

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 16-1389
CODE CHAPTER 5.05 TO ADD, REMOVE, AND	)	
AMEND CERTAIN SOLID WASTE FLOW	)	Introduced by Chief Operating Officer Martha
CONTROL REQUIREMENTS AND MAKING	)	Bennett in concurrence with Council
OTHER 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 5.05 contains the requirements for Solid Waste Flow Control; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.05, that chapter has become unnecessarily complicated; and

WHEREAS, due to amendments over time to Metro Code Chapter 5.05, 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 5.05 renumber many code sections, thus improving section numbering for easier referencing; and

WHEREAS, updating Metro Code Chapter 5.05 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 authorizing the Chief Operating Officer to determine whether to issue non-system licenses for residential food waste mixed with yard debris, authorizing the Chief Operating Officer to administratively grant limited term extensions for non-system licenses, revising enforcement provisions to make them consistent with other Metro Code chapters, 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

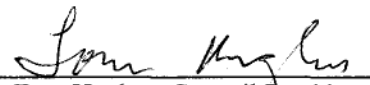
WHEREAS, the Chief Operating Officer also recommends that the Metro Council adopt these amendments to Metro Code Chapter 5.05 to improve the chapter's clarity, consistency and readability, and to build greater transparency and predictability in how Metro implements its requirements to protect the environment and the public's health; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.05 further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

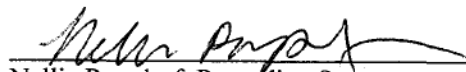
1. Metro Code Chapter 5.05 is amended as set forth in the attached Exhibit A.

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

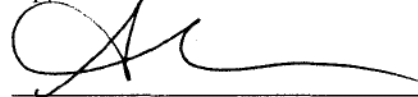
  
Tom Hughes, Council President



Attest:

  
Nellie Papsdorf, Recording Secretary

Approved as to Form:

  
Alison R. Kean, Metro Attorney

## CHAPTER 5.05

## SOLID WASTE FLOW CONTROL

## SECTION TITLE

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5.05.020	<del>030</del>	Authority, Jurisdiction, and Application
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5.05.031	<del>070</del>	<u>Adding Facilities</u> to the <del>List of</del> Designated Facilities <u>List</u>
5.05.032	<del>080</del>	<u>Removing From</u> and <u>Amendments to</u> <del>Amending</del> the <del>List of</del> Designated Facilities <u>List</u>
5.05.033	<del>090</del>	Contents of Designated Facility List and Council Adoption Every Five Years
5.05.034	<del>100</del>	Agreements with Designated Facilities
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5.05.044	<del>150</del>	<u>Non-System License Issuance Timetables</u> <del>to</del> <u>Determine whether to issue License for Non-Putrescible Waste</u>
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5.05.065	<del>230</del>	Appeals to the Hearings Officer
5.05.070	<del>240</del>	Solid Waste Tracking System <del>to be Developed</del>
5.05.080	<del>250</del>	Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
5.05.090	<del>260</del>	<u>Adoption and Amendment of</u> Administrative Rules <u>and Performance Standards</u>
5.05.100	<del>270</del>	Contested Case Proceedings

5.05.015-10 Purpose

(a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to:

- (1) Protect and preserve the health, safety and welfare of Metro's residents;
- (2) Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies;
- (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro;
- (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and
- (5) Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.

(b) The provisions of this chapter shall be liberally construed to accomplish these purposes.

5.05.020 Special Findings for Solid Waste Flow Control

~~In connection with the enactment of the provisions of this Chapter 5.05 of the Metro Code (as defined below), the~~The  
~~Council of Metro hereby finds and determines~~makes the following  
findings:

(a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste,  
and it is the Council's responsibility ~~of the Council~~ to protect and judiciously utilize ~~such~~Metro's limited land and resources.

(b) Metro has developed the system as a regional waste disposal and recovery system within the framework of a regional solid waste management plan, and it has done so in cooperation with federal, state and local agencies for the benefit of all Metro citizens ~~of Metro~~.

