be regulated under the solid waste code.

Metro Response to Cusma Comment #1: The new term "clean fill" was added to Chapter 5.00 to provide clarification for the Metro definition of "cleanup material" and to clarify the types of waste that qualify for Metro's reduced regional system fee and excise tax. Clean fill is inert material and is regulated as such under Metro Code. Inert material that is used beneficially or disposed in an inert landfill is exempt from Metro's regional system fee and excise tax. Furthermore, a facility that exclusively receives, processes, transfers, or disposes of inert waste is exempt from Metro's licensing requirements.

- <u>Cusma Comment #2:</u> Metro Code Chapter 5.00 Metro proposes changes to the definitions of "designated facility" and "Metro designated facility." The proposed definitions are:
 - "'Designated facility' means a facility that Metro designates as part of the system designated pursuant to Chapter 5.05."
 - "'Metro designated facility' means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro."

It is unclear whether Metro intends for these terms to have different meanings. If Metro intends for both terms to have the same meaning, Metro should consistently use one of the terms throughout the solid waste code and remove the other term. If Metro intends for the terms to have different meanings, Schnitzer Steel encourages Metro to better explain the difference between the two terms.

Metro Response to Cusma Comment #2: Staff recommends retaining the current term "designated facility" and deleting the term "Metro designated facility." Metro intends for both terms to have the same meaning. Staff agrees that a consistent term should be used throughout Metro Code. Refer to Revision No. 2 in Table 1.

• <u>Cusma Comment #3:</u> Metro Code Chapter 5.01 - In its proposed revisions to Chapter 5.01 of the Metro Code, Metro proposes to require facilities to obtain a solid waste license if they shred, mill, pulverize, or store outdoors any electronic waste. Chapter 5.00 does not define the term "electronic waste." Schnitzer Steel urges Metro to replace references to "electronic waste" with "covered electronic device waste," based on a term that is used in ORS chapters 459 and 459A. This would better align the solid waste code with ORS chapters 459 and 459A.

Consistent with ORS 459A.305(4), Schnitzer Steel recommends that Metro define "covered electronic device" as follows:

"Covered electronic device" means (1) a computer monitor of any type having a viewable area greater than four inches measured diagonally; (2) a desktop computer or portable computer; (3) a television of any type having a viewable area greater than four inches measured diagonally; (4) a computer peripheral; or (5) a printer. This term does not include (a) any part of a motor vehicle; (b) any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment; (c) telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or (d) any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

Because the term "waste" is separately defined in Chapter 5.00, a separate definition of "covered electronic device waste" is unnecessary.

If Metro is unwilling to replace "electronic waste" with "covered electronic device waste," Schnitzer Steel urges Metro to define "electronic waste" in Chapter 5.00. The definition should exclude at least those categories of material described in (a) through (d) of the definition of "covered electronic device waste" proposed above. These exclusions would limit the definition of "electronic waste" to include only those materials commonly understood to constitute electronic waste. This will provide certainty to regulated entities and avoid unintended consequences.

Metro Response to Cusma Comment #3: Staff recommends adding the new term "electronic device" to Chapter 5.00 using the definition for "covered electronic device" as defined in ORS 459A.305(4). Staff agrees that Metro should clearly define what constitutes electronic waste for purposes of the Metro Code. Refer to Revision No. 3 in Table 1

In addition to the above, staff recommends not changing Metro's current licensing exemption for certain facilities that process electronic waste pending further evaluation by Metro. Staff recommends changing Section 5.01.030 (Prohibited Activities) to include a new provision prohibiting the outdoor storage of "electronic devices" at solid waste facilities. Refer to Revisions Nos. 7 and 10 in Table 1.

<u>Cusma Comment #4:</u> Metro Code Chapter 5.00 - Metro proposes to delete the
definitions of the terms "Metro disposal system" and "Metro waste management
system." However, these terms still appear in other portions of the solid waste code.
Further, as currently defined, these two terms do not have the same meaning, nor are
they synonymous with the proposed definition of "system."

As one example, the proposed definition of the term "regional transfer charge" is "a fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste deliveries to Metro disposal system facilities." (Emphasis added.) Without a definition for "Metro disposal system"

or "disposal system," it is unclear on which solid waste deliveries Metro would impose the regional transfer change.

As another example, the proposed definition of the term "regional system fee" is "a fee that pays Metro waste management system costs." (Emphasis added.) The term "waste management system also appears in Section 5.02.120(a), which provides: "The regional system fee is the dollar amount per ton of solid waste adopted by Council ordinance for the purpose of paying for Metro waste management system costs." (Emphasis added.) Without a definition for "Metro waste management system" or "waste management system," it is unclear which costs would be paid by the regional system fee.

Metro Response to Cusma Comment #4: Staff finds the terms "Metro disposal system," "regional transfer charge," and "Metro waste management system," to be unnecessary and recommends deleting the terms from Chapter 5.00 and removing the reference to "regional transfer charge" from proposed Section 5.02.060(a). The term "Metro disposal system" is currently used only in Chapter 5.00 in reference to the definition for "regional transfer charge." The term "Metro disposal system" does not appear anywhere else in Title V. Similarly, the term "regional transfer charge" appears only once in current Metro Code Section 5.02.027(a) and is not used anywhere else throughout Title V. Regional transfer charges were repealed from Metro Code by Ordinance No. 94-531 in 1994 (repealed Section 5.02.050). Refer to Revision No. 16 in Table 1.

With respect to the term "Metro waste management system," the term is currently used only in Chapter 5.00 for the definition for "regional system fee." The term "Metro waste management system" does not appear anywhere else in current Title V. The term was mistakenly added as part of the proposed changes to Metro Code Section 5.02.120(a). Staff recommends deleting the unnecessary term "Metro waste management system" as proposed and subsequently combining its definition with that of the term "regional system fee" for further clarification. Staff also recommends similar revisions to proposed Section 5.02.120(a) for consistency purposes. Refer to Revisions Nos. 4 and 17 in Table 1.

• <u>Cusma Comment #5:</u> Metro Code Chapter 5.00 - Metro proposes to delete the definition of the term "standard recyclable materials." This definition is used elsewhere in the solid waste code (e.g., Secs. 5.10.080(a); 5.10.230(a)(2), (b), and (c); and 5.10.240(b)(1)) and should not be deleted.

Metro Response to Cusma Comment #5: Staff agrees and recommends retaining the current term "standard recyclable materials." Refer to Revision No. 5 in Table 1.

expand the purposes of Chapter 5.01. Metro suggests that the changes are meant to incorporate the "six public benefits" from Metro's Solid Waste Roadmap. Metro also proposes to revise and expand the purposes of Chapter 5.05 to incorporate the six public benefits (see Paragraph IV.A below). Metro frequently refers to the six public benefits during meetings related to the proposed changes to the solid waste code. Metro does not, however, consistently define or describe the six public benefits. As one example, the proposed description of the six public benefits in Section 5.01.010 is different than the proposed description of the six public benefits in Section 5.05.010. As another example, in a PowerPoint created by Metro for a September 2015 workshop, Metro explained that one of the six public benefits is to "[p]rovide good value." However, "good value" does not appear in the Section 5.01.010 or Section 5.05.010.

If Metro is going to rely on a particular set of public benefits to guide solid waste regulation and interpretation of the solid waste code, Metro should clearly and consistently articulate those benefits. Schnitzer Steel understands Metro entertained significant stakeholder input to develop and define the six public benefits articulated in the Solid Waste Roadmap, and they should not be modified to support varying goals.

<u>Metro Response to Cusma Comment #6:</u> Staff recommends withdrawing the initial proposal and not making any substantive changes to the current purpose section at this time. Staff recommends non-substantive housekeeping changes to this section to improve clarity, consistency, and ease of reading. Refer to Revisions No. 6 and 18 in Table 1.

 <u>Cusma Comment #7:</u> Metro Code Section 5.01.040(a) - Schnitzer Steel believes strongly that scrap metal and similarly situated recyclable materials with intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications should be managed as commodities rather than subjected to regulation as "solid waste." The Oregon Legislature defined "solid waste" to mean:

[A]II useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.

ORS 459.005(24) (emphasis added). That means a material must be either useless or discarded before it is considered a solid waste under state law.

Schnitzer Steel receives recyclable materials—scrap metal in various forms—that are neither useless nor discarded by the end user. Rather, scrap metal items are typically kept out of the solid waste stream and sold to Schnitzer Steel or an intermediate scrap dealer. Schnitzer Steel, in turn, treats that material as a valuable commodity—collecting, sorting, and processing the scrap to meet specific, internationally-recognized specifications, and generally managing the material to maximize its value in the market.

Two of the specific types of solid waste listed in the state definition above are "discarded or abandoned vehicles or parts thereof" and "discarded home and industrial appliances." ORS 459.005(24). Metro's definition of "solid waste" includes identical categories. Because Metro's solid waste definition uses the same language found in ORS 459.005(24), it is logical to interpret these categories in the Metro definition consistent with ORS 459.005(24).

Vehicles, vehicle parts, and appliances are primary types of materials received by Schnitzer Steel. These materials are not useless, discarded, or abandoned; rather, they are valuable materials that have been intentionally segregated from other materials that enter the solid waste stream. The legislature has specifically recognized that certain types of scrap metal, including end-of-life vehicles, vehicle parts, and appliances, do not routinely enter the solid waste stream. ORS 459A.010(3).

As a result of these and other considerations, Metro has long recognized single-stream recycling facilities, such as Schnitzer Steel, as a unique category of commercial recycling facility, and has considered them exempt from solid waste facility licensing requirements. Unfortunately, however, the unique character of single-stream recycling facilities is not recognized with a unique exemption that applies only to this type of recycling facility—that is, Subsection 5.01.040(a) does not include a specific exemption for single-stream recycling facilities. Instead, these facilities are subsumed within other, broader exemptions. Single-stream recycling facilities often fall within the exemption applicable to facilities that receive non-putrescible source-separated recyclable materials (Section 5.01.040(a)(3)) or various other exemptions contained in Section 5.01.040(a), but the materials sent to these facilities typically are not "separated" from the waste stream because they never enter the waste stream in the first place.

Schnitzer Steel encourages Metro to take this opportunity to clarify the exemption applicable to single-stream recycling facilities by adopting a single, narrowly tailored exemption that covers all such facilities. This is important because the rationale for exempting these single-stream recycling facilities is

specific to these types of facilities. Single-stream recycling facilities like Schnitzer Steel receive a single type of recyclable material (for Schnitzer Steel, scrap metal in various forms). Single-stream recyclable materials generally have intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications. As such, these types of recyclable materials are managed by both the recycling facility and end user as a commodity, not a solid waste.

Schnitzer Steel suggests the following description for the new exemption: "Facilities that (A) exclusively receive single-stream recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them."

Metro would also need to add a new definition for "single-stream recyclable material" to Section 5.00.010. Schnitzer Steel suggests the following definition:

"Single-stream recyclable material" means recyclable material that (i) has been isolated as a single material type (e.g., a specific type of standard recyclable material) for the purpose of recycling, or (ii) is predominantly made up of a single material type for which mechanical processing is necessary to further separate component types of recyclable materials.

<u>Metro Response to Cusma Comment #7:</u> Staff does not recommend adding the suggested changes as part of the proposed updates at this time. Staff will consider the comment in conjunction with any recommendations that may result from the SWAAC subcommittee that is currently evaluating facilities that exclusively receive source-separated recyclable materials.

 <u>Cusma Comment #8:</u> Metro Code Section 5.01.050(a)(6) - Metro proposes to require a solid waste license for all facilities that shred, mill, pulverize, or store outdoors any electronic waste (see Section 5.01.050(a)(6)). Schnitzer Steel urges Metro to replace the term "electronic waste" with "covered electronic device waste" (see Paragraph I.C above).

As proposed, the licensing requirement would apply quite broadly to facilities that shred, mill, pulverize, or store outdoors any electronic waste, which could arguably include small circuit boards or other electronic components contained inside any appliance with digital controls or a potentially unidentified printer inside a large load of scrap, as examples. This could have the unintended consequence of requiring licenses for facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste (or covered electronic device waste). To avoid this unintended consequence, Schnitzer Steel encourages Metro to add the following exemption to Section 5.01.040(a): "Facilities that incidentally shred,

mill, pulverize, or store outdoors small quantities of electronic waste [or covered electronic device waste]."

<u>Metro Response to Cusma Comment #8:</u> Refer to Metro's response to Cusma Comment #3 above. Staff does not recommend adding the suggested reference to "incidental quantity" as part of the proposed revision.

• <u>Cusma Comment #9:</u> Metro Code Section 5.01.080(e) - Under the current solid waste code, if Metro's Chief Operating Officer ("COO") fails to grant or deny a license application within 120 days, the license is deemed granted. Metro proposes to eliminate this requirement and replace it with a process under which the applicant may request the Metro Council to direct the COO to act on the license if the COO fails to act within 120 days.

Metro does not provide adequate justification for this change. The change would reduce the incentive for the COO to expeditiously review and act on license applications. Metro has not identified any instance in which the 120-day deadline has caused the COO to grant or deny a license application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

<u>Metro Response to Cusma Comment #9:</u> Refer to Metro's response to Mr. Garrett's comment #3 above.

• <u>Cusma Comment #10:</u> Metro Code Section 5.01.110 - The proposed revision to Subsection (a) is confusing when read together with Subsection (d). Proposed Subsection (a) reads: "The [COO] may approve or deny a license renewal of a solid waste facility." As written, this provision suggests that the COO has complete discretion to approve or deny a license. However, proposed Subsection (d) reads: "The [COO] must approve a solid waste facility license renewal unless"
Subsection (a) would be more clear if it read: "The [COO] will review a license renewal and approve or deny it consistent with this section."

Metro Response to Cusma Comment #10: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising subsection (a) to clarify its intent that the Chief Operating Officer will approve or deny licenses as provided in Code. Refer to Revision No. 12 in Table 1.

 Cusma Comment #11: Metro Code Section 5.01.180(g) - Similar to the proposed changes to Subsection 5.01.080(e) (discussed above), under the current solid waste code, if the Metro Council fails to grant or deny a franchise application within 120 days, the franchise is deemed granted. Metro proposes to eliminate the automatic grant of a franchise. Metro does not provide adequate justification for this change. The change would reduce the incentive for the Metro Council to expeditiously review and act on franchise applications. Subsection (h)(3) already allows for an extension of the 120-day deadline by mutual agreement of the applicant and the COO. This extension process is adequate to address situations in which the Metro Council is unable to act on a franchise application within 120 days. Metro has not identified any instance in which the 120-day deadline has caused the Metro Council to grant or deny a franchise application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

Metro Response to Cusma Comment #11: Refer to Metro's response to Mr. Garrett's Comment #3 above. Staff recommends similar revisions to Section 5.01.180(g).

• Cusma Comment #12: Metro Code Section 5.01.280 - Metro proposes to modify the COO's authority to adopt and amend rules, performance standards, procedures, and forms. The proposed title of Section 5.01.280 is: "Adoption and Amendment of Administrative Rules and Performance Standards." The title would more closely align with the substantive provisions of the section if it read: "Adoption and Amendment of Rules, Performance Standards, Procedures and Forms." Although the title of Section 5.01.280 makes clear that Metro intends the substantive provisions of the section to apply to both adoption and amendment of rules, performance standards, procedures, and forms, the section's substantive provisions refer to adoption but not amendment. To clarify the scope of Section 5.01.280, Metro should revise the section's substantive provisions to refer to both adoption and amendment.

The proposed changes to the substantive provisions of Section 5.01.280 include new procedural protections. These proposed changes provide greater protection to licensees and franchisees, but some of the other proposed changes to the section would arguably expand Metro's rulemaking authority. The proposed changes are discussed in more detail below.

Metro Response to Cusma Comment #12: Staff recommends revising the titles for each of the administrative rulemaking sections in Metro Code Chapters 5.01, 5.02, and 5.05 to read "Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms." Staff also recommends additional changes to the section to further clarify that the provisions apply to adoption and amendment of administrative rules and standards. Metro intends to have identical sections in each of the above-mentioned chapters for consistency. Refer to Revision No. 21 in Table 1.

Staff does not recommend including the term "administrative procedures" in the proposed section. An "administrative procedure" is the *process* by which a rule is

adopted. Metro intends to use the term "administrative rule" going forward to reduce confusion and improve consistency. Using the term "rule" is more consistent with the practice of other governmental regulatory bodies such as Oregon Department of Environmental Quality.

• <u>Cusma Comment #13:</u> Metro Code Section 5.01.280 - Under current Section 5.01.132, the COO's rulemaking authority is limited to issuing "administrative procedures and performance standards governing the obligations of licensees and franchisees." (Emphasis added.) In contrast, proposed Section 5.01.280 is ambiguous about whether the COO's rulemaking authority extends to operators of exempt facilities. Subsection 5.01.280(a) provides: "The [COO] may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision."

Schnitzer Steel encourages Metro to clarify that the rules, performance standards, procedures, and forms adopted by the COO apply only to licensees and franchisees.

<u>Metro Response to Cusma Comment #13:</u> Staff does not recommend making the suggested changes as part of the proposed updates. The Chief Operating Officer has authority to adopt any rule to implement the provisions of Chapters 5.01, 5.02, and 5.05. Therefore, the proposed rule making authority does not apply exclusively to a licensee or franchisee.

 Cusma Comment #14: Metro Code Section 5.01.280 - Subsection 5.01.280(b) would require the COO to provide a 30-day public comment period before adopting any rules or performance standards. However, as proposed, this requirement does not explicitly extend to procedures and forms adopted under Section 5.01.280. Because these procedures and forms will have "the same force and effect as any other chapter provision," the procedures and forms should also be subject to a 30-day public comment period.

Subsection 5.01.280(b) is silent regarding the type of notice Metro must provide regarding the public comment period. Metro should revise the subsection to require notice in a manner reasonably calculated to reach interested parties. Metro could address these suggestions by replacing the first sentence of Subsection 5.01.280(b) with the following:

Before the Chief Operating Officer adopts or amends a rule, performance standard, procedure or form under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. Metro will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description

of the proposed rule, performance standard, procedure or form; the location at which a person may obtain copies of the full text of the proposed rule, performance standard, procedure or form; the method for submitting comments; and the deadline for submitting public comments.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

Metro Response to Cusma Comment #14: Staff does not recommend including the terms "form" and "administrative procedures" as part of the public hearing section in the proposed updates. As stated in Metro's response to Mr. Cusma's Comment #12, Metro intends to replace the term "procedure" with "rule" to more accurately reflect that an "administrative procedure" describes the process by which a rule is adopted, including providing notice of and the opportunity to comment on a proposed rule. This change will reduce confusion and better align Metro's rule making process and terminology with that of other regulatory agencies, including the DEQ.

With respect to "forms," staff finds that it is unnecessary to hold a public hearing regarding the rather ministerial procedure of creating a form.

Staff agrees that Metro should clarify the language of the proposed subsection with respect to general notice procedures. Staff recommends revising the subsection to clarify the type of notice, submittal method, and deadline for comments. Refer to Revision No. 21 in Table 1.

• <u>Cusma Comment #15:</u> Metro Code Section 5.01.280 - Subsections 5.01.280(b) and (c) include requirements related to public hearings. As proposed in Subsection 5.01.280(b), the COO "may...hold a public hearing on any proposed rule or performance standard if the [COO] determines that there is sufficient public interest in the proposed rule or performance standard." (Emphases added.) This would vest complete discretion in whether to hold a public hearing with the COO and undermines the procedural protection that a public hearing would provide.

Schnitzer Steel encourages Metro to strengthen this procedural protection by requiring public hearings under certain circumstances and expanding the scope of the public hearing provision to cover proposed procedures and forms. Schnitzer Steel suggests replacing the last sentence of Subsection 5.01.280(b) with the following:

The Chief Operating Officer may hold a public hearing on any proposed rule, performance standard, procedure or form if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule, performance standard, procedure or form. The Chief Operating Officer will hold a public hearing if the Chief Operating Officer (i) determines or receives evidence

showing that the proposed rule, performance standard, procedure or form could have a material economic impact on a licensee or franchisee, or (ii) receives at least five written requests for a public hearing.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

Metro Response to Cusma Comment #15: Staff does not recommend including the terms "form" and "administrative procedures" as part of the public hearing section in the proposed updates. As explained above in Metro's response to Mr. Cusma's comment #12, the term "procedures" is unnecessary because Metro intends to use the term "rule" going forward. Additionally, public hearings are not necessary for certain administrative matters such as creating and changing forms.

Staff recommends revising the subsection to clarify that Metro will always hold a public hearing for a new or amended rule or performance standard that is adopted under the proposed rulemaking procedures. Refer to Revision No. 21 in Table 1.

<u>Cusma Comment #16:</u> Metro Code Section 5.01.280 - Subsection 5.01.280(d)
 provides that, unless otherwise stated, all rules and performance standards take
 effect when the COO adopts them. This does not provide a sufficient opportunity to
 challenge the rules and performance standards before they become effective. Absent
 a serious danger to public health or safety, it is unnecessary for any proposed rule,
 performance standard, procedure or form to take effect sooner than 60 days
 following adoption.

Schnitzer Steel suggests replacing Subsection 5.01.280(d) with the following:

All rules, performance standards, procedures and forms adopted or amended under this section will take effect 60 days after adoption or amendment by the Chief Operating Officer, unless (i) the Chief Operating Officer specifies an earlier effective date after determining that failure to immediately implement the rule, performance standard, procedure or form would create a serious danger to the public health or safety, or (ii) the Chief Operating Officer specifies a later effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

<u>Metro Response to Cusma Comment #16:</u> Staff recommends revising the subsection to establish a waiting period of at least 30 days after adoption before a rule or standard takes effect. Staff agrees that the public should have an opportunity to review and understand all newly adopted and amended rules and standards before they become effective. Refer to Revision No. 21 in Table 1.

 Cusma Comment #17: Metro Code Section 5.01.280 - Subsection 5.01.280(e) would allow the COO to circumvent the public notice and comment process when adopting interim rules and performance standards. To adopt an interim rule or performance standard, the COO must find that "failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party." This is a vague standard and arguably creates a lower threshold than the "serious danger" standard contained in other sections of Chapter 5.01.

Schnitzer Steel suggests replacing Subsection 5.01.280(e) with the following:

Notwithstanding subsections (b) and (d) of this section, the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment or opportunity for a public hearing only if the Chief Operating Officer finds that failure to act immediately will result in serious danger to the public health or safety. The Chief Operating Officer must explain, in writing, the basis for adopting the interim rule or performance standard. Any rule or performance standard adopted pursuant to this subsection takes effect upon adoption and expires no later than 180 days from its effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(e) and 5.05.260(e).

Metro Response to Cusma Comment #17: Staff does not agree with the suggested revision and does not recommend replacing the phrase "serious prejudice to the public interest" with "serious danger to the public health and safety" in this section. However, staff agrees that Metro should provide a written explanation of any interim rule or standard that is adopted under the proposed provision. Staff recommends revising the subsection to clarify such requirement. Refer to Revision No. 21 in Table 1.

• Cusma Comment #18: Metro Code Section 5.01.290(a) - Subsection 5.01.040(c) provides that certain exempt activities and facilities are subject to Section 5.01.290, which relates to inspections and audits. This authority is intended to allow Metro to inspect and audit certain exempt activities and facilities for the limited purpose of confirming that those activities and facilities qualify for the claimed exemption. Schnitzer Steel recommends that Metro add the following sentence at the end of Subsection 5.01.290(a) to clarify the relationship between Subsection 5.01.040(c) and Subsection 5.01.290(a): "The Chief Operating Officer is authorized to inspect, audit, or otherwise investigate activities and facilities described in Subsections 5.01.040(a)(3) through (a)(9) only to confirm that such activity or facility is exempt under Section 5.01.040."

Metro Response to Cusma Comment #18: Staff does not recommend making the suggested change. The Chief Operating Officer has authority to inspect and audit solid waste facilities as necessary to assure compliance with Metro Code, Chapter 5.01, and all rules and standards adopted in accordance with the chapter.

• <u>Cusma Comment #19:</u> Metro Code Section 5.01.320(f) - This subsection relates to the effect of Metro's revocation of, or refusal to renew, a franchise or license. As proposed by Metro, this subsection would read: "If Metro revokes or refuses to renew a franchise or license, all franchisee or licensee rights in the franchise or license become void." The phrase "or refuses to renew" should be deleted from this subsection for at least two reasons. First, Section 5.01.320 relates to the suspension, modification, and revocation of licenses and franchises, not the refusal to renew a license or franchise. Second, as written, subsection (f) is inconsistent with subsection 5.01.340(b), which provides that the COO's refusal to renew a license does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing (unless necessary to avoid serious danger to the public health or safety).

Metro Response to Cusma Comment #19: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends removing the phrase "or refuses to renew" as suggested. Refer to Revision No. 14 in Table 1.

<u>Cusma Comment #20:</u> Metro Code Section 5.02.050(a) - Metro proposes adding the following sentence to Subsection 5.02.050(a): "Source separated recyclable material' has the same meaning as defined in ORS 459.005." This statement is not correct because ORS 459.005 does not define "source separated recyclable material." The term is, however, defined in Section 5.00.010.

Metro Response to Cusma Comment #20: The draft proposal mistakenly included a reference to ORS 459.005 in the above-mentioned section. Staff recommends removing the reference to ORS 459.005, replacing the term "recyclable material" with "standard recyclable materials," and other minor revisions to clarify which types of materials qualify for a disposal charge credit at Metro's transfer stations. Refer to Revision No. 15 in Table 1.

 <u>Cusma Comment #21:</u> Metro Code Section 5.02.060(a) and 5.0.080(f)(4) - References in these subsections to "enhancement fee" should be replaced with "community enhancement fee" to align these subsections with Metro's proposed changes to definitions in Section 5.00.010.

Metro Response to Cusma Comment #21: Staff recommends replacing all references to "enhancement fee" with the term "community enhancement fee" throughout Chapters 5.00, 5.01, 5.02, and 5.05. Additionally, staff recommends including the term "enhancement fee" as part of the definition of "community enhancement fee"

to clarify that both terms have the same meaning in case the terms are used interchangeably in other chapters of Title V. Refer to Revision No. 1 in Table 1.

 <u>Cusma Comment #22:</u> Metro Code Section 5.02.170 - See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

Metro Response to Cusma Comment #22: Refer to Metro's response to Cusma Comments #14 through #17 above. Staff recommends similar revisions to Chapter 5.02.

Cusma Comment #23: Metro Code Section 5.05.010 - Metro proposes to revise and expand the purposes of Chapter 5.05. Metro suggests that the changes merely incorporate the "six public benefits" from Metro's Solid Waste Roadmap (similar to the proposed changes to Chapter 5.01). However, the six public benefits listed in Chapter 5.05 are not identical to the six public benefits listed in Chapter 5.01. (See Paragraph II.A above for further discussion regarding this issue.)

<u>Metro Response to Cusma Comment #23:</u> Staff recommends withdrawing the initial proposal and not making any substantive changes to the current purpose section at this time. Staff recommends non-substantive housekeeping changes to this section to improve clarity, consistency, and ease of reading. Refer to Revisions No. 6 and 18 in Table 1.

• <u>Cusma Comment #24:</u> Metro Code Section 5.05.020(c) - Metro proposes to revise the description of the authority under which it regulates under Chapter 5.05. The current solid waste code states that Metro is exercising its authority under ORS 268.317 and ORS 268.360. Metro proposes to replace the references to those specific statutory sections with a generic reference to ORS chapter 268. This is arguably a substantive change because ORS 268.317 is limited to solid and liquid waste disposal powers and ORS 268.360 relates to Metro's authority to enact and enforce ordinances. In contrast, other sections of ORS chapter 268 would grant broader powers to Metro (e.g., ORS 268.310(6) authorizes Metro to "[e]xercise jurisdiction over other matters of metropolitan concern as authorized by [the Metro] charter"). If Metro intends to rely on statutory grants of authority beyond ORS 268.317 and ORS 268.360, Metro should do so explicitly and provide an adequate justification for the exercise of broader statutory authority.

Metro Response to Cusma Comment #24: Staff does not agree with the commenter and recommends retaining the changes as initially proposed. Including a reference to ORS Chapter 268 in Section 5.05.020(c) does not "broaden" Metro's authority. ORS Chapter 268 reflects the statutory authority that the legislature has conferred upon Metro. Referencing Metro's statutory authority in Metro code does not "broaden" or otherwise expand that authority. Further, the proposed change better aligns this section with current section 5.05.030, which is entitled "Authority,

Jurisdiction and Application," and which states in subsection (a) that "Metro's solid waste flow control authority is derived from ORS chapter 268 for solid waste and the Metro Charter."

• <u>Cusma Comment #25:</u> Metro Code Section 5.05.050(a) - This subsection provides an exemption from the general requirement to obtain a non-system license in order to transport, or cause to be transported, solid waste generated within Metro to any solid waste facility or disposal site. The exemption applies to "non-putrescible source separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them." As currently drafted, it is somewhat unclear at what point the exemption begins to apply. However, the clear intent of the exemption is that it applies to source separated recyclable materials from the point of source separation, provided the materials will be reused or recycled or transferred, transported, or delivered to a person or facility that will reuse or recycle them. Metro should revise this subsection to ensure it is implemented as intended.

Metro could clarify the intent of the exemption by adding a sentence to the end of Subsection 5.05.050(a) that states: "This exemption applies from the point of source separation, provided the materials are ultimately: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them."

<u>Metro Response to Cusma Comment #25:</u> Staff does not recommend adding the suggested changes as part of the proposed updates at this time. Staff will consider the comment in conjunction with any recommendations that may result from the SWAAC subcommittee that is currently evaluating facilities that exclusively receive source-separated recyclable materials.

<u>Cusma Comment #26:</u> Metro Code Section 5.05.080(b)(6) - This subsection lists the
factors the Metro Council may consider in deciding whether to remove a facility from
Metro's designated facilities list. Metro proposes to add a catchall factor: "Any other
factor the Council considers appropriate." This factor is broader than necessary to
accomplish the purposes of Chapter 5.05. At a minimum, the catchall factor should
be limited to "Any other factor necessary to accomplish the purposes of this
chapter." (Emphasis added.)

Metro Response to Cusma Comment #26: Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising the subsection to better define the factors that the Metro Council will consider when deciding whether to remove a facility from Metro's list of designated facilities. Refer to Revision No. 19 in Table 1.

• <u>Cusma Comment #27:</u> Metro Code Section 5.05.150(b) - This subsection relates to the conditions the COO may impose on a new or renewed non-system license. Metro proposes to add language that would allow the COO to "impose conditions on the issuance of a new or renewed non-system license for non- putrescible waste as the [COO] considers necessary under the circumstances." This grant of authority is more broad than necessary to accomplish the purposes of Chapter 5.05, and Metro has not provided sufficient justification for such a broad grant of authority. A more limited grant of authority would allow the COO to "impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as necessary to accomplish the purposes of this chapter." (Emphasis added.)

<u>Metro Response to Cusma Comment #27:</u> Staff agrees that Metro should clarify the language of the proposed subsection. Staff recommends revising the subsection to better define the factors the Chief Operating Officer will consider when determining non-system license conditions. Refer to Revision No. 19 in Table 1.

 <u>Cusma Comment #28:</u> Metro Code Section 5.05.260 - See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

<u>Metro Response to Cusma Comment #28:</u> Refer to Metro's response to Mr. Cusma's comments #14 through #17 above. Staff recommends similar revisions to Chapter 5.05.

V. White Comment – the following is an excerpt from the commenter's letter (refer to attached letter dated April 29, 2016):

• White Comment: Metro Code Chapter 5.00 - Metro's definition of Solid Waste should follow the state of Oregon's definition by reinserting the words "useless and discarded" to clarify that the material is unwanted by the person last using it and deleting the words "commingled recyclable material" and "source-separated recyclable material" to clarify that the material has not been separated from solid waste for the purpose of recycling by the person last using it.

<u>Metro Response to White Comment:</u> Staff does not recommend any additional changes to this section other than non-substantive housekeeping changes. The definition will remain as proposed.

VI. Jordan Comment (refer to attached letter dated April 29, 2016):

<u>Jordan Comment:</u> Republic Services, Inc. is unable at this time to provide constructive commentary regarding the proposed changes to Metro Code Chapters 5.00, 5.01 5.02 5.05 and 7.01. You have informed us that the "proposed changes seek greater consistency in how Metro reviews and authorizes solid waste facilities, great transparency in how Metro implements its requirements to protect the environment and the public health, and great adaptability to changing conditions, all while

making the (Metro) Code easier to use and understand." Our inability to comment at this time stems from the lack of a context upon which we can evaluate the ramifications resulting from a change in a provision of the Metro Code you are proposing.

David White, our representative with Oregon Refuse and Recycling Association (ORRA), recommended some time ago that the changes to the Metro Code proposed by you should be considered during the review of the Regional Solid Waste Management Plan. I believe this review will take place in next [sic] 12 to 18 months. Republic Services believes a more suitable process would be to adopt the evaluating of your proposed changes to Metro Code 5.00, 5.01 5.02 5.05 and 7.01 during the review of RSWMP which would provide the needed context.

<u>Metro Response to Jordan Comment:</u> The commenter did not provide comments on the content of the proposed changes. Staff recommends updating and revising Metro Code Chapters 5.00, 5.01, 5.02, and 5.05 as proposed.

Warren Johnson

From: Chris Bell [Chris@Bellassociatesinc.com]
Sent: Saturday, February 20, 2016 10:28 AM

To: Warren Johnson

Subject: RE: Proposed Changes to Metro Code Title V (Solid Waste)

Categories: CODE COMMENTS

Warren,

The one area of interest for me and for my municipal clients is the rate charged by other disposal facilities. Section 310 – Determination of Rates, starts to address the issue, but is so weak you might as well forget the changes.

Here is my proposed change: If the total rate* varies within 5% of the current Metro tip, licensee must substantiate the cost of service. The cost of service includes the costs of transfer, transport, and disposal.

* Total rate includes the posted tipping fee plus any scalehouse, environmental, or transaction fees.

The key word is must. What I am finding is the transaction fee / environmental fee charged by some licensees is adding an additional \$2 to \$5 per ton to the total cost. This charge, combined with their tipping fee, puts some facilities higher than Metro by more than 5%.

Chris

Chris Bell Bell & Associates, Inc. Phone 360-210-4344 Mobile 360-773-7676

From: Warren Johnson [mailto:Warren.Johnson@oregonmetro.gov]

Sent: Friday, February 19, 2016 2:44 PM

To: Warren Johnson < <u>Warren.Johnson@oregonmetro.gov</u>>
Subject: Proposed Changes to Metro Code Title V (Solid Waste)

Good afternoon. You are receiving this email because you have previously expressed interest in receiving information about updates to Metro's solid waste code.

I am writing to notify you that Metro staff will present a proposal to the Solid Waste Alternatives Advisory Committee (SWAAC) at its <u>meeting</u> on February 25 to review and discuss proposed improvements and housekeeping changes to the Metro Solid Waste Code (Title V). If SWAAC generally agrees with the proposed changes, a formal public comment period will follow, during which time the public is welcome to submit comments, questions, and suggestions that will be included in the public record and provided to the Metro Council for its consideration.

Written materials associated with the proposed code changes are available on the Metro <u>website</u>. These draft materials include a summary of the proposed changes and multiple "redline" documents that show the proposed amendments to the code by section. At the top of each "redline" document is a guide to reading it.

The key element of the guide is that substantive changes are highlighted in yellow and non-substantive ones are in gray.

Please contact me if you have questions. Thank you.

Warren Johnson Solid Waste Compliance Supervisor Property and Environmental Services

Metro 600 NE Grand Av Portland, OR 97232-2736 503-797-1836 warren.johnson@oregonmetro.gov

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Terrell Garrett
GreenWay Recycling, LLC
PO Box 4483
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(503) 793-9238
14 March 2016

Metro Council Members Warren Johnson 600 NE Grand Ave. Portland, OR 97232

Re: Metro Solid Waste Code Updates

Dear Council Members and Mr. Johnson:

GreenWay Recycling would like to comment on the proposed Solid Waste Code Updates as follows:

Metro Code Chapter 5.00 (Solid Waste Definitions)

"Recoverable Solid Waste" attempts to define products based upon their acceptance or rejection by Metro's facilities without regard to the marketplace and competing facilities abilities to quite frankly "do a better job" than Metro's facilities. This definition should be expanded to include all system licensed or franchised facilities.

Metro Code Chapter 5.01 (Solid Waste Facility Regulation)

5.01.040 (a) (D) Comment A16 "Remove licensing exemption for wood waste processing operations and facilities." Under Council guidance the SWAC has formed a subcommittee which is charged with recommending to Council whether or not "clean MRF's" and other source-separated recycling facilities should be regulated by Metro. It would seem that Staff is circumventing the process assigned by Council to the subcommittee. This subject should be reviewed by the SWAC subcommittee as part of their process.

5.01.080 (e) Comment A52 "Remove automatic granting of a license if the Chief Operating Officer does not act on the application within 120 days." This removal removes accountability and surety that the Chief Operating Officer will act reasonably and expeditiously on applications. Yes, there is appeal to the Council President, however that appeal at minimum adds substantive time to the application process and at maximum causes the application to "die in process" due to lack of Council President action. This

creates a situation of uncertainty for businesses which is unacceptable and contrary to the concept of responsible, respondent government.

5.01.280 "Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms." Conceptually, the movement of Metro toward the type of government with administrative rulemaking similar to that of State and Federal government is a good move. However, this process should be transparent. It is understood that certain administrative rules may not garner attention worthy of the cost and effort necessary for public hearing, but leaving the determination if a proposed rule is worth public hearing solely up to the Chief Operating Officer is outside the bounds of transparent government. The Chief Operating Officer is a person and subject to fault and error. There should be a "trigger" with which the public can force public hearings on proposed rulemaking, regardless of the opinion of the Chief Operating Officer. Further, there should be recognition that Metro is different than State Government, unique in the United States and elsewhere. Because of this uniqueness, Metro should adopt the good parts of Administrative Rulemaking and then look past to new levels of transparency and accountability. In doing so, Council should provide an appeal process through which decisions made by the human and therefore fallible Chief Operating Officer can be fully vetted and either affirmed or negated by the Council should adequate affected persons request such.

Metro Code Chapter 5.02 (Disposal Charges and User Fees)

5.02.170 "Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms." Please refer to 5.01.280 above.

Metro Code Chapter 5.05 (Solid Waste Flow Control)

5.05.200 "Issuance of Required Use Orders." The removal of the ability and right of waste haulers and other persons to choose a facility to patronize based upon cost, service, products offered, and convenience is not non-substantive as purported by Staff. What this does is it removes any surety that a business which is well run and provides a superior services can be assured of market success. This is a terrible idea which should be eliminated.

Summary

Primarily, the proposed Code updates are timely, well written and to comprise necessary housekeeping. There are a few areas which need some changes, however, in general it is a good, solid effort.

Sincerely,

Terrell Garrett

Managing Member

PHILIP J. WUEST DIRECT DIAL: (503) 417-2152 E-mail: pjw@bhlaw.com Oregon and Washington

April 27, 2016

VIA E-MAIL ONLY TO WARREN.JOHNSON@OREGONMETRO.GOV

Metro Solid Waste Code Updates Attn: Warren Johnson 600 N.E. Grand Ave Portland, OR 97232

Reference: Proposed changes to Metro Code Title V, Chapter 5.01.040 to

remove exemption for certain wood waste processing

operations/facilities

Dear Mr. Warren:

I represent Mr. Jim Smith of Jim Smith Excavating and write this letter to express opposition to the proposed removal of the existing exemption in Metro Code 5.01.040(a)(5)(D) (the "Exemption"). The Exemption provides that Chapter 5.01 shall not apply to "Operations or facilities that chip or grind wood wastes, unless such wastes are processed for composting."

Jim Smith Excavating (JSE) and other similarly situated operators, including Wood Waste Management, LLC and McFarelane's Bark, Inc., manufacture "hogged fuel" from clean wood that is transported to the manufacturing facility by independent third parties. Those parties pay to drop the wood at the processing facility where it is used to manufacture hogged fuel. The fuel re-enters the stream of commerce as a new product, and is sold to independent third party facilities that are licensed to burn the hogged fuel to produce energy.

JSE has been manufacturing hogged fuel for over 20 years at its current location and has, over that time, contributed significantly to the beneficial management of would-be wood scrap by keeping it from ever entering the regional waste stream.

Metro's governing statutes recognize the beneficial nature of JSE's activities. Under ORS 268.310(1), Metro has broad authority to regulate solid and liquid wastes, subject to the requirements of ORS 459.005 to ORS 045, etc. ORS 459.007 specifically exempts certain



types of wood residue from coverage under ORS 459.005, including wood residue that is "exchanged by the generator of the wood residue for fair market value and is combusted as a fuel" ORS 459.007. Legislative materials explain the policy behind the exemption. "Oregon law establishes a hierarchy for the management of solid waste. The first objective is to prevent the generation of waste. If that is not possible, reuse is the best option, followed by recycling, composting, and energy recovery." 76th Oregon Legislative Assembly – 2011 Regular Session, Staff Measure Summary, Senate Committee on Rules. ORS 459.007 "Excludes woody biomass that is combusted as a fuel by facility (sic) that has obtained a permit under ORS 468A.040 (air quality) from the definition of solid waste." 76th Oregon Legislative Assembly, House Committee on Rules.

The existing exemption in Metro's code recognizes and implements the policy underlying Oregon's approach to management of the waste stream. The existing exemption, without any interference from government, has allowed a secondary market in wood products and wood products manufacturing to develop and thrive, keeping marketable wood products out of the waste stream and putting them to secondary beneficial use.

There is simply no need change what is already working. The sole reason for the change cited in Metro's materials is to "improve consistency". See page 2 of 4, Summary of Proposed Metro Code Title V Changes, February 12, 2016; See also, page 3 of 4 Comment 2(a) of Summary of Proposed Metro Code Title V Changes, February 29, 2016. The matter appears to have been briefly discussed during the January 13, 2016 meeting SWAAC, see Item 6 on page 3, but there is no indication that the committee or anyone has considered the broader policy implications of the proposed code change to remove the Exemption. There is another mention of the issue in the meeting notes of the February 1, 2016, SWAAC/MRF/CT Subcommittee meeting notes, Item 3 on page 2, where Chair Brower notes that using wood waste to generate power does not clearly fit into Metro's solid waste regulations, and that there are a "broader group of interests and views that should be heard, discussed and considered" so that the committee is well equipped to advise the Metro Council on the proposed changes. Staff again offered only the explanation that Metro's code should be updated for consistency.

This letter specifically requests that the Committee not endorse or recommend the proposed removal of the Exemption, absent some compelling policy rationale. The Exemption has been in place for many years and, as a direct result, there is a robust and successful secondary market keeping wood out of the waste stream and putting it to beneficial use. Bringing these activities under Metro's regulatory control "for the sake of consistency" is a weak rationale when the existing system is working now to achieve Oregon's goals. As such, there is no need for the proposed change in Metro's code to remove the Exemption. The Exemption is working.



Mr. Warren Johnson – Metro's Solid Waste Code Update April 27, 2016 – Page 3

Thank you for your consideration of this request and please do not hesitate to contact me for additional information.

Very truly yours,

Philip J. Wuest Jim Smith Excavating: Jim Smith Wood Waste Management, In. Rick Franklin McFarlane's Bark, Inc.: Dan McFarlane PJW:pjw 1144148

P. 003

Mr. Warren Johnson -- Metro's Solid Waste Code Update April 27, 2016 - Page 3

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Philip J. Wuest

Jim Smith Excavating:

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Wood Waste Management, In.

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Mr. Warren Johnson – Metro's Solid Waste Code Update April 27, 2016 – Page 3

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Mr. Warren Johnson -- Metro's Solid Waste Code Update April 27, 2016 -- Page 3

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Philip J. Wuest

Jim Smith

Wood Waste Management, In.

Rick Franklin

McFarlane's Bark, Inc.:

Dan McFarlane

PJW:pjw 1144148



April 28, 2016

Mr. Warren Johnson Metro 600 NE Grand Avenue Portland, OR 97201

SUBJECT: Metro Solid Waste Code Updates

Dear Mr. Johnson,

Metro is currently seeking public comments on proposed changes to its solid waste code (Title V of the Metro Code). Schnitzer Steel Industries, Inc. (Schnitzer Steel) appreciates the opportunity to submit these comments regarding the proposed changes.

As an initial matter, Schnitzer Steel is concerned that Metro may not recognize the full effect of its proposed changes. Metro describes the proposed changes as proposed improvements and housekeeping changes. ¹ Metro also suggests that it is simply [c]leaning up the code. ² These statements suggest the proposed changes are non-substantive, non-controversial, or both. Schnitzer Steel does not agree. As explained in this letter, Schnitzer Steel believes many of the proposed changes are substantive and could be controversial. Some of these changes will increase burdens on regulated entities, while others will expand the types of materials regulated under the solid waste code, without sufficient justification to support the changes. Schnitzer Steel is also concerned that stakeholder feedback regarding the proposed changes could be muted because of the way Metro has characterized the changes. The consequence could be a process that lacks sufficient transparency and fails to engage stakeholders who will be impacted.

Metro's proposed changes to the solid waste code would amend the following chapters of the Metro Code: Chapter 5.00 (Solid Waste Definitions), Chapter 5.01 (Solid Waste Facility Regulation), Chapter 5.02 (Disposal Charges and User Fees), and Chapter 5.05 (Solid Waste Flow Control). The comments below are organized by code chapter and focus on specific changes proposed by Metro. This comment letter proposes additional changes to the solid waste code that would further Metro's stated goal of provid[ing]

 2 Id

¹ Metro, Public Notice: Solid Waste Code Updates (Feb. 29, 2016), http://www.oregonmetro.gov/news/public-notice-solid-waste-code-updates (last visited April 5, 2016).

greater predictability, consistency and clarity for businesses while meeting Metro's public obligations of ensuring accountability and transparency for the public in regulating the region's garbage and recycling system. ³ All citations to the solid waste code refer to the *proposed* section numbers, unless otherwise noted.

I. CHAPTER 5.00 (SOLID WASTE DEFINITIONS)

A. Clean Fill

Metro proposes adding clean fill as a new defined term. Metro's rationale for adding this new definition is unclear, particularly given that Metro's proposed changes to Chapter 5.00 are intended to [d]elete . . . unnecessary or unused terms. ⁴ The only place Metro proposes to use the new term is in the revised definition of cleanup material. Metro could achieve the same result without adding clean fill as a new defined term.

The issue with adding clean fill as a defined term is that it is unclear how clean fill would be regulated under the solid waste code. For example, it is unclear whether clean fill falls within the definition of solid waste. Relatedly, the definition of non-putrescible waste explicitly includes construction and demolition waste but explicitly excludes cleanup material, source separated recyclable materials, special waste, land clearing debris or yard waste. This definition leaves unclear whether clean fill is non-putrescible waste. Whether clean fill falls within the definition of solid waste and/or non-putrescible waste will affect how clean fill is treated under various provisions of the solid waste code.

Schnitzer Steel encourages Metro to reconsider its decision to add clean fill as a new defined term. If Metro decides to retain the proposed definition, Schnitzer Steel encourages Metro to better explain how clean fill will be regulated under the solid waste code.

B. "Designated Facility" and "Metro Designated Facility"

Metro proposes changes to the definitions of designated facility and Metro designated facility. The proposed definitions are:

 'Designated facility' means a facility that Metro designates as part of the system designated pursuant to Chapter 5.05.

⁴ Metro, Summary of Proposed Improvements and Housekeeping Changes to Metro Code Title V (Solid Waste) for 2016, at 2 (Feb. 29, 2016).

³ *Id*.

> 'Metro designated facility' means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.

It is unclear whether Metro intends for these terms to have different meanings. If Metro intends for both terms to have the same meaning, Metro should consistently use one of the terms throughout the solid waste code and remove the other term. If Metro intends for the terms to have different meanings, Schnitzer Steel encourages Metro to better explain the difference between the two terms.

C. Electronic Waste

In its proposed revisions to Chapter 5.01 of the Metro Code, Metro proposes to require facilities to obtain a solid waste license if they shred, mill, pulverize, or store outdoors any electronic waste. Chapter 5.00 does not define the term electronic waste. Schnitzer Steel urges Metro to replace references to electronic waste with covered electronic device waste, based on a term that is used in ORS chapters 459 and 459A. This would better align the solid waste code with ORS chapters 459 and 459A.

Consistent with ORS 459A.305(4), Schnitzer Steel recommends that Metro define covered electronic device as follows:

Covered electronic device means (1) a computer monitor of any type having a viewable area greater than four inches measured diagonally; (2) a desktop computer or portable computer; (3) a television of any type having a viewable area greater than four inches measured diagonally; (4) a computer peripheral; or (5) a printer. This term does not include (a) any part of a motor vehicle; (b) any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment; (c) telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or (d) any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

Because the term waste is separately defined in Chapter 5.00, a separate definition of covered electronic device waste is unnecessary.

If Metro is unwilling to replace electronic waste with covered electronic device waste, Schnitzer Steel urges Metro to define electronic waste in Chapter 5.00. The

definition should exclude at least those categories of material described in (a) through (d) of the definition of covered electronic device waste proposed above. These exclusions would limit the definition of electronic waste to include only those materials commonly understood to constitute electronic waste. This will provide certainty to regulated entities and avoid unintended consequences.

D. "Metro Disposal System" and "Metro Waste Management System"

Metro proposes to delete the definitions of the terms Metro disposal system and Metro waste management system. However, these terms still appear in other portions of the solid waste code. Further, as currently defined, these two terms do not have the same meaning, nor are they synonymous with the proposed definition of system.

As one example, the proposed definition of the term regional transfer charge is a fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste deliveries to *Metro disposal system* facilities. (Emphasis added.) Without a definition for Metro disposal system or disposal system, it is unclear on which solid waste deliveries Metro would impose the regional transfer change.

As another example, the proposed definition of the term regional system fee is a fee that pays Metro *waste management system* costs. (Emphasis added.) The term waste management system also appears in Section 5.02.120(a), which provides: The regional system fee is the dollar amount per ton of solid waste adopted by Council ordinance for the purpose of paying for *Metro waste management system* costs. (Emphasis added.) Without a definition for Metro waste management system or waste management system, it is unclear which costs would be paid by the regional system fee.

E. Standard Recyclable Materials

Metro proposes to delete the definition of the term standard recyclable materials. This definition is used elsewhere in the solid waste code (e.g., Secs. 5.10.080(a); 5.10.230(a)(2), (b), and (c); and 5.10.240(b)(1)) and should not be deleted.

II. CHAPTER 5.01 (SOLID WASTE FACILITY REGULATION)

A. Section 5.01.010

Metro proposes to revise and expand the purposes of Chapter 5.01. Metro suggests that the changes are meant to incorporate the six public benefits from Metro's Solid Waste

Roadmap. Metro also proposes to revise and expand the purposes of Chapter 5.05 to incorporate the six public benefits (see Paragraph IV.A below). Metro frequently refers to the six public benefits during meetings related to the proposed changes to the solid waste code. Metro does not, however, consistently define or describe the six public benefits. As one example, the proposed description of the six public benefits in Section 5.01.010 is different than the proposed description of the six public benefits in Section 5.05.010. As another example, in a PowerPoint created by Metro for a September 2015 workshop, Metro explained that one of the six public benefits is to [p]rovide good value. ⁵ However, good value does not appear in the Section 5.01.010 or Section 5.05.010.

If Metro is going to rely on a particular set of public benefits to guide solid waste regulation and interpretation of the solid waste code, Metro should clearly and consistently articulate those benefits. Schnitzer Steel understands Metro entertained significant stakeholder input to develop and define the six public benefits articulated in the Solid Waste Roadmap, and they should not be modified to support varying goals.

B. Subsection 5.01.040(a)

1. Single-Stream Recyclers

Schnitzer Steel believes strongly that scrap metal and similarly situated recyclable materials with intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications should be managed as *commodities* rather than subjected to regulation as solid waste. The Oregon Legislature defined solid waste to mean:

[A]ll useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.6

ORS 459.005(24) (emphasis added). That means a material must be either *useless* or *discarded* before it is considered a solid waste under state law.

⁶ The definition excludes certain categories of material that are not relevant to the argument here. ORS 459.005(24).

⁵ Metro, 2015 Metro Solid Waste Code Improvements (Title V) (Sept. 3, 2015), http://www.oregonmetro.gov/sites/default/files/Code workshop presentation 20150903.pdf.

Schnitzer Steel receives recyclable materials—scrap metal in various forms—that are neither useless nor discarded by the end user. Rather, scrap metal items are typically kept out of the solid waste stream and *sold* to Schnitzer Steel or an intermediate scrap dealer. Schnitzer Steel, in turn, treats that material as a valuable commodity—collecting, sorting, and processing the scrap to meet specific, internationally-recognized specifications, and generally managing the material to maximize its value in the market.

Two of the specific types of solid waste listed in the state definition above are discarded or abandoned vehicles or parts thereof and discarded home and industrial appliances. ORS 459.005(24). Metro's definition of solid waste includes identical categories. Because Metro's solid waste definition uses the same language found in ORS 459.005(24), it is logical to interpret these categories in the Metro definition consistent with ORS 459.005(24).

Vehicles, vehicle parts, and appliances are primary types of materials received by Schnitzer Steel. These materials are not useless, discarded, or abandoned; rather, they are valuable materials that have been intentionally segregated from other materials that enter the solid waste stream. The legislature has specifically recognized that certain types of scrap metal, including end-of-life vehicles, vehicle parts, and appliances, *do not routinely enter the solid waste stream*. ORS 459A.010(3).

As a result of these and other considerations, Metro has long recognized single-stream recycling facilities, such as Schnitzer Steel, as a unique category of commercial recycling facility, and has considered them exempt from solid waste facility licensing requirements. Unfortunately, however, the unique character of single-stream recycling facilities is not recognized with a unique exemption that applies only to this type of recycling facility—that is, Subsection 5.01.040(a) does not include a specific exemption for single-stream recycling facilities. Instead, these facilities are subsumed within other, broader exemptions. Single-stream recycling facilities often fall within the exemption applicable to facilities that receive non-putrescible source-separated recyclable materials (Section 5.01.040(a)(3)) or various other exemptions contained in Section 5.01.040(a), but the materials sent to these facilities typically are not separated from the waste stream because they never enter the waste stream in the first place.

Schnitzer Steel encourages Metro to take this opportunity to clarify the exemption applicable to single-stream recycling facilities by adopting a single, narrowly tailored exemption that covers all such facilities. This is important because the rationale for exempting these single-stream recycling facilities is specific to these types of facilities. Single-stream recycling facilities like Schnitzer Steel receive a single type of recyclable material (for Schnitzer Steel, scrap metal in various forms). Single-stream recyclable

materials generally have intrinsic value, well-established markets, incoming material quality guidelines, and outgoing material specifications. As such, these types of recyclable materials are managed by both the recycling facility and end user as a commodity, not a solid waste.

Schnitzer Steel suggests the following description for the new exemption: Facilities that (A) exclusively receive single-stream recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them.

Metro would also need to add a new definition for single-stream recyclable material to Section 5.00.010. Schnitzer Steel suggests the following definition:

Single-stream recyclable material means recyclable material that (i) has been isolated as a single material type (e.g., a specific type of standard recyclable material) for the purpose of recycling, or (ii) is predominantly made up of a single material type for which mechanical processing is necessary to further separate component types of recyclable materials.

2. Incidental Quantity Exemption for Electronic Waste

Metro proposes to require a solid waste license for all facilities that shred, mill, pulverize, or store outdoors any electronic waste (see Section 5.01.050(a)(6)). Schnitzer Steel urges Metro to replace the term electronic waste with covered electronic device waste (see Paragraph I.C above).

As proposed, the licensing requirement would apply quite broadly to facilities that shred, mill, pulverize, or store outdoors *any* electronic waste, which could arguably include small circuit boards or other electronic components contained inside any appliance with digital controls or a potentially unidentified printer inside a large load of scrap, as examples. This could have the unintended consequence of requiring licenses for facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste (or covered electronic device waste). To avoid this unintended consequence, Schnitzer Steel encourages Metro to add the following exemption to Section 5.01.040(a): Facilities that incidentally shred, mill, pulverize, or store outdoors small quantities of electronic waste [or covered electronic device waste].

C. Subsection 5.01.080(e)

Under the current solid waste code, if Metro's Chief Operating Officer (COO) fails to grant or deny a license application within 120 days, the license is deemed

granted. Metro proposes to eliminate this requirement and replace it with a process under which the applicant may request the Metro Council to direct the COO to act on the license if the COO fails to act within 120 days.

Metro does not provide adequate justification for this change. The change would reduce the incentive for the COO to expeditiously review and act on license applications. Metro has not identified any instance in which the 120-day deadline has caused the COO to grant or deny a license application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

D. Section 5.01.110

The proposed revision to Subsection (a) is confusing when read together with Subsection (d). Proposed Subsection (a) reads: The [COO] may approve or deny a license renewal of a solid waste facility. As written, this provision suggests that the COO has complete discretion to approve or deny a license. However, proposed Subsection (d) reads: The [COO] must approve a solid waste facility license renewal unless Subsection (a) would be more clear if it read: The [COO] will review a license renewal and approve or deny it consistent with this section.

E. Subsection 5.01.180(g)

Similar to the proposed changes to Subsection 5.01.080(e) (discussed above), under the current solid waste code, if the Metro Council fails to grant or deny a franchise application within 120 days, the franchise is deemed granted. Metro proposes to eliminate the automatic grant of a franchise.

Metro does not provide adequate justification for this change. The change would reduce the incentive for the Metro Council to expeditiously review and act on franchise applications. Subsection (h)(3) already allows for an extension of the 120-day deadline by mutual agreement of the applicant and the COO. This extension process is adequate to address situations in which the Metro Council is unable to act on a franchise application within 120 days. Metro has not identified any instance in which the 120-day deadline has caused the Metro Council to grant or deny a franchise application that otherwise would have been processed differently. Therefore, Schnitzer Steel opposes this proposed change.

F. Section 5.01.280

Metro proposes to modify the COO's authority to adopt and amend rules, performance standards, procedures, and forms. The proposed title of Section 5.01.280 is: Adoption

and Amendment of Administrative Rules and Performance Standards. The title would more closely align with the substantive provisions of the section if it read: Adoption and Amendment of Rules, Performance Standards, Procedures and Forms. Although the title of Section 5.01.280 makes clear that Metro intends the substantive provisions of the section to apply to both *adoption* and *amendment* of rules, performance standards, procedures, and forms, the section's substantive provisions refer to *adoption* but not *amendment*. To clarify the scope of Section 5.01.280, Metro should revise the section's substantive provisions to refer to both adoption and amendment.

The proposed changes to the substantive provisions of Section 5.01.280 include new procedural protections. These proposed changes provide greater protection to licensees and franchisees, but some of the other proposed changes to the section would arguably expand Metro's rulemaking authority. The proposed changes are discussed in more detail below.

1. Applicability of Rules to Exempt Facilities

Under *current* Section 5.01.132, the COO's rulemaking authority is limited to issuing administrative procedures and performance standards governing the *obligations of licensees and franchisees*. (Emphasis added.) In contrast, *proposed* Section 5.01.280 is ambiguous about whether the COO's rulemaking authority extends to operators of exempt facilities. Subsection 5.01.280(a) provides: The [COO] may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision.

Schnitzer Steel encourages Metro to clarify that the rules, performance standards, procedures, and forms adopted by the COO apply only to licensees and franchisees.

2. Public Notice and Comment

Subsection 5.01.280(b) would require the COO to provide a 30-day public comment period before adopting any rules or performance standards. However, as proposed, this requirement does not explicitly extend to procedures and forms adopted under Section 5.01.280. Because these procedures and forms will have the same force and effect as any other chapter provision, the procedures and forms should also be subject to a 30-day public comment period.

Subsection 5.01.280(b) is silent regarding the type of notice Metro must provide regarding the public comment period. Metro should revise the subsection to require notice in a manner reasonably calculated to reach interested parties.

Metro could address these suggestions by replacing the first sentence of Subsection 5.01.280(b) with the following:

Before the Chief Operating Officer adopts or amends a rule, performance standard, procedure or form under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. Metro will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule, performance standard, procedure or form; the location at which a person may obtain copies of the full text of the proposed rule, performance standard, procedure or form; the method for submitting comments; and the deadline for submitting public comments.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

3. Public Hearings

Subsections 5.01.280(b) and (c) include requirements related to public hearings. As proposed in Subsection 5.01.280(b), the COO may . . . hold a public hearing on any proposed rule or performance standard if the [COO] determines that there is *sufficient public interest* in the proposed rule or performance standard. (Emphases added.) This would vest complete discretion in whether to hold a public hearing with the COO and undermines the procedural protection that a public hearing would provide.

Schnitzer Steel encourages Metro to strengthen this procedural protection by *requiring* public hearings under certain circumstances and expanding the scope of the public hearing provision to cover proposed procedures and forms. Schnitzer Steel suggests replacing the last sentence of Subsection 5.01.280(b) with the following:

The Chief Operating Officer may hold a public hearing on any proposed rule, performance standard, procedure or form if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule, performance standard, procedure or form. The Chief Operating Officer will hold a public hearing if the Chief Operating Officer (i) determines or receives evidence showing that the proposed rule, performance standard, procedure or form could have a material economic impact on a licensee or franchisee, or (ii) receives at least five written requests for a public hearing.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(b) and 5.05.260(b).

4. Effective Date

Subsection 5.01.280(d) provides that, unless otherwise stated, all rules and performance standards take effect when the COO adopts them. This does not provide a sufficient opportunity to challenge the rules and performance standards before they become effective. Absent a serious danger to public health or safety, it is unnecessary for any proposed rule, performance standard, procedure or form to take effect sooner than 60 days following adoption.

Schnitzer Steel suggests replacing Subsection 5.01.280(d) with the following:

All rules, performance standards, procedures and forms adopted or amended under this section will take effect 60 days after adoption or amendment by the Chief Operating Officer, unless (i) the Chief Operating Officer specifies an earlier effective date after determining that failure to immediately implement the rule, performance standard, procedure or form would create a serious danger to the public health or safety, or (ii) the Chief Operating Officer specifies a later effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(d) and 5.05.260(d).

5. Interim Rules and Performance Standards

Subsection 5.01.280(e) would allow the COO to circumvent the public notice and comment process when adopting interim rules and performance standards. To adopt an interim rule or performance standard, the COO must find that failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. This is a vague standard and arguably creates a lower threshold than the serious danger standard contained in other sections of Chapter 5.01.

Schnitzer Steel suggests replacing Subsection 5.01.280(e) with the following:

Notwithstanding subsections (b) and (d) of this section, the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment or opportunity for a public hearing only if the Chief Operating Officer finds that failure to act immediately will result in serious danger to the public health or safety.

The Chief Operating Officer must explain, in writing, the basis for adopting the interim rule or performance standard. Any rule or performance standard adopted pursuant to this subsection takes effect upon adoption and expires no later than 180 days from its effective date.

Schnitzer Steel suggests that Metro make the same change to analogous provisions in Subsections 5.02.170(e) and 5.05.260(e).

G. Subsection 5.01.290(a)

Subsection 5.01.040(c) provides that certain exempt activities and facilities are subject to Section 5.01.290, which relates to inspections and audits. This authority is intended to allow Metro to inspect and audit certain exempt activities and facilities for the limited purpose of confirming that those activities and facilities qualify for the claimed exemption. Schnitzer Steel recommends that Metro add the following sentence at the end of Subsection 5.01.290(a) to clarify the relationship between Subsection 5.01.040(c) and Subsection 5.01.290(a): The Chief Operating Officer is authorized to inspect, audit, or otherwise investigate activities and facilities described in Subsections 5.01.040(a)(3) through (a)(9) only to confirm that such activity or facility is exempt under Section 5.01.040.

H. Subsection 5.01.320(f)

This subsection relates to the effect of Metro's revocation of, or refusal to renew, a franchise or license. As proposed by Metro, this subsection would read: If Metro revokes or refuses to renew a franchise or license, all franchise or licensee rights in the franchise or license become void. The phrase or refuses to renew should be deleted from this subsection for at least two reasons. *First*, Section 5.01.320 relates to the suspension, modification, and revocation of licenses and franchises, not the refusal to renew a license or franchise. *Second*, as written, subsection (f) is inconsistent with subsection 5.01.340(b), which provides that the COO's refusal to renew a license does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing (unless necessary to avoid serious danger to the public health or safety).

III. CHAPTER 5.02 (DISPOSAL CHARGES AND USER FEES)

A. Subsection 5.02.050(a)

Metro proposes adding the following sentence to Subsection 5.02.050(a): 'Source separated recyclable material' has the same meaning as defined in ORS 459.005. This

statement is not correct because ORS 459.005 does not define source separated recyclable material. The term is, however, defined in Section 5.00.010.

B. Subsections 5.02.060(a) and 5.02.080(f)(4)

References in these subsections to enhancement fee should be replaced with community enhancement fee to align these subsections with Metro's proposed changes to definitions in Section 5.00.010.

C. Section 5.02.170

See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

IV. CHAPTER 5.05 (SOLID WASTE FLOW CONTROL)

A. Section 5.05.010

Metro proposes to revise and expand the purposes of Chapter 5.05. Metro suggests that the changes merely incorporate the six public benefits from Metro's Solid Waste Roadmap (similar to the proposed changes to Chapter 5.01). However, the six public benefits listed in Chapter 5.05 are not identical to the six public benefits listed in Chapter 5.01. (See Paragraph II.A above for further discussion regarding this issue.)

B. Subsection 5.05.020(c)

Metro proposes to revise the description of the authority under which it regulates under Chapter 5.05. The current solid waste code states that Metro is exercising its authority under ORS 268.317 and ORS 268.360. Metro proposes to replace the references to those specific statutory sections with a generic reference to ORS chapter 268. This is arguably a substantive change because ORS 268.317 is limited to solid and liquid waste *disposal* powers and ORS 268.360 relates to Metro's authority to enact and enforce ordinances. In contrast, other sections of ORS chapter 268 would grant broader powers to Metro (e.g., ORS 268.310(6) authorizes Metro to [e]xercise jurisdiction over other matters of metropolitan concern as authorized by [the Metro] charter). If Metro intends to rely on statutory grants of authority beyond ORS 268.317 and ORS 268.360, Metro should do so explicitly and provide an adequate justification for the exercise of broader statutory authority.

C. Subsection 5.05.050(a)

This subsection provides an exemption from the general requirement to obtain a nonsystem license in order to transport, or cause to be transported, solid waste generated

within Metro to any solid waste facility or disposal site. The exemption applies to non-putrescible source separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them. As currently drafted, it is somewhat unclear at what point the exemption begins to apply. However, the clear intent of the exemption is that it applies to source separated recyclable materials from the point of source separation, provided the materials *will be* reused or recycled or transferred, transported, or delivered to a person or facility that will reuse or recycle them. Metro should revise this subsection to ensure it is implemented as intended.

Metro could clarify the intent of the exemption by adding a sentence to the end of Subsection 5.05.050(a) that states: This exemption applies from the point of source separation, provided the materials are ultimately: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.

D. Subsection 5.05.080(b)(6)

This subsection lists the factors the Metro Council may consider in deciding whether to remove a facility from Metro's designated facilities list. Metro proposes to add a catchall factor: Any other factor the Council considers appropriate. This factor is broader than necessary to accomplish the purposes of Chapter 5.05. At a minimum, the catchall factor should be limited to Any other factor necessary to accomplish the purposes of this chapter. (Emphasis added.)

E. Subsection 5.05.150(b)

This subsection relates to the conditions the COO may impose on a new or renewed non-system license. Metro proposes to add language that would allow the COO to impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the [COO] considers necessary under the circumstances. This grant of authority is more broad than necessary to accomplish the purposes of Chapter 5.05, and Metro has not provided sufficient justification for such a broad grant of authority. A more limited grant of authority would allow the COO to impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as necessary to accomplish the purposes of this chapter. (Emphasis added.)

F. Section 5.05.260

See proposed changes to this section in Paragraphs II.F.2 through II.F.5 above.

V. CONCLUSION

We appreciate the opportunity to provide these comments to Metro and appreciate the role Metro plays in regulating the solid waste management and disposal system for the region. We look forward to continued discussions regarding how to ensure Metro can achieve its regulatory objectives without placing unnecessary burdens on the recycling industry.

Please contact me at 503.265.6339 to discuss any of the comments provided in this letter.

Respectfully,

SCHNITZER STEEL INDUSTRIES, INC.

MATHEW J. CUSMA

Senior Environmental Manager

cc: Mr. Tom Hughes, Metro Council President

Oregon Refuse and Recycling Association

David White, Regional Representative 1739 NW 156th Avenue Beaverton, Oregon 97006 (503) 690-3143 (Tel) (503) 536-6708 (Fax) <u>davidw@orra.net</u>

April 29, 2016

Mr. Warren Johnson, Solid Waste Compliance Supervisor Property and Environmental Services Metro 600 NE Grand Avenue | Portland, OR 97232

Re: Comments on Proposed revisions to Metro Code Chapter 5.00 (Solid Waste Definitions)

Dear Mr. Johnson:

I am Regional Representative for the Oregon Refuse and Recycling Association (ORRA). ORRA is the statewide trade association representing solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate source-separated recyclable material processing facilities and many of Oregon's municipal solid waste transfer stations and landfills.

Please consider the following comments regarding Metro's definition of Solid Waste:

The state of Oregon, in ORS 459.005 (24), defines Solid Waste as follows:

Solid waste means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386 (Definitions for ORS 459.386 to 459.405). Solid waste does not include:

- (a) Hazardous waste as defined in ORS 466.005 (Definitions for ORS 453.635 and 466.005 to 466.385).
- (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.
- (c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040 (Permits).

Metro, in Code 5.01.010 (Definitions), defines Solid Waste as follows:

"Solid waste" means all putrescible and non-putrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste as defined in ORS 459.386; and other such wastes, including without limitation cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
 - (4) Explosives.

Metro's definition of Solid Waste varies significantly from the state's definition. Specifically Metro's definition deletes the words "useless and discarded" and adds the words "commingled recyclable material" and "source-separated recyclable material".

In the Summary of Proposed Metro Title V Changes, dated February 29, 2016 in the section on Chapter 5.00, it states that proposed changes specific to Modified Terms or Added Terms were to "Change definitions to match as defined by state or reference Oregon Administrative Rules. In general, the term is defined verbatim to assist the reader. Citation references are only used when the State's definition is too long or not easily transcribed."

It appears from the above, that at least in some instances, Metro acknowledges the importance of adopting definitions that are consistent with the state definition. This provides the solid waste system with reliable, established and generally accepted references. Metro has chosen to deviate from the accepted definition of Solid Waste.

Metro's definition of Solid Waste should follow the state of Oregon's definition by reinserting the words "useless and discarded" to clarify that the material is unwanted by the person last using it and deleting the words "commingled recyclable material" and "source-separated recyclable material" to clarify that the material has not been separated from solid waste for the purpose of recycling by the person last using it.

Sincerely,

David White, ORRA Regional Representative

Davil White_

cc: Kristan Mitchell, Executive Director, Oregon Refuse and Recycling Association



April 29, 2016

Warren Johnson Metro Regulatory Affairs Department 600 N.E. Grand Ave. Portland, OR 97232

RE: Proposed changes to Metro Code Chapters 5.00, 5.01, 5.02, 5.05 and 7.01

Dear Mr. Johnson:

Republic Services, Inc. is unable at this time to provide constructive commentary regarding the proposed changes to Metro Code Chapters 5.00, 5.01 5.02 5.05 and 7.01. You have informed us that the "proposed changes seek greater consistency in how Metro reviews and authorizes solid waste facilities, greater transparency in how Metro implements its requirements to protect the environment and the public health, and greater adaptability to changing conditions, all while making the (Metro) Code easier to use and understand." Our inability to comment at this time stems from the lack of a context upon which we can evaluate the ramifications resulting from a change in a provision of the Metro Code you are proposing.

David White, our representative with Oregon Refuse and Recycling Association (ORRA), recommended some time ago that the changes to the Metro Code proposed by you should be considered during the review of the Regional Solid Waste Management Plan. I believe this review will take place in next 12 to 18 months. Republic Services believes a more suitable process would be to adopt the evaluating of your proposed changes to Metro Code 5.00, 5.01 5.02 5.05 and 7.01 during the review of RSWMP which would provide the needed context.

Very truly yours,

Jason Jordan General Manager

cc: Brian May, Republic Services, Inc.

David White, ORRA

Table 1

<u>Summary of Initially Proposed Changes to Metro Code Title V in Comparison with Revisions Made in Response to Comments</u> July 6, 2016

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
1	Chapter 5.00 – Solid Waste Definitions "Community enhancement fee" means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.	Chapter 5.00 - Solid Waste Definitions "Community enhancement fee" or "enhancement fee" means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.
2	 Chapter 5.00 - Solid Waste Definitions "Designated facility" means one of the facilities constituting an facility that Metro designates as part of the system designated from time to time pursuant to Chapter 5.05. "Metro designated facility" means a facility in the system of solid waste facilities and disposal sites that Metro authorizes is authorized under Chapter 5.05 to accept waste generated within the jurisdiction of Metro. 	 Chapter 5.00 - Solid Waste Definitions "Designated facility" means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro. means one of the facilities constituting a part of the system designated from time to time pursuant to Chapter 5.05. "Metro designated facility" means a facility in the system of solid waste facilities and disposal sites that is authorized under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
3	The initial draft did not include a definition for the term "electronic device."	Chapter 5.00 - Solid Waste Definitions "Electronic device" means: (1) A computer monitor of any type having a viewable area greater than four inches measured diagonally; (2) A desktop computer or portable computer; (3) A television of any type having a viewable area greater than four inches measured diagonally; (4) A computer peripheral; or (5) A printer. The term electronic device does not include: (1) Any part of a motor vehicle; (2) Any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment; (3) Telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or (4) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.
4	 Chapter 5.00 - Solid Waste Definitions "Regional system fee" means those fees which pay the cost of thea fee that pays Metro waste management system costs. "Regional transfer charge" means those fees which paya fee that pays the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities. 	"Regional system fee" means those fees which pay the cost of thea fee that pays the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. Metro waste management system. - "Regional transfer charge" means those fees which pay the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
5	Chapter 5.00 – Solid Waste Definitions "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.	Chapter 5.00 – Solid Waste Definitions "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.
6	(a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to-protect: (1) Protect and preserve the health, safety and welfare of Metro's residents; to implement (2) Protect and preserve the environment and livability of the region; (3) Implement programs cooperatively with federal, state and local agencies consistent with the Regional Solid Waste Management Plan; to provide a (4) Provide coordinated regional disposal, management and resource recovery program and a solid waste management planprograms to benefit all citizens of Metro; and to reduce (5) Adapt and respond to changes in the solid waste system; and (6) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery. (b) The provisions of this chapter shall be liberally construed to accomplish these purposes.	Section 5.01.010 - Purpose (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to protect: (1) Protect and preserve the health, safety and welfare of Metro's residents; to (2) ilmplement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies; the Regional Solid Waste Management Plan; to (3) pProvide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and to Metro; and to perform the source recovery. (4) pReduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery. (b) The provisions of this chapter shall be liberally construed to accomplish these purposes.
7	Section 5.01.030 – Prohibited Activities The initial draft did not include a prohibition on the outdoor storage of "electronic devices."	Section 5.01.030 – Prohibited Activities (g) Any person to store electronic device waste uncovered and outside of a roofed structure.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
8	5.01.040 – Exemptions to Prohibited Activities (D) Operations or facilities that chip or grind wood wastes, unless: (i) such chipped or ground wood wastes are processed for composting; or (ii) such operations or facilities are other-wise regulated under Metro Code Section 5.01.045.	5.01.040 – Exemptions to Prohibited Activities (8) (D) An Ooperations or facilityies that chip or grindprocesses wood wastes, unless: (i) The such chipped or ground wood wastes are processed for composting; or (ii) The such operations or facilityies is are other-wise regulated under Metro Code Section 5.01.05045 this chapter.
9	5.01.050 – License Requirements and Fees (5) Chipping or grinding Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.	5.01.050 – License Requirements and Fees (5) Chipping or grindingProcessing wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.
10	Section 5.01.050 - License Requirements and Fees (6) Shredding, milling, pulverizing, or storing outdoors any electronic waste.	Section 5.01.050 - License Requirements and Fees The revised draft does not include the initially proposed licensing requirement for shredding, milling, pulverizing, or storing electronic waste outdoors

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
11	Section 5.01.080 — License Issuance (e) If the Chief Operating Officer does not act to grant or deny a license application within 120 days after the filing of applicant files a complete application, the license shall be deemed granted for applicant may send a written request to the solid waste facility or activity requested in Council President requesting that the application, and Council direct the Chief Operating Officer shall issue a license containing the standard terms and conditions included in other comparable licenses issued by Metroto act. (f) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall beig restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. An applicant may withdraw its application at any time prior to before the Chief Operating Officer's decision and may submit a new application at any time thereafter.	Section 5.01.080 – License Issuance (e) If the Chief Operating Officer does not act to grant approve or deny a new license application within 18020 days after the filing of applicant files a complete application, the license shall is be deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then and the Chief Operating Officer shall issue at he license will contain license containing the standard terms and conditions included in other comparable licenses issued by Metro. (f) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall be restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if: (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period. (g) An applicant may withdraw its application at any time prior to before the Chief Operating Officer's decision and may submit a new application at any time thereafter.
12	5.01.110 – License Renewal (a) The Chief Operating Officer shall renew may approve or deny a license renewal of a solid waste facility license.	5.01.110 – License Renewal (a) The Chief Operating Officer shall renew a solid waste facility license responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
13	Section 5.01.180 – Franchise Issuance (g) The Council shall act tomust grant or deny a franchise application within 120 days after the filing of applicant files a complete application. The unless the deadline for the Council to act to grant or deny an application may be set 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 an applicant files a complete franchise application, the deadline for the Council to act to grant or deny the application shall be sextended if: (1) The Council acts to extendextends the deadline for up to an additional 60 days, which the Council may do ene time only once for any single application; (2) The applicant substantially modifies the application during the course of the review period, in which case the 120 days review period for the Council to act shall be restanted as of the date Metro receives the applicant's modifications; or (3) The applicant and the Chief Operating Officer mutually agree to extend the deadline for the Council to act for a specified time period of time.	Section 5.01.180 – Franchise Issuance (g) If Tthe Council shall act to does not grant approve or deny a new franchise application within 12180 days after the applicant files filing of a complete application the franchise is be deemed granted for the solid waste facility or disposal site requested in the application. – The deadline for the Council to act to grant approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro. 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 an applicant files a complete franchise application, the deadline for the Council to act to grantapprove or deny the application shall be sextended if: (1) The Council acts to extendextends the deadline for up to an additional 60 days, which the Council may do ene timeonly once for any single application; (2) The applicant substantially modifies the application during the course of the review period, in which case the 120_180 days review period for the Council to act shall be restanted as of the date Metro receives the applicant's modifications; or

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
14	5.01.320 – Enforcement Provisions (f) If Metro revokes or refusal refuses to renew thea franchise or license, all rights of the franchise or licensee rights in the franchise or license shall immediately be divested become void.	5.01.320 – Enforcement Provisions (f) If Metro revokes or refusalto renew thea franchise or license, all rights of the franchisee or licensee rights in the franchise or license shall immediately be divested become void.
15	5.02.050 Source Separated Recyclable Disposal Charge Credit Notwithstanding the provisions of Metro Code Section 5.02.025, (a) A non-commercial customerscustomer at Metro South Station or Metro Central Station who disposed isposes of source-separated recyclable material as defined in ORS 459.005 shallwill receive a \$3.00 disposal charge credit in the amount of \$3.00 forwhen disposing of fewer than 100 pounds of recyclables, and in the amount of \$6.00 for credit when disposing of 100 pounds or more of recyclables, source-separated recyclable material. "Source separated recyclable material" has the same meaning as defined in ORS 459.005.	5.02.050 Source-Separated Standard Recyclable Materials Disposal Charge Credit Notwithstanding the previsions of Metro Code Section 5.02.025, (a) A non-commercial sustemers customer at Metro South Station or Metro Central Station who disposed disposes of source-separated standard recyclable materials (except yard debris) that are generated by a household as defined in ORS 459.005 shallwill receive a \$3.00 disposal charge credit in the amount of \$3.00 for when disposing of fewer than 100 pounds of such recyclables, and in the amount of \$6.00 for credit when disposing of 100 pounds or more of such recyclables.
16	Section 5.02.060 - Charges for Management of Household Hazardous Wastes (a) There is hereby established Customers delivering household hazardous waste at Metro hazardous waste facilities must pay a "household hazardous waste management charge that shall be collected on household hazardous waste accepted at Metro hazardous waste facilities. Such household hazardous waste management." This charge shall be is in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and enhancement fees, and certification non-compliance fees that may be required by this chapter. and excise taxes required by Chapter 7.01.	Section 5.02.060 - Charges for Management of Household Hazardous Wastes (a) There is hereby established Customers delivering household hazardous waste at Metro hazardous waste facilities must pay a "household hazardous waste management charge that shall be collected on household hazardous waste accepted at Metro hazardous waste facilities. Such household hazardous waste management." This charge shall beis in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and community enhancement fees, and certification noncompliance fees that may be required by this chapter; and excise taxes required by Chapter 7.01.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
17	Section 5.02.120 - Regional System Fees (a) The regional system fee shall beis the dollar amount per ton of solid waste adopted by anCouncil ordinance offor the purpose of paying for Metro waste management system costs. Metro Council, prorated will round the regional system fee to the nearest one-hundredth of a ton and prorate it based on the actual weight of solid waste, at issue rounded to the nearest one-hundredth of a ton.	Section 5.02.120 - Regional System Fees The regional system fee shall beis the dollar amount per ton of solid waste adopted by anCouncil ordinance offor the purpose of paying the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. Metro Council, prorated will round the regional system fee to the nearest one-hundredth of a ton and prorate it based on the actual weight of solid waste, at issue rounded to the nearest one-hundredth of a ton.
18	This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to: (a) Protect and preserve the health, safety and welfare of residents located outside the region when solid waste generated within Metro is delivered there; (b) Protect and preserve the environment and livability of areas located outside the region when solid waste generated within Metro is delivered there; (c) Implement programs and authorizations cooperatively with federal, state and local agencies consistent with the regional solid waste management plan; (d) Provide a coordinated regional disposal, management and resource recovery program to benefit all citizens of Metro and communities that receive solid waste generated within Metro; (e) Adapt and respond to changes in the solid waste system; and (f) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery in accordance with the regional solid waste management plan. The provisions of this chapter should be liberally construed to accomplish these purposes.	Section 5.05.010 - Purpose (a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to: (1) Protect and preserve the health, safety and welfare of Metro's residents; (2) Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies; (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and (5) Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law. (b) The provisions of this chapter shall be liberally construed to accomplish these purposes.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
19	Section 5.05.080 - Removing From and Amending the Designated Facilities List (6) (bAny other factor the Council considers appropriate.	Section 5.05.080 - Removing From and Amending the Designated Facilities List (6) (bAny other factor the Council considers appropriate to accomplish the purposes of this chapter.
20	Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste (b) The Chief Operating Officer shall formulate and provide to the Council may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances.	Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste (b) The Chief Operating Officer shall formulate and provide to the Council may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances to accomplish the purposes of this chapter.
21	 Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms (a) The Chief Operating Officer may adopt rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and form adopted under this section has the same force and effect as any other chapter provision. (b) Before the Chief Operating Officer adopts a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer may also hold a public hearing on any proposed rule or performance standard if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule or performance standard. (c) If the Chief Operating Officer holds a public hearing on any proposed rule or performance standard, the Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the public hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard. (d) Unless otherwise stated, all rules and performance standards adopted under this section take effect when the Chief Operating Officer adopts them. 	Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (a) The Chief Operating Officer may adopt or amend rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure andor form adopted or amended under this section has the same force and effect as any other chapter provision. (b) Before the Chief Operating Officer adopts or amends a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule, performance standard or form; the location at which a person may obtain a copy of the full text of the proposed rule, performance standard or form; the method for submitting public comments; and the deadline for submitting public comments. The Chief Operating Officer may also hold a public hearing on any proposed rule or performance standard if the Chief Operating Officer determines that there is sufficient public interest in the proposed rule or performance standard.

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
	<u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms (CONTINUED)</u>	Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)
21	(e) Notwithstanding subsection (b), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice or comment upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.	(c) In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. If the Chief Operating Officer holds a public hearing on any proposed rule or performance standard, the The public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor-ner more than 30 days before the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard. (d) During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period. (e) After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.

Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED) (g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, e-comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date. (h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms. (i) Any form, performance standard, or administrative rule (formerly known as an "administrative procedure") that is in effect on the date of this ordinance's adoption remains in effect unless otherwise repealed or amended. (ii) For purposes of ORS 34,020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.	Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
			Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED) (g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, or comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date. (h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms. (i) Any form, performance standard, or administrative rule (formerly known as an "administrative procedure") that is in effect on the date of this ordinance's adoption remains in effect unless otherwise repealed or amended. (j) For purposes of ORS 34.020, any rule adopted by the Chief Operating