

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 16-1388
CODE CHAPTER 5.02 TO ADD, REMOVE, AND)	
AMEND CERTAIN DISPOSAL CHARGE AND)	Introduced by Chief Operating Officer Martha
FEE 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 5.02 contains the requirements for Solid Waste Disposal Charges and User Fees; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.02, that chapter has become unnecessarily complicated; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.02, 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 5.02 renumber many code sections, thus improving section numbering for easier referencing; and

WHEREAS, updating Metro Code Chapter 5.02 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 clarifying the types of recyclable materials that qualify for a disposal charge credit at Metro's transfer stations, establishing that solid waste loads containing a mixture of waste generated both inside and outside of Metro's boundaries are deemed to be generated entirely within the region (with certain exceptions), 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

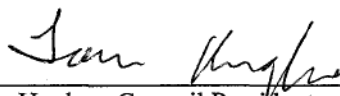
WHEREAS, the Chief Operating Officer also recommends that the Metro Council adopt these amendments to Chapter 5.02 to improve the chapter's clarity, consistency and readability, and to build greater transparency and predictability in how Metro implements its requirements to protect the environment and the public's health; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.02 further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.02 is amended as set forth in the attached Exhibit A.

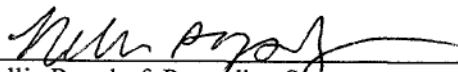
ADOPTED by the Metro Council this 10 day of November 2016.



Tom Hughes, Council President



Attest:



Nellie Papsdorf, Recording Secretary

Approved as to Form:



Alison R. Kean, Metro Attorney

METRO CODE - TITLE V SOLID WASTE

CHAPTER 5.02

DISPOSAL CHARGES AND USER FEES

SECTION TITLE

5.02.010 Purpose

~~5.02.015 Definitions (Repealed & Replaced Ord. 14 1331)~~

~~5.02.016~~ 5.02.020 Scale Weights Required

5.02.~~020~~030 Establishment of Disposal Fees and Charges;
Procedures

5.02.~~025~~040 Disposal Charges at Metro South & Metro Central
Station

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Disposal Charge Credit

5.02.~~027~~060 Charges for Management of Household Hazardous
Wastes

5.02.~~028~~070 Charges for Conditionally Exempt Generator Waste

5.02.~~029~~080 Charges for Recoverable Solid Waste ~~(repealed &
replaced Ord. 12 1277, § 5, eff. 8/01/12)~~

5.02.~~030~~090 Charges for Direct-Haul Disposal

5.02.~~031~~100 Special Waste Surcharge and Special Waste Permit
Application Fees

5.02.~~035~~110 Litter Control Surcharge

5.02.~~037~~ ~~Disposal Charge for Compostable Organic Waste
(repealed Ord. No. 12 1277, § 6, eff. 8/01/12)~~

~~5.02.040 Disposal Fees (repealed Ord. 94 531 § 5)~~

~~5.02.045~~120 Regional System Fees

5.02.~~046~~ ~~Special Findings for Regional System Fee Credits
(repealed Ord. 07 1147B, eff. 7/01/09)~~

~~5.02.047~~130 Regional System Fees on Cleanup Material
~~Contaminated by Hazardous Substances (repealed and
replaced Ord. 14 1323, § 4, eff. 5/14/14)~~

~~5.02.050 Regional Transfer Charge (repealed Ord. 94 531 § 7)~~

~~5.02.055~~5.02.140 Remittance to Metro of Fees and Other
Charges

5.02.~~060~~150 Account Policy at Metro Solid Waste Disposal
Facilities

- ~~5.02.065 Special Waste Surcharge and Special Waste Permit Application Fees; Conditionally Exempt Generator Waste (repealed Ord. 98 720A § 25)~~
- ~~5.02.070 Source Separated Yard Debris Disposal Charge (repealed Ord. 98 720A § 25)~~
- ~~5.02.075~~160 Special Exemption from Disposal Fees
- ~~5.02.085 Out of District Waste (repealed Ord. 98 720A § 25)~~170
Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms

5.02.010 Purpose

The purpose of this chapter is to establish solid waste disposal rates, charges and credit policies for the Metro South Station and the Metro Central Station and to establish the method for setting and administering appropriate fees and charges assessed on solid waste generated within Metro or delivered to solid waste facilities regulated by or contracting with Metro.

(Ordinance No. 82-146, Sec. 1. Amended by Ordinance No. 88-257, Sec. 1; Ordinance No. 89-269, Sec. 2; Ordinance No. 90-337, Sec. 1; Ordinance No. 91-386C, Sec. 1; Ordinance No. 92-455B, Sec. 1; Ordinance No. 94-531, Sec. 1; Ordinance No. 98-720A, Sec. 1; Ordinance No. 02-974, Sec. 1.)

5.02.~~016~~020 Scale Weights Required

~~All user fees or other fees submitted to Metro from any~~
A facility ~~receiving~~that receives solid waste generated within Metro ~~shall be calculated on a tonnage basis using~~must use certified scale weights ~~to calculate, on a tonnage basis, all~~
user fees and other fees that the facility submits to Metro.

(Ordinance No. 82-146, Sec. 2. Amended by Ordinance No. 86-210, Sec. 1; Ordinance No. 88-257, Sec. 2; Ordinance No. 88-278, Sec. 1; Ordinance No. 89-269, Sec. 2; Ordinance No. 89-295, Sec. 1; Ordinance No. 90-337, Sec. 2; Ordinance No. 90-372, Sec. 1; Ordinance No. 91-386C, Sec. 2; Ordinance No. 91-404, Sec. 1; Ordinance No. 02-974, Sec. 1.)

5.02.~~020~~030 Establishment of Disposal Fees and Charges; Procedures

(a) Purpose. The purpose of this section is to establish a consistent, predictable, open and transparent framework ~~for the adoption of when Metro adopts~~ solid waste disposal fees and charges ~~by Metro.~~

(b) Definitions of Rate and Rate Year. As used in this ~~subsection, rates~~chapter, "rate" means any of Metro's solid waste fees or charges ~~as set forth in Metro Code section 5.02.025 or 5.02.045.~~ "Rate year" means a period of 365 consecutive days (366 leap year days) ~~commencing from~~beginning on the date on which a rate becomes effective.

(c) Frequency. The Council ~~shall~~will consider rates annually and adopt changes as needed.

(d) Rate-Making Requirements; Independent Review. Each year the Chief Operating Officer ~~shall~~will prepare rates for Council's consideration ~~by the Council.~~ Rates ~~shall be regarded as~~are provisional until ~~transmitted~~the Chief Operating Officer transmits them to the Council pursuant to ~~paragraph subsection (ef) of this section.~~paragraph subsection (ef) of this section. In preparing provisional rates the Chief Operating Officer ~~shall~~will:

- ~~_____~~ (1) Consider all sources and uses of funds that affect the solid waste revenue fund budget during the next rate year~~;~~;
- ~~_____~~ (2) Follow generally accepted practices for selection of methodologies, assumptions, requirements, and other technical factors that determine the rates~~;~~;
- ~~_____~~ (3) Incorporate rate criteria and policies adopted by resolution of the Council pursuant to ~~paragraph subsection (fg) of this section.~~paragraph subsection (fg) of this section.;
- ~~_____~~ (4) Submit the provisional rates to ~~review~~by at least one independent expert for review;
and
- (5) Perform any other ~~forms of~~ due diligence that the Chief Operating Officer finds necessary to meet the purpose of this section.~~—The~~

(e) Independent Review Process; written report.

- (1) After the Chief Operating Officer submits the provisional rates to an independent expert reviewer~~shall~~, the reviewer will test the provisional rates for accuracy, adequacy, the reasonableness of underlying assumptions, compliance with applicable law and requirements, consistency with the Council's adopted criteria ~~of the Council~~, and any other criteria ~~specified by the Chief Operating Officer~~ specifies or ~~recommended by which~~ the reviewer ~~under~~recommends based on generally accepted ~~professional or best~~ practices for rate review. The Chief Operating Officer ~~shall~~will provide the reviewer with ~~access to~~ the rate model, data, assumptions, criteria, and any other information that the Chief Operating Officer used to calculate the provisional rates.~~—At~~
- (2) ~~the conclusion of his work~~After the review is complete, the reviewer ~~shall~~will ~~deliver~~submit a written report to the Chief Operating Officer

documenting the reviewer's findings, exceptions and recommendations.

~~(e)(f)~~ Transmittal of Proposed Rates to the Council.— Each year the Chief Operating Officer ~~shall~~will transmit to the ~~Metro~~ Council in ordinance form a set of proposed rates for consideration. At the same time that the Chief Operating Officer transmits the rates, the Chief Operating Officer ~~shall~~will also transmit to the ~~Metro~~ Council:

— (1) A report that documents the methodologies, data, assumptions, adopted criteria and ~~the~~ other factors that the Chief Operating Officer used to calculate the proposed rates, including ~~their~~the Chief Operating Officer's response to the reviewer's recommendations ~~of the independent review~~; and

— (2) The reviewer's report ~~of the independent review~~as prepared pursuant to paragraph subsection (e). ~~(d)(3) of this section.~~

~~(f)~~ Periodic Review of Rate Criteria and Policies.— ~~From time to time~~ At least every three years, the Council ~~shall~~will undertake a review of its adopted rate criteria and policies. ~~The purpose of these reviews shall be to assure to ensure that adopted criteria and policies~~they reflect the purpose of this section, meet Metro's needs, support Metro's management of the regional solid waste system, and address any findings of the Council that result from the periodic review. ~~The Chief Operating Officer shall initiate periodic reviews no less frequently than every three years.~~ The Council may initiate, ~~or the Chief Operating Officer may propose to initiate,~~ a review of rate criteria or policies at any time.

(Ordinance No. 09-1223. Amended by No. 14-1323, Sec. 1.)

5.02.025—040 Disposal Charges at Metro South & Metro Central Station

(a) The ~~fee for disposal of~~ solid waste disposal fee at the Metro South Station and at the Metro Central Station ~~shall consist~~consists of:

(1) ~~The following charges~~ A disposal charge for each ton of solid waste ~~delivered for disposal~~comprised of:

- (A) A tonnage charge in ~~the dollar~~an amount adopted by ~~an~~Council ordinance ~~of the Metro Council~~;
 - (B) The regional system fee as ~~provided~~set forth in Section 5.02.~~045~~120;
 - (C) The community enhancement fee as set forth in ~~Metro Code~~ Chapter 5.06~~7~~i and
 - (D) ~~The~~All applicable DEQ fees established in Oregon Revised Statutes chapters 459 and 459A, as implemented in Chapter 340 Division 90 of Oregon Administrative Rules~~7~~.
- (2) All applicable solid waste excise taxes as ~~established~~set forth in ~~Metro Code~~ Chapter 7.01, ~~which excise taxes shall be~~ stated separately; and
- (3) A transaction charge in ~~the dollar~~an amount adopted by ~~an~~Council ordinance ~~of the Metro Council~~ for each solid waste disposal transaction that is:
- (A) Completed at staffed scales, or
 - (B) Completed at the automated scales.
 - (C) Notwithstanding the provisions of subsection (A), the solid waste disposal transaction charge ~~shall be~~is the amount authorized in subsection (B) in the event that a transaction that is otherwise capable of being completed at the automated scales must be completed at the staffed scales due to a physical site limitation, a limit or restriction of the computer operating system for the automated scales, or due to a malfunction of the automated scales.
- (b) Notwithstanding subsection (a) ~~of this section~~),
- (1) There ~~shall be~~is a minimum ~~charges~~charge at Metro South Station and at Metro Central Station for the acceptance of solid wastes ~~which shall consist~~that consists of a transaction charge as set forth in Metro Code ~~section~~Section

5.02.~~025~~040 (a) (3) plus a tipping charge based on the minimum load weight adopted by an ordinance of the ~~Metro~~ Council.

- (2) The Chief Operating Officer may waive collection of the regional system fee on solid waste that is generated outside ~~the District~~Metro's regional boundaries, and collected by a hauler that is regulated by a local government unit, and accepted at Metro South Station or Metro Central Station.

(c) ~~Total~~Metro will round total fees ~~assessed in cash~~ at the Metro South Station and ~~at the~~ Metro Central Station ~~shall be rounded~~ to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(d) The ~~Director of Parks and Environmental Services~~Chief Operating Officer may waive disposal fees ~~created in this section~~ for non-commercial customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

(Ordinance No. 82-146. Amended by Ordinance No. 83-163, Sec. 2; Ordinance No. 85-191, Sec. 3; Ordinance No. 86-214, Sec. 3; Ordinance No. 88-257, Sec. 4; Ordinance No. 88-278, Sec. 3; Ordinance No. 89-269, Sec. 2; Ordinance No. 89-295, Sec. 3.; Ordinance No. 90-337, Sec. 4; Ordinance No. 90-372, Sec. 2; Ordinance No. 91-386C, Sec. 4; Ordinance No. 91-405A, Sec. 1; Ordinance No. 92-455B, Sec. 1; Ordinance No. 93-482, Sec. 2; Ordinance No. 94-531, Sec. 3; Ordinance No. 95-597, Sec. 2; Ordinance No. 97-681B, Sec. 2. Repealed by Ordinance No. 98-720A, Sec. 3; replaced by Ordinance No. 98-720A, Sec. 4. Amended by Ordinance No. 99-825A, Sec. 1; Ordinance No. 01-918A, Sec. 1; Ordinance No. 03-1000A, Sec. 1; Ordinance No. 04-1042A, Sec. 1; Ordinance No. 05-1080, Sec. 1; Ordinance No. 06-1118, Sec. 1; Ordinance No. 07-1146, Sec. 1; Ordinance No. 08-1186A, Sec. 1; Ordinance No. 09-1217A, Sec. 1; Ordinance No. 10-1237, Secs. 1 and 4; Ordinance No. 11-1257A, Sec. 1; Ordinance No. 12-1277, Sec. 1; Ordinance No. 13-1302, Sec. 1 and Ordinance No. 14-1323, Sec. 2.)

5.02.~~026~~050 Source--Separated Standard Recyclable Materials Disposal Charge Credit

~~Notwithstanding the provisions of Metro Code Section 5.02.025,~~

(a) A non-commercial ~~customers~~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 shall will~~ 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 a~~ \$6.00 ~~for credit when disposing of~~ 100 pounds or more of such recyclables.

~~(a)(b)~~ Notwithstanding ~~the provisions of this section, subsection (a),~~ the Chief Operating Officer may designate source-separated recyclable materials that ~~may be accepted Metro will accept~~ from customers at no charge.

(Ordinance No. 98-720A, Secs. 5-6; Amended by Ordinance No. 04-1057, Sec. 1.)

5.02.027060 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 community enhancement fees, ~~and~~ certification non-compliance fees that may be required by this chapter, ~~and~~ and excise taxes required by Chapter 7.01.

(b) ~~The~~ For containers of 10 gallons capacity or less, the amount of the household hazardous waste management charge ~~shall be~~ is:

- (1) \$5.00 for the first 35 gallons of household hazardous waste that is accepted in a single transaction ~~in containers of 10 gallons capacity or less, , and~~
- (2) \$5.00 for ~~each~~ every additional 35 gallons (or portion thereof) of household hazardous waste that is ~~delivered~~ accepted in the same transaction ~~in containers of 10 gallons capacity or less. .~~

These fees ~~shall do not be charged for acceptance of~~ apply to post-consumer architectural paint under the Oregon paint stewardship system ~~established by Oregon HB3037~~ set forth in ORS 459A.820 et seq.

(c) ~~The~~ For containers of greater than 10 gallons capacity, the household hazardous waste management charge ~~for household hazardous waste that is accepted in a container of greater than 10 gallons capacity shall be as follows~~ is:

- (1) \$5.00 for each empty container only;
- (2) \$10.00 for each container that contains up to 25 gallons of household hazardous waste;
- (3) \$15.00 for each container that contains more than 25 gallons of household hazardous waste.

~~(d) Each of the above charges may be waived by the Director of Parks and Environmental Services.~~

(d) The Chief Operating Officer may waive any charge in this section.

(Ordinance No. 98-720A, Secs. 7-8. Amended by Ordinance No. 01-907A, Sec. 2; Ordinance No. 04-1057, Sec. 2; Ordinance No. 07-1135, Sec. 1; Ordinance No. 07-1146, Sec. 2; and Ordinance No. 11-1257A, Sec. 4.)

5.02.029070 Charges for Conditionally Exempt Generator Waste

(a) ~~The amount charged for acceptance of~~ For conditionally exempt generator (CEG) waste from non-household sources, ~~shall be~~ customers must pay the actual disposal costs of ~~such the~~ waste calculated from the current Metro contractor price schedules, Metro and ~~or~~ contractor labor costs (as applicable), all applicable excise taxes, and the cost of material utilized for managing the waste.

(b) Notwithstanding ~~section~~ subsection (a), ~~there shall be no~~ Metro will not charge fees under this section ~~for acceptance of~~:

- (1) Post-consumer architectural paint under the Oregon paint stewardship system ~~established by Oregon HB3037~~ as set forth in ORS 459A.820 et seq; or
- (2) Hazardous waste generated at any facility operated by Metro.

(c) The ~~Director of Parks and Environmental Services~~ Chief Operating Officer may waive charges established in this section in specific instances upon a finding that a waiver ~~of such charges~~ is in the public interest.

(Ordinance No. 98-720A, Secs. 9-10; and Ordinance No. 11-1257A, Sec. 5.)

5.02.029080 Charges for Recoverable Solid Waste

(a) ~~There are hereby established~~ Metro will collect a "recoverable solid waste ~~charges that shall be collected~~ charge" on different classes of recoverable solid wastes accepted at Metro Central Station or Metro South Station.

(b) The ~~amount of each~~ recoverable solid waste charge ~~shall consist~~ consists of a transaction charge as set forth in Section 5.02.025040 and a tonnage charge as adopted by the ~~Metro~~ Council or as specified in this section.

(c) For purposes of this section ~~5.02.029,~~ "managing" and "management" of recoverable solid waste ~~shall mean~~ means any of the following activities: acceptance, onsite handling and logistics, quality assurance, mixing of wastes to meet an engineering or market specification, processing such as grinding and shredding that may alter the form but does not substantially alter the content of the waste, residuals management, reloading, transport and delivery to a recycling site, and similar activities directly related to the handling and disposition of recoverable solid waste.

(d) For purposes of this section ~~5.02.029,~~ a class of recoverable solid waste is distinguished from other classes of wastes by a material difference in the ~~cost of management~~ cost or by physical characteristics that require different practices to manage the waste.

(e) The Chief Operating Officer ~~is authorized to~~ may specify new classes of recoverable solid wastes, ~~to~~ set tonnage charges for new classes of recoverable solid wastes, and ~~to~~ change tonnage charges for existing classes of recoverable solid wastes. ~~The Chief Operating Officer shall set the~~

(f) The tonnage charge for each class of recoverable solid waste is equal to the sum of:

————— (1) ~~Metro's~~ The contractual costs that Metro pays, if any, ~~paid by Metro to~~ any contract operator of Metro Central or Metro South Station for managing ~~said the~~ class of recoverable solid waste, expressed on a per-ton basis;

————— (2) Metro's direct costs, if any, for personnel, materials, services and capital incurred directly by Metro for managing ~~said the~~ class of recoverable solid waste, expressed on a per-ton basis;

————— (3) An allocation of Metro's administrative, overhead, capital, and fixed contractual costs that is reasonably related to managing ~~said the~~ class of recoverable solid waste, expressed on a per-ton basis; and

~~_____~~ (4) The community enhancement fee set forth in ~~Metro Code s~~Section 5.06.010(a).

~~_____~~ Nothing in this subsection modifies ~~or is intended to modify the Metro~~ Council's authority to set recoverable solid waste charges by ordinance at any time.

~~(fg)~~ The Chief Operating Officer ~~shall~~must provide 10 days notice to the ~~Metro~~ Council ~~prior to~~before either implementing any proposed change to a recoverable solid waste tonnage charge, ~~and when or~~ proposing a tonnage charge for a new class of recoverable solid waste. ~~An~~Metro will keep on file an accounting of the ~~components of each~~ recoverable solid waste ~~tonnage~~ charge ~~shall be kept on file with the Finance and Regulatory Services department or its successor at Metro~~components.

~~_____~~ ~~(g)~~ All recoverable solid waste charges shall be (h) Metro will clearly ~~posted by material class~~post on ~~Metro's~~sits website and at Metro Central and Metro South stations all recoverable solid waste charges by material class.

~~(hi)~~ Notwithstanding subsections (b) and ~~(e) of this section:~~

~~_____~~ (1) The Chief Operating Officer ~~shall~~will establish charges for recoverable solid wastes that are typically accepted and managed on a unit or count basis rather than by scale weight. ~~These~~Metro will base these charges ~~shall be based~~ on ~~Metro's~~sits actual costs for managing ~~said~~the wastes.

~~_____~~ (2) The Chief Operating Officer ~~shall~~will establish minimum charges for loads of recoverable solid waste.

~~_____~~ (3) The charge for accepting up to three Christmas trees in one transaction ~~shall be~~is the transaction charge as set forth in Metro Code Section 5.02.~~025~~040.

~~_____~~ ~~(i) The provisions of this~~ (j) This section ~~shall~~does not apply to any source-separated recyclable material that the Chief Operating Officer ~~has designated~~designates as exempt from charges pursuant to Metro Code Section 5.02.~~026~~050.

(Ordinance No. 98-720A, Secs. 11-12; Amended by Ordinance No. 06-1118, Sec. 2; repealed and replaced Ordinance No. 12-1277, Sec. 5.)

5.02.030~~090~~ Charges for Direct-Haul Disposal

~~(a) Each facility licensed or franchised under Metro Code Chapter 5.01 and facility~~ authorized to transport solid waste directly to the Columbia Ridge Landfill ~~shall~~must pay ~~to~~ Metro a per ton charge ~~as provided in this section~~ for the disposal of solid waste ~~which that~~ is generated:

(1) Generated or originates within the Metro boundary, ~~and which the facility~~

(2) Transported directly ~~transports~~ to the Columbia Ridge Landfill.

~~For (b) The direct-haul disposal charge for~~ each ton disposed under this section during each calendar quarter, ~~such direct haul disposal charge shall be~~ is equal to the sum of the total amount that Metro paid to its contract operator for disposal of solid waste during the previous calendar quarter divided by the sum of the number of tons of solid waste disposed by Metro at the Columbia Ridge Landfill during the previous calendar quarter and the number of tons of solid waste disposed under direct-haul authorization during the previous calendar quarter.

(Ordinance No. 98-720A, Secs. 13-14. Amended by Ordinance No. 99-823A, Sec. 1; Ordinance No. 01-913, Sec. 1.)

5.02.031100 Special Waste Surcharge and Special Waste Permit Application Fees

(a) A special waste surcharge ~~and a special waste permit application fee shall be collected on~~ applies to all special wastes disposed of at Metro facilities ~~and on. A special waste permit application fee applies to~~ all special waste permit applications. The surcharge and fee ~~shall be~~ are in addition to any other charge or fee established by this chapter. The purpose of the surcharge and permit application fee is to require disposers of special waste to pay the cost of services provided by Metro to manage special wastes. The surcharge and fee ~~shall be applied~~ apply to all special wastes.

(b) The special waste surcharge ~~shall be determined by~~ is ~~the amount equal to~~ Metro's actual costs in managing special waste, ~~which. These~~ costs comprise ~~of~~ of special handling costs, cleanup costs, and lab or testing costs. The special waste surcharge ~~shall apply~~ applies to all permitted special wastes and to all non-permitted special wastes that Metro discovers at a Metro-operated facility that result in additional management costs not otherwise covered by, or incorporated within, any other Metro fee.

(c) The special waste permit application fee ~~shall be~~ is \$25.00. ~~This Metro will collect this fee shall be collected at the time it receives a special waste permit applications are received application. for processing.~~

(d) The special waste surcharge and special waste permit application fee ~~shall do~~ not apply to household hazardous waste accepted at Metro hazardous waste facilities or Metro household hazardous waste collection events.

(Ordinance No. 98-720A, Secs. 15-16. Amended by Ordinance No. 01-907A, Sec. 3.)

5.02.035110 Litter Control Surcharge

(a) A customer must pay a "litter control surcharge of \$25.00 per ton, up to a maximum amount of \$100.00, shall be levied against any customer who disposes of solid waste or a recoverable solid waste at" if the customer enters Metro Central Station or ~~at~~ Metro South Station ~~if, when entering the facility, and~~ any portion of the customer's solid waste or recoverable solid waste is unsecured and visible to Metro scalehouse personnel.

~~—(b)—No~~ The amount of the litter control surcharge shall be levied under this section is:

(1) Three dollars for 240 pounds or less in a single transaction; or

(2) Twenty five dollars per ton for more than 240 pounds, up to a maximum of \$100.00, in a single transaction.

(c) Metro will not impose the litter control surcharge if the solid waste or recoverable solid waste is only visible through a secure covering.

~~(e) Notwithstanding subsection (a) of this section, a surcharge of \$3.00 per solid waste disposal transaction shall be levied against any customer who disposes of a single load of solid waste or recoverable solid waste that weighs 240 pounds or less and that is unsecured and visible to Metro scalehouse personnel.~~

~~—(d)—The d)~~ Metro will collect the litter control surcharge provided for in this section shall be collected in the same manner as that Metro collects all other disposal fees and charges at the facility.

(Ordinance No. 82-146, Sec. 6. Amended by Ordinance No. 89-269, Sec. 2; Ordinance No. 90-337, Sec. 5; Ordinance No. 91-397, Sec. 1; Ordinance No. 94-531, Sec. 4; Ordinance No. 97-681B, Sec. 3. Repealed by Ordinance No. 98-720A, Sec. 17; replaced by Ordinance No. 98-720A, Sec. 18; amended by Ordinance No. 01-898, Sec. 1; Ordinance No. 01-918A, Sec. 2; Ordinance No. 05-1080, Sec. 2; Ordinance No. 06-1118, Sec. 3.)

~~(5.02.037 Disposal Charge for Compostable Organic Waste. Ordinance No. 00-876A, Secs. 2-3. Amended by Ordinance No. 04-1036, Sec. 2.; Repealed Ord. No. 12-1277 Sec. 6, effective 8/01/12.)~~

~~(5.02.040 Disposal Fees. Repealed Ord. 94-531 § 5)~~

~~5.02.045 Regional System Fees~~

5.02.120 Regional System Fees

(a) The regional system fee ~~shall be~~ is the dollar amount per ton of solid waste adopted by ~~an~~ Council ordinance ~~offer~~ for 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, prorate~~ 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.

(b) Any ~~waste hauler or other~~ person transporting solid waste generated, originating, or collected from inside the Metro region ~~shall~~ must pay a regional system ~~fees~~ fee to Metro for the disposal of ~~such~~ that solid waste. ~~Payment~~ A person satisfies payment of applicable system fees to the operator of a designated facility shall satisfy the obligation to pay regional system fees fee if the person pays the fee to a designated facility operator, provided that, if ~~such~~ the person transports solid waste ~~is transported~~ to a designated facility outside of the Metro region, then ~~such waste hauler or other~~ the person must ~~have informed the operator of~~ inform the designated facility operator that the solid waste was generated, originated or collected inside the Metro region. ~~In any~~ If a dispute arises regarding whether such waste hauler or other a person informed ~~such~~ the facility operator that the solid waste was generated, originated, or collected inside the Metro region, ~~such waste hauler or other~~ then the person ~~shall have~~ transporting the waste has the burden of proving that ~~such information was~~ the person communicated this to the operator.

(c) Regional system fees ~~shall~~ do not apply to:

- (1) Solid waste ~~received at~~ accepted at licensed or franchised solid waste facilities ~~that are~~

~~licensed, franchised or, or otherwise~~ exempt from regulation under Chapter 5.01;

- (2) Cleanup material ~~contaminated by hazardous substances~~ accepted at facilities that treat ~~said~~the cleanup material ~~contaminated by hazardous substances~~ to applicable DEQ standards;
- (3) Useful material that is accepted at a disposal site that is listed as a Metro designated facility in Chapter 5.05 or accepted at a disposal site under authority of a Metro non-system license issued pursuant to Chapter 5.05, provided that the useful material: (A) is intended to be used, and is in fact used, productively in the operation of the disposal site ~~(such as for roadbeds or alternative daily cover)~~; and (B) is accepted at the disposal site at no charge; or
- (4) Processing residual produced by any tire processor that is regulated pursuant to Chapter 5.01 and that sorts, classifies or processes used tires into fuel or other products, provided ~~said~~the processing residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent ~~, and under the terms,~~ specified in the Metro license or franchise.

(d) Designated facility operators ~~shall~~must collect and pay to Metro the regional system fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries ~~, in accordance with this chapter.~~. There is no liability for regional system fees on charge accounts that are worthless and charged off as uncollectible, provided that ~~the facility operator submits to Metro an affidavit is filed with Metro~~ stating the name and amount of each uncollectible charge account and documenting good faith efforts that ~~have been~~the operator made to collect the accounts. Regional system fees ~~may are~~ not ~~be deemed~~ uncollectible unless the underlying account is also uncollectible. If the ~~operator has paid the~~ fees ~~have~~ previously ~~been paid,~~ ~~then the operator may take~~ a deduction ~~may be taken~~ from the next payment due to Metro for the amount found worthless and charged off. ~~If~~However, if the operator ~~thereafter collects on~~ any such account ~~is thereafter collected,~~ in whole or in part, the ~~operator must include the~~ amount ~~so~~ collected ~~shall be included~~ in the first return ~~filed~~it files after ~~such~~the collection, and ~~pay~~ the fees ~~shall be paid~~ with the return.

(e) All regional system fees ~~shall~~must be paid in the form of a remittance ~~payable~~ to Metro. ~~All Metro must deposit all deposit all~~ regional system fees ~~received by Metro shall be deposited~~ in the solid waste operating fund and ~~used~~use them only for the administration, implementation, operation and enforcement of the Regional Solid Waste Management Plan.

(f) ~~When~~If solid waste ~~generated from within the Metro boundary is mixed loads~~ in the same vehicle or container ~~with solid contain a mixture of waste generated from both inside and outside the Metro boundary, of Metro's boundaries, then~~ the load in its entirety ~~shall is considered to be reported at the disposal site by generated within Metro's boundary.~~ In such cases, the generator or waste hauler ~~as having been generated within the Metro boundary, and they must report it and pay regional system fee shall be paid fees~~ on the entire load, unless the hauler or generator ~~or hauler provides the disposal site operator with can provide~~ documentation regarding the total weight of ~~the solid that~~ waste ~~in within~~ the vehicle or container that was generated only within the Metro boundary ~~and the.~~ The disposal site operator ~~forwards such must forward that~~ documentation to Metro, ~~or unless Metro has agreed in writing to another method of reporting.~~

(Ordinance No. 82-146, Sec. 8; Ordinance No. 85-191, Sec. 4; Ordinance No. 86-214, Sec. 4; Ordinance No. 88-257, Sec. 6; Ordinance No. 88-278, Sec. 4; Ordinance No. 89-269, Sec. 2; Ordinance No. 90-337, Sec. 6; Ordinance No. 90-351, Sec. 1; Ordinance No. 90-372, Sec. 3; Ordinance No. 91-386C, Sec. 6; Ordinance No. 92-455B, Sec. 1; Ordinance No. 94-531, Sec. 6; Ordinance No. 97-681B, Sec. 4. Repealed by Ordinance No. 98-720A, Sec. 19; replaced by Ordinance No. 98-720A, Sec. 20. Amended by Ordinance No. 99-823A, Sec. 2; Ordinance No. 00-867, Sec. 3; Ordinance No. 01-918A, Sec. 3; Ordinance No. 03-1000A, Sec. 2; Ordinance No. 04-1042A, Sec. 2; Ordinance No. 05-1080, Sec. 3; Ordinance No. 06-1103, Sec. 2; Ordinance No. 06-1118, Sec. 4; Ordinance No. 07-1146, Sec. 3; Ordinance No. 08-1186A, Sec. 2; Ordinance No. 09-1217A, Sec. 2; Ordinance No. 10-1237, Secs. 2 and 4; Ordinance No. 11-1257A, Sec. 2; Ordinance No. 12-1277, Sec. 2 Ordinance No. 13-1323, Sec 3; and Ordinance No. 14-1338.)

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~~5.02.046 Special Findings for Regional System Fee Credits.
Repealed Ord. 07-1147B, effective 7/01/09)~~

~~5.02.047130~~ Regional System Fees on Cleanup Material Contaminated by Hazardous Substances

(a) Notwithstanding Section 5.02.~~045120~~(a), ~~there is hereby established~~ a reduced regional system fee ~~on~~applies to cleanup material ~~contaminated by hazardous substances~~ that is delivered to any solid waste system facility authorized by Metro to accept ~~such~~that material.

(b) The regional system fee on cleanup material ~~contaminated by hazardous substances shall be~~ is the dollar amount per ton adopted by ~~an~~Council ordinance ~~of the Metro Council.~~

~~(c) The Chief Operating Officer is authorized to issue administrative procedures that define the terms and conditions under which solid wastes may qualify for the reduced regional system fee. The Chief Operating Officer is further authorized to establish an application process for said reduced rate; and may approve, deny, or approve with conditions any application submitted under this process.~~

(Ordinance No. 98-720A, Secs. 21-22. Amended by Ordinance No. 98-762C, Sec. 55; Ordinance No. 99-805, Sec. 1; Ordinance No. 99-823A, Sec. 3; Ordinance No. 00-858, Sec. 1; Ordinance No. 00-867, Sec. 4; Ordinance No. 00-873, Sec. 2; Ordinance No. 01-897, Sec. 1; Ordinance No. 01-919B, Sec. 4; Ordinance No. 02-951B, Sec. 2; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1000A, Sec. 3; Ordinance No. 04-1042A, Sec. 3; Ordinance No. 06-1118, Sec. 5; Ordinance No. 07-1146, Sec. 4; Ordinance No. 07-1147B, Sec. 7; Ordinance No. 08-1186A, Sec. 3; Ordinance No. 09-1217A, Sec. 3; Ordinance No. 10-1237, Secs. 3-4; Ordinance No. 11-1257A, Sec. 3; Ordinance No. 12-1277, Sec. 3; repealed and replaced Ordinance No. 14-1323, Sec.4.)

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~~5.02.050 Regional Transfer Charge. Repealed Ord. 94 531 § 7.)~~

~~5.02.055~~ Remittance¹⁴⁰ Payment to Metro of Fees and Other Charges

(a) Fees and charges owed to Metro by any person pursuant to this ~~chapter~~Chapter shall constitute are a debt owed to Metro, ~~and such debt shall be extinguished only by payment of such.~~ A person must pay the fees and charges ~~to Metro~~ as provided ~~in~~by this section. ~~to extinguish the debt.~~ Franchisees and other operators of designated facilities ~~shall~~must remit fees and charges (other than excise taxes) to Metro as specified in this section. In addition, waste haulers and other persons liable for the payment of user fees as provided in Metro Code

Section 5.02.~~045~~120 (b) ~~shall remit~~must pay fees and charges (other than excise taxes) to Metro as specified in this section.

(b) Fees ~~shall~~ accrue on a monthly basis and ~~shall~~must be ~~remitted~~paid to Metro by the 15th day of the month for waste disposed of in the preceding month. Fees and other charges ~~will be~~ delinquent if not ~~received by Metro~~paid on or before the due date. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows.

(Ordinance No. 93-509, Sec. 3; Ordinance No. 94-533, Sec. 1; Ordinance No. 97-681B, Sec. 5; Ordinance No. 98-720A, Sec. 23; Ordinance No. 06-1103, Sec. 3; and Ordinance No. 14-1338.)

5.02.~~060~~150 Account Policy at Metro Solid Waste Disposal Facilities

(a) ~~Disposal~~ A person may pay disposal charges, including all fees and taxes, ~~may be paid at the time of disposal~~ in cash, by credit card, ~~or by check, or may be paid~~ under Metro's credit policy. ~~No Metro will not grant credit shall be granted~~ to any person ~~prior to approval of~~before it approves a credit application in a form or forms ~~provided by Metro~~as required.

(b) ~~Metro's~~ The Chief Operating Officer ~~shall~~ will establish ~~and maintain~~ appropriate account requirements ~~for new and existing accounts, which requirements shall be~~ designed to diminish Metro's risk of loss due to non-payment. ~~Existing for new and existing accounts. Metro may require existing account holders may be required to make new application to reapply for credit or provide additional guarantees, as deemed necessary or prudent by~~ as the Chief Operating Officer considers necessary.

(c) Account charges ~~shall~~ accrue on a monthly basis. Metro will mail statements on or about the 10th day of the month for disposal services rendered in the prior month. ~~A statement~~ An account holder must be paid ~~pay the statement~~ no later than the last business day of the month in which ~~it is mailed~~ Metro mails the statement ~~will be considered~~. The statement is past due thereafter. ~~A payment shall under no circumstances be considered~~ statement is not "received by Metro" unless it is delivered the account holder personally delivers it to the Metro Department of Finance and Administrative Services during business hours or, ~~if delivered by mail, received in Metro's~~ unless Metro's mail room receives it on or before the due date.

(d) ~~A~~ Metro will access a finance charge in the amount of the greater of \$25.00 or 1.5 percent of the sum of all past due charges ~~shall be assessed~~ on all unpaid, past due charges

~~commencing as of~~beginning on the 15th day of the month following the month in which Metro mails a statement ~~is mailed~~, and continuing on the 15th day of each month thereafter until paid. Finance charges ~~will be assessed~~accrue only on unpaid past due balances, and not on previously assessed finance charges. ~~Finance charges~~ Metro will continue to ~~be assessed~~ assess finance charges on negotiated repayment schedules. ~~Payments~~Metro will ~~be applied~~ first apply payments to finance charges and then to the oldest amount past due. In addition to any other finance charge or fee, ~~any account that has been forwarded to any collection agency for collection~~Metro will also ~~be charged~~ charge a 30 percent collection fee ~~in the amount of 30 percent of~~ on the past-due balance owing ~~at the time of~~ on any account that Metro forwards to a collection agency.

(e) ~~An~~If an account ~~that~~ is 15 days past due, ~~as defined in 5.02.060(c),~~ then Metro may be placed place an account on a cash only basis, ~~until the account holder pays all past due disposal and finance charges are paid.~~ An. Metro may close an account that if Metro has been placed it on a cash only basis more than twice during any 12-month period may be closed. Facility access. Metro may be denied deny facility access to a person whose account is past due ~~and unpaid~~ for 30 days or more. ~~A decision~~ The Chief Operating Officer has discretion to place an account on a cash only basis or deny facility access ~~shall be at the discretion of the Chief Financial Officer.~~

(f) An account customer ~~that~~ must immediately notify Metro if the customer sells, terminates, or makes a substantial change in the scope of its business after Metro approves its application for credit ~~has been approved must notify Metro immediately.~~ Failure to. Metro may terminate the customer's credit if the customer does not provide the notice required by this subsection may result in termination of credit at Metro facilities pending reapplication for credit. notice.

(g) ~~The Department of Finance and Administrative Services~~ Chief Operating Officer may adjust accounts receivable and reverse finance charges in accordance with prudent credit practices. ~~Adjustments~~ The Chief Operating Officer will report adjustments over \$1,000.00 ~~shall be reported~~ to the Council in writing on a monthly basis.

(h) ~~The~~ Consistent with prudent credit practices, the Chief Operating Officer may end pursuit of an account receivable, ~~consistent with prudent credit practices,~~ when the likelihood of collecting does not justify further collection costs. The Chief Operating Officer will provide Council with a written report, at least monthly, of all accounts receivable over \$1000.00 for which Metro has ended collection efforts. Only Council may approve ending collection efforts on an account over

~~\$10,000.00. Such action shall be reported to the Council in writing on a monthly basis when the amount exceeds \$1,000.00, and amounts over \$10,000.00 shall require Council approval.~~

(Ordinance No. 82-146, Sec. 11. Amended by Ordinance No. 90-350; Ordinance No. 91-386C, Sec. 8; Ordinance No. 92-455, Sec. 1. Repealed and re-established by Ordinance No. 93-504A. Amended by Ordinance No. 97-681B, Sec. 6; Ordinance No. 98-720A, Sec. 24; Ordinance No. 01-913, Sec. 2; Ordinance No. 02-974, Sec. 1; Ordinance No. 04-1049, Sec. 1.)

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~~5.02.065 Special Waste Surcharge and Special Waste Permit Application Fees; Conditionally Exempt Generator Waste. Repealed Ord. 98 720A § 25)~~

~~(5.02.070 Source Separated Yard Debris Disposal Charge. Repealed Ord. 98 720A § 25)~~

5.02.075160 Special Exemption from Disposal Fees

(a) The Chief Operating Officer may issue ~~on such terms as the Chief Operating Officer finds appropriate~~ a special exemption permit to a public agency, local government, or qualified non-profit entity as specified in Code Section 5.07.030(a), (b), (d) and (j) for the purpose of waiving fees for disposal of solid waste generated within the Metro region.

(b) ~~Commencing in Metro fiscal year 2007 08 and in each fiscal year thereafter, the~~The Chief Operating Officer ~~shall~~must provide the ~~Metro~~Council with an annual report ~~showing indicating the:~~

- (1) ~~the amount~~ Amount of solid waste recycled and disposed under the special exemption permits granted by the Chief Operating Officer during ~~such~~that fiscal year; and
- (2) ~~the total expenditures~~ Total lost revenue arising from the exemption permits granted.

(Ordinance No. 94-531, Sec. 9. Amended by Ordinance No. 97-681B, Sec. 8; Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1099B.)

~~(5.02.085 Out of District Waste. Repealed Ord. 98 720A § 25)~~

5.02.170 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 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 Officer under this section is considered a final decision.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 16-1388 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO ADD, REMOVE, AND AMEND CERTAIN DISPOSAL CHARGE AND FEE REQUIREMENTS AND MAKING OTHER HOUSEKEEPING CHANGES

October 14, 2016

Prepared by: Warren Johnson
503-797-1836

Adoption of Ordinance No. 16-1388 will amend Metro Code Chapter 5.02 (Disposal Charge and User Fees) to add, remove, and revise certain disposal charge and fee 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 5.01 (Solid Waste Facility Regulation),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. 16-1387

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 5.02. 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 5.02

Metro Code Chapter 5.02 (Disposal Charges and User Fees) establishes the solid waste rates charged at Metro’s publicly-owned transfer stations and governs the regional system fee and other charges assessed on solid waste generated within the region. The Chief Operating Officer (COO) recommends the proposed changes to Chapter 5.02 as described below and further detailed in Exhibit A.

1. Disposal Charge Credits at Metro’s Transfer Station

The COO recommends amending current Section 5.02.026 to clarify that standard recyclable materials (except yard debris) qualify for a disposal charge credit at Metro’s transfer stations. Currently, the above-mentioned section provides a general reference to Oregon Revised Statutes (ORS) for a description of the types of materials that qualify for the credit.⁴ The COO finds that removing the reference to ORS and replacing it with the term *standard recyclable materials* as defined in Chapter 5.00 will improve clarity and ease of understanding.

⁴ ORS 459.005

The proposed change will allow a disposal charge credit for certain source-separated standard recyclable materials (except yard debris) that are delivered to Metro's transfer stations.

2. Regional System Fees for Mixed Waste Loads

The COO recommends amending Section 5.02.045(f) to establish that all solid waste loads containing a mixture of waste generated from both inside and outside of Metro's boundaries are considered to be generated entirely within the region for the purpose of reporting and assessing regional system fees unless the hauler can otherwise document the total weight of the Metro-area waste in the load. The proposed change will require haulers to use scale weights for determining fees for mixed waste loads.

Currently, the above-mentioned section provides an option for haulers and generators to use alternative measurement methods in lieu of scale weights (such as periodic sampling, customer averages, and other tonnage estimations). The COO finds that removing these alternative measurement options and requiring the use of scale weights for determining the payment of fees will ensure greater equity, transparency, and accountability in how Metro implements its requirements.

3. 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 5.02. 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 5.01 and 5.05.

4. 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 5.02 as provided in Exhibit A.

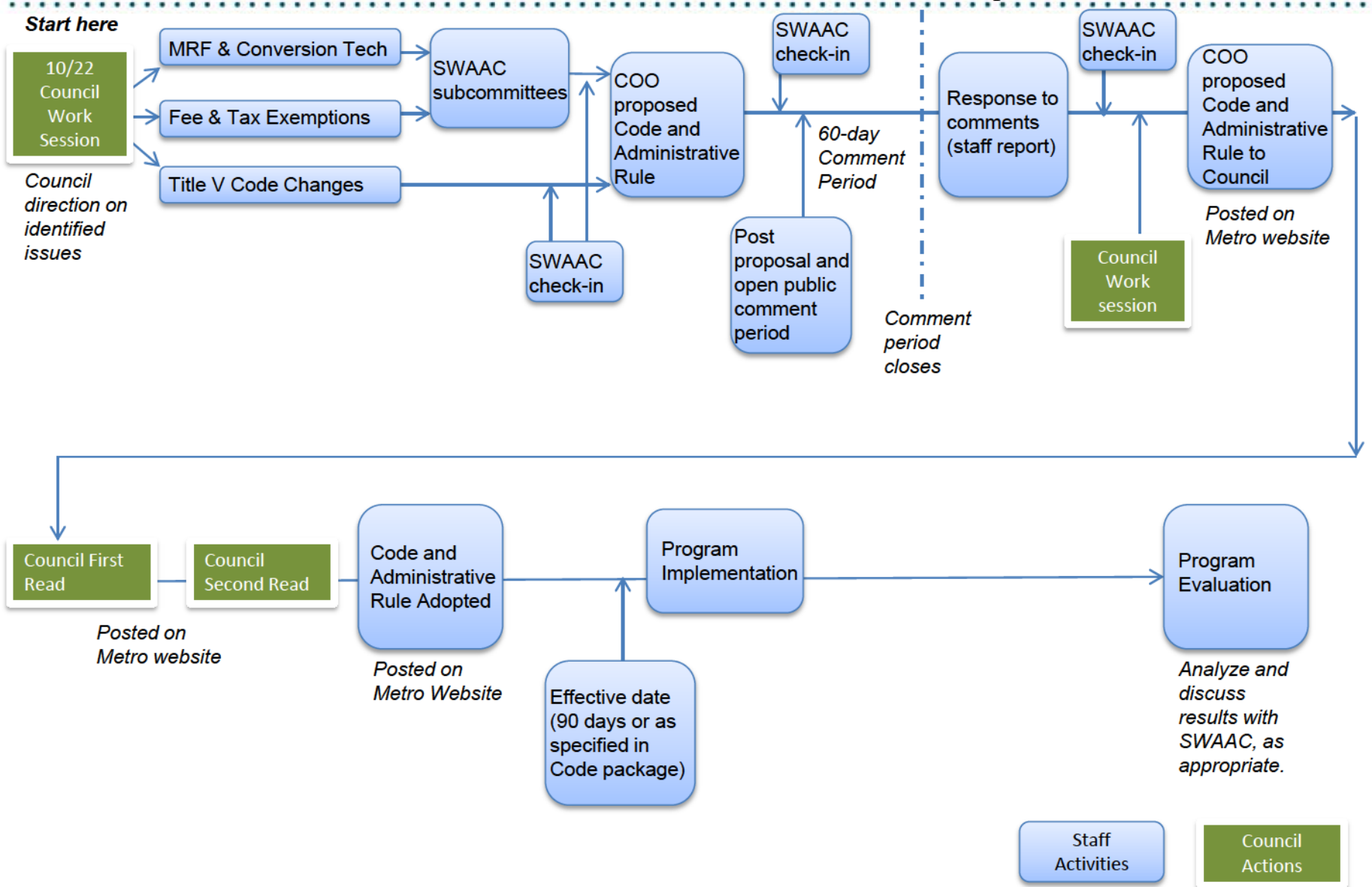
4. Budget Impacts

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

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 16-1388.

WJ:bjl



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.*

Metro Response to Garrett Comment #1: 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.

Metro Response to Garrett Comment #4: 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.

Metro Response to Garrett Comment #5: 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.

Metro Response to Garrett Comment #6: 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):

- Wuest Comment: *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 5.01.040(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."*

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):

- Cusma Comment #1: *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.

- Cusma Comment #2: *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.

- Cusma Comment #3: *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.

- Cusma Comment #4: *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 charge.

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.

- Cusma Comment #5: *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.

- Cusma Comment #6: Metro Code Chapter 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.” 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.

Metro Response to Cusma Comment #6: 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.

- Cusma Comment #7: 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]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.

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.

Metro Response to Cusma Comment #7: 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.

- Cusma Comment #8: 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].”

Metro Response to Cusma Comment #8: 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.

- Cusma Comment #9: *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.

Metro Response to Cusma Comment #9: Refer to Metro’s response to Mr. Garrett’s comment #3 above.

- Cusma Comment #10: *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.

- Cusma Comment #13: 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.

Metro Response to Cusma Comment #13: 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.

- Cusma Comment #15: *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.

- Cusma Comment #16: *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).

Metro Response to Cusma Comment #16: 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.

- Cusma Comment #19: *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.

- Cusma Comment #20: *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.

- Cusma Comment #21: *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.

- Cusma Comment #22: 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.)

Metro Response to Cusma Comment #23: 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.

- Cusma Comment #24: 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.”

- Cusma Comment #25: *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.”

Metro Response to Cusma Comment #25: 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.

- Cusma Comment #26: *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.

- Cusma Comment #27: *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.)*

Metro Response to Cusma Comment #27: 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.

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

Metro Response to Cusma Comment #28: 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.*

Metro Response to White Comment: 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):

- Jordan Comment: *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.

Metro Response to Jordan Comment: 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 <Warren.Johnson@oregonmetro.gov>
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 [meeting](#) 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 [website](#). 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

Metro | Making a great place
www.oregonmetro.gov

Terrell Garrett
GreenWay Recycling, LLC
PO Box 4483
Portland, OR 97208-4483
(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

B L A C K

H E L T E R L I N E LLP

ATTORNEYS AND COUNSELORS AT LAW

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



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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

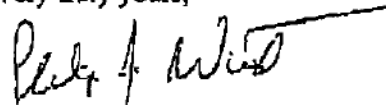
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Mr. Warren Johnson -Metro's Solid Waste Code Update
April 27, 2016 - Page 3

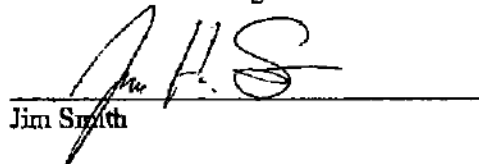
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Very truly yours,



Philip J. Wuest

Jim Smith Excavating:


Jim Smith

Wood Waste Management, Inc.

Rick Franklin

McFarlane's Bark, Inc.:

Dan McFarlane

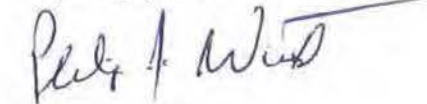
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Mr. Warren Johnson –Metro's Solid Waste Code Update
April 27, 2016 – Page 3

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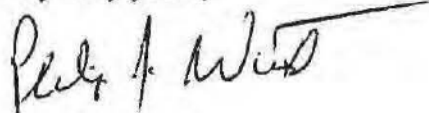
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Mr. Warren Johnson --Metro's Solid Waste Code Update
April 27, 2016 -- Page 3

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Very truly yours,



Philip J. Wuest

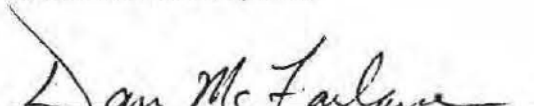
Jim Smith Excavating:

Jim Smith

Wood Waste Management, Inc.

Rick Franklin

McFarlane's Bark, Inc.:



Dan McFarlane

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b



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]

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).

² *Id.*

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.

³ *Id.*

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

- '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 charge.

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.

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.

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

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 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).

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 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.

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.

Mr. Warren Johnson

April 28, 2016

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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.

A handwritten signature in dark ink, appearing to read 'Mathew J. Cusma', with a stylized, flowing script.

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)

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davidw@orra.net

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

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



REPUBLIC
SERVICES

10295 SW Ridder Road, Wilsonville, OR 97070
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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

Summary of Initially Proposed Changes to Metro Code Title V in Comparison with Revisions Made in Response to Comments

July 6, 2016

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
1	<p><u>Chapter 5.00 – Solid Waste Definitions</u></p> <p><u>“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.</u></p>	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <p><u>“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.</u></p>
2	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Designated facility" means one of the facilities constituting a 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. 	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Designated facility" <u>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.</u>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.

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3	The initial draft did not include a definition for the term "electronic device."	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <p><u>"Electronic device" means:</u></p> <ol style="list-style-type: none"> <u>(1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;</u> <u>(2) A desktop computer or portable computer;</u> <u>(3) A television of any type having a viewable area greater than four inches measured diagonally;</u> <u>(4) A computer peripheral; or</u> <u>(5) A printer.</u> <p><u>The term electronic device does not include:</u></p> <ol style="list-style-type: none"> <u>(1) Any part of a motor vehicle;</u> <u>(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;</u> <u>(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</u> <u>(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.</u>
4	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Regional system fee" means those fees which pay the cost of the a fee that pays Metro waste management system <u>costs</u>. • "Regional transfer charge" means those fees which pay a 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. 	<p><u>Chapter 5.00 - Solid Waste Definitions</u></p> <ul style="list-style-type: none"> • "Regional system fee" means those fees which pay the cost of the a 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.

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

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

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11	<p><u>Section 5.01.080 – License Issuance</u></p> <p>(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 Metro to act.</p> <p>(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. 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.</p>	<p><u>Section 5.01.080 – License Issuance</u></p> <p>(e) If the Chief Operating Officer does not act to grant <u>approve</u> or deny a <u>new</u> license application within 180 <u>20</u> days after the filing of applicant files a complete application, the license shall be deemed granted for the solid waste facility or activity requested in the application. <u>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 a the license will contain license containing the standard terms and conditions included in other comparable licenses issued by Metro.</u></p> <p>(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:</p> <p><u>(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</u></p> <p><u>(2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.</u></p> <p>(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.</p>
12	<p><u>5.01.110 – License Renewal</u></p> <p>(a) The Chief Operating Officer shall renew <u>may approve or deny a license renewal of</u> a solid waste facility license.</p>	<p><u>5.01.110 – License Renewal</u></p> <p>(a) The Chief Operating Officer shall renew a solid waste facility license <u>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.</u></p>

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13	<p><u>Section 5.01.180 – Franchise Issuance</u></p> <p>(g) The Council shall act to<u>must</u> 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 <u>may be</u> 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.</p> <p>(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 extended if:</p> <ol style="list-style-type: none"> (1) The Council acts to extend<u>extends</u> the deadline for up to an additional 60 days, which the Council may do one 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 restarted as of the date Metro receives the applicant's modifications; or (3) The applicant and the Chief Operating Officer <u>mutually</u> agree to extend the deadline for the Council to act for a specified <u>time</u> period of time. 	<p><u>Section 5.01.180 – Franchise Issuance</u></p> <p>(g) If <u>If</u> the Council shall act to<u>does not grant approve</u> or deny a <u>new</u> franchise application within 120<u>180</u> days after the applicant files filing of a complete application <u>the franchise is deemed granted for the solid waste facility or disposal site requested in the application.</u> 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.</p> <p>(h) At any time after the filing of an applicant files a complete franchise application, the deadline for the Council to act to grant<u>approve</u> or deny the application shall be extended if:</p> <ol style="list-style-type: none"> (1) The Council acts to extend<u>extends</u> the deadline for up to an additional 60 days, which the Council may do one 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<u>180</u> days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or (3) The applicant and the Chief Operating Officer <u>mutually</u> agree to extend the deadline for the Council to act for a specified <u>time</u> period of time.

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14	<p><u>5.01.320 – Enforcement Provisions</u></p> <p>(f) If Metro revokes or refusalrefuses to renew thea franchise or license, all rights of the franchisee or licensee rights in the franchise or license shall immediately be divestedbecome void.</p>	<p><u>5.01.320 – Enforcement Provisions</u></p> <p>(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 divestedbecome void.</p>
15	<p><u>5.02.050 Source Separated Recyclable Disposal Charge Credit</u></p> <p>Notwithstanding the provisions of Metro Code Section 5.02.025,</p> <p>(a) A non-commercial customerscustomer at Metro South Station or Metro Central Station who disposedisposes 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 a \$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.</p>	<p><u>5.02.050 Source-Separated Standard Recyclable Materials Disposal Charge Credit</u></p> <p>Notwithstanding the provisions of Metro Code Section 5.02.025,</p> <p>(a) A non-commercial customerscustomer at Metro South Station or Metro Central Station who disposedisposes 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 a \$6.00 for credit when disposing of 100 pounds or more of recyclables.</p>
16	<p><u>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</u></p> <p>(a) There is hereby establishedCustomers 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 enhancement fees, and certification non-compliance fees that may be required by this chapter, and excise taxes required by Chapter 7.01.</p>	<p><u>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</u></p> <p>(a) There is hereby establishedCustomers 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 enhancement fees, and certification non-compliance fees that may be required by this chapter, and excise taxes required by Chapter 7.01.</p>

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17	<p><u>Section 5.02.120 - Regional System Fees</u></p> <p>(a) The regional system fee shall be the dollar amount per ton of solid waste adopted by anCouncil ordinance effor the <u>purpose of paying for Metro waste management system costs.</u> 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.</p>	<p><u>Section 5.02.120 - Regional System Fees</u></p> <p>The regional system fee shall be the dollar amount per ton of solid waste adopted by anCouncil ordinance effor the <u>purpose of paying the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system.</u> 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.</p>
18	<p><u>Section 5.05.010 - Purpose</u></p> <p><u>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:</u></p> <p>(a) <u>Protect and preserve the health, safety and welfare of residents located outside the region when solid waste generated within Metro is delivered there;</u></p> <p>(b) <u>Protect and preserve the environment and livability of areas located outside the region when solid waste generated within Metro is delivered there;</u></p> <p>(c) <u>Implement programs and authorizations cooperatively with federal, state and local agencies consistent with the regional solid waste management plan;</u></p> <p>(d) <u>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;</u></p> <p>(e) <u>Adapt and respond to changes in the solid waste system; and</u></p> <p>(f) <u>Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery in accordance with the regional solid waste management plan.</u></p> <p><u>The provisions of this chapter should be liberally construed to accomplish these purposes.</u></p>	<p><u>Section 5.05.010 - Purpose</u></p> <p>(a) <u>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:</u></p> <p>(1) <u>Protect and preserve the health, safety and welfare of Metro's residents;</u></p> <p>(2) <u>Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies;</u></p> <p>(3) <u>Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro;</u></p> <p>(4) <u>Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and</u></p> <p>(5) <u>Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.</u></p> <p>(b) <u>The provisions of this chapter shall be liberally construed to accomplish these purposes.</u></p>

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19	<p><u>Section 5.05.080 - Removing From and Amending the Designated Facilities List</u></p> <p>(6) Any other factor the Council considers appropriate.</p>	<p><u>Section 5.05.080 - Removing From and Amending the Designated Facilities List</u></p> <p>(6) Any other factor the Council considers appropriate to accomplish the purposes of this chapter.</p>
20	<p><u>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</u></p> <p>(b) The Chief Operating Officer shall formulate and provide to the Council <u>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.</u></p>	<p><u>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</u></p> <p>(b) The Chief Operating Officer shall formulate and provide to the Council <u>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.</u></p>
21	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms</u></p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(d) Unless otherwise stated, all rules and performance standards adopted under this section take effect when the Chief Operating Officer adopts them.</p>	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms</u></p> <p>(a) The Chief Operating Officer may adopt <u>or amend</u> rules, performance standards, procedures and forms to implement any provision of this chapter. Any rule, performance standard, procedure and or <u>or amended</u> under this section has the same force and effect as any other chapter provision.</p> <p>(b) Before the Chief Operating Officer adopts <u>or amends</u> 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. <u>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.</u></p>

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21	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms (CONTINUED)</u></p> <p>(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.</p>	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</u></p> <p>(c) <u>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 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 not 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.</u></p> <p>(d) <u>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.</u></p> <p>(e) <u>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.</u></p> <p>(f) <u>Unless otherwise stated, all rules and performance standards Any rule or performance standard adopted under this section takes effect 30 days after when the Chief Operating Officer adopts them, unless the Chief Operating Officer specifies a later effective date.</u></p>

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21	<i>Intentionally left blank. Continued from previous page.</i>	<p><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</u></p> <p>(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 <u>written</u> 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.</p> <p>(h) <u>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.</u></p> <p>(i) <u>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.</u></p> <p>(j) <u>For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.</u></p>