~~(c) The purposes of this chapter are to protect and preserve the health, safety and welfare of Metro's residents; to implement cooperatively with federal, state and local agencies the Regional Solid Waste Management Plan; to provide a~~



~~coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; to reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and to protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.~~

~~——(d) Pursuant to the authority granted to Metro under ORS chapter 268.317 and 268.360, as amended, Metro may require any person or class of persons who generate solid or liquid waste to make use of disposal, transfer or resource recovery sites or facilities of the system or disposal, transfer or resource recovery sites designated by Metro.:~~

~~——(e)(1) The system's disposal sites or solid waste facilities, or~~

~~(2) Metro's designated disposal sites or solid waste facilities.~~

~~(d) ORS 268.317 and ORS 268.360, as amended, also provides authorize Metro the authority to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.:~~

~~(1) ——(f) The provisions of this Chapter 5.05 are intended to be, and they shall constitute, system's disposal sites or solid waste facilities, or~~

~~(2) Metro's designated disposal sites or solid waste facilities.~~

~~(e) Under the exercise by Metro of the powers and authority granted to it under in ORS 268.317 and, ORS 268.360, as amended, and the regional solid waste management plan-, this chapter's provisions authorize Metro to require the persons and classes of persons specified herein who generate, pickup, collect or transport solid or liquid waste to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.:~~

~~(1) The system's disposal sites or solid waste facilities, or~~

(2) Metro's designated disposal sites or solid waste facilities.

(Ordinance No. 89-319; Ordinance No. 01-917, Sec. 2; and Ordinance No. 02-974, Sec. 1.)

5.05.020-030 Authority, Jurisdiction, and Application

(a) Metro's solid waste flow control authority is ~~established under~~derived from ORS Chapter 268 for solid waste and the Metro Charter ~~and. It~~ includes the authority to regulate solid waste generated within Metro.

(b) This chapter ~~shall govern the~~governs:

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

(2) Any person who generates solid waste within Metro, and

(3) Any person who transports, transfers, disposes or otherwise deals with or processes solid waste generated within Metro.

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

(Ordinance No. 89-319; Ordinance No. 01-917, Sec. 3; Ordinance No. 02-974, Sec. 1; and Ordinance No. 03-1019, Sec. 2.)

#### 5.05.025-040 Prohibited Activities

(a) ~~Except as otherwise provided in this chapter, it shall be unlawful for any waste hauler or other~~ Unless a person to has a valid, Metro-issued non-system license, no person may transport, ~~or caused to be transported,~~ solid waste generated within Metro to, ~~or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District,~~ any solid waste facility or disposal site ~~without an appropriate license from Metro.~~

(b) ~~It shall be unlawful for any solid waste generator, hauler, contractor, or other person to state~~ No person may falsely, or to state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of Metro if the waste was actually generated inside of Metro.

(c) No person may direct another person to ~~state~~ state ~~falsely,~~ to the operator of a system facility operator that solid waste delivered to ~~the~~ that facility for disposal was generated outside of Metro if the District when, in fact, such solid waste was actually generated within the District. inside of Metro. ~~A solid waste generator, hauler, or contractor shall be~~ person is deemed to have directed another person to make false statements ~~regarding the origin of solid waste under this section~~ subsection if the ~~solid waste generator, hauler, or contractor~~ person doing the directing knew or reasonably should have ~~known~~ known that the person ~~that transported~~ transporting the solid waste to the system facility would ~~state~~ state ~~falsely~~ to state the ~~operator~~ origin of ~~a system facility that the solid waste being delivered to the facility for disposal or other processing was generated outside the District when, in fact, such solid waste was generated within the District.~~

(Ordinance No. 01-917, Secs. 4-5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 06-1104, Sec. 1.)

#### 5.05.027-050 Exemptions to Prohibited Activities

(a) ~~A license is~~ This chapter does not ~~required of any waste hauler or other person to transport solid waste generated within Metro~~ apply to, or to utilize or cause to be utilized for the disposal transportation, transfer or ~~other~~ processing of

~~solid waste generated within Metro,~~ or other dealing with, 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.

(b) If a designated facility ~~of the system that~~ is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility ~~-, then a non-system license is not required of any person to:~~

- (1) ~~Transport solid waste generated within Metro to that designated facility, or~~
- (2) Utilize the designated facility for disposing or processing solid waste that was generated within Metro.

(c) A non-system license is not required for a government agency to transport solid waste to the Covanta Waste-to-Energy facility located in Brooks, Oregon, for the primary purpose of destroying ~~such wastes~~ the waste in order to assure public safety or for the public good. Solid waste exempt under this subsection ~~include~~ includes, but ~~are~~ is not limited to, contraband, postage stamps, expired pharmaceuticals, and lottery tickets.

(Ordinance No. 01-917, Secs. 6-7; Ordinance No. 02-974, Sec. 1; and Ordinance No. 06-1106.)

#### 5.05.03060 Designated Facilities of the System

(a) Designated Facilities. The following described facilities ~~constitute the~~ are designated facilities of the system, and the ~~Metro~~ Council ~~having found~~ finds that ~~said these~~ facilities meet the criteria set forth in Metro Code Chapter 5.05:

- (1) ~~Disposal~~ Metro owned or operated disposal sites or solid waste facilities ~~owned or operated by Metro.~~
- (2) Disposal sites or solid waste facilities within Metro's boundary that are subject to Metro regulatory authority under Chapter 5.01.

(3) Disposal sites or solid waste facilities located outside Metro's boundary that the ~~Metro~~ Council ~~has designated~~designates as part of the system, and ~~are authorized~~which Council authorizes to accept waste generated from inside the Metro boundary ~~as specified by and subject to~~under:

(A) An agreement between Metro and the ~~owner of the~~ disposal site or solid waste facility owner; or

(B) A non-system license ~~issued~~that Metro issues to the waste generator or the person transporting the waste to the disposal site or solid waste facility.

(b) The ~~Metro~~ Council will consider ~~for adoption~~ a list of designated facilities for adoption by resolution ~~(1)~~:

(1) At least every five years ~~beginning in 2015~~ as set forth in Metro Code Section 5.05.~~033~~090; or ~~(2) any~~

~~(1)~~ (2) Any time there is a proposed change to the list under Metro Code Sections 5.05.~~031~~070 or 5.05.~~032~~080 pursuant to administrative procedures.

(c) A disposal site or solid waste facility located outside the Metro boundary may ~~(1) apply~~:

(1) Apply to Metro to become a designated facility of the system, or ~~(2) request to be removed~~

(2) Request that Metro remove it from the list of designated facilities.

(d) The Chief Operating Officer will provide ~~a form of an~~ application form and will consider the factors set forth in Metro Code ~~Sections~~Section 5.05.~~031~~070 when determining whether to recommend to the Council any addition to the designated facility list.

(Ordinance No. 14-1333; Ordinance No. 14-1334; Ordinance No. 14-1335; and Ordinance No. 14-1337.)

5.05.~~031~~ Addition 070 Adding Facilities to the List of Designated Facilities List

(a) The Council may add a facility to the list of designated facilities ~~on either:~~

- (1) On its own motion, ~~by recommendation of~~
- (2) Upon the Chief Operating ~~Officer~~Officer's recommendation, or ~~upon~~
- (3) Upon a facility application ~~by a facility~~ under Metro Code Section 5.05.~~030~~060 (c). ~~In~~

(b) The Council will consider the following factors when deciding whether to add a facility to the ~~list of~~ designated facilities ~~the Council shall consider~~list:

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

(Ordinance No. 14-1337.)



5.05.032 ~~Deletions from~~080 Removing From and Amendments  
~~to~~Amending the List of Designated Facilities List

(a) The Council may ~~delete~~remove a facility from the ~~list of~~ designated facilities ~~on~~list:

- (1) On its own motion, ~~by recommendation of~~
- (2) Upon the Chief Operating ~~Officer~~Officer's recommendation, or ~~upon~~
- (3) Upon a facility's request ~~by a facility~~ under Metro Code Section 5.05.~~030~~060(c).

(b) In deciding whether to ~~delete~~remove a facility from the ~~list of~~ designated facilities list, the Council ~~shall~~will consider:

- (1) Changes in facility operations, including without limitation whether the facility is not operating, whether the facility has changed the type of waste it accepts, or whether the facility has changed ~~the type of waste it accepts or~~ the method for accepting the waste;
- (2) Changes in legal requirements that apply to the facility;
- (3) The facility's record of regulatory compliance, ~~including~~. This includes but is not limited to public health and safety regulations and environmental ~~rules and~~ regulations;
- (4) Changes in ownership of the facility; ~~and~~
- (5) Other benefits or detriments accruing to regional residents ~~of the region from~~if Council ~~action to delete~~removes the facility from the list of designated facilities ~~;~~ and
- (6) ~~(b)~~Any other factor the Council considers appropriate to accomplish the purposes of this chapter.

(c) Council may ~~delete~~remove a facility from the ~~list of~~ designated facilities list upon the facility's request ~~by the facility~~ under Metro Code Section 5.05.~~030~~060(c) without considering the factors set forth in ~~a~~subsection(b).

(~~ed~~) The Chief Operating Officer may change ~~the~~ a facility name or ~~the~~ address ~~of a facility~~ on the ~~list of designated facilities~~ facility list without Council ~~approval of a resolution so long as~~ action if no substantive change, ~~has occurred~~ has occurred as set forth ~~above in (a), has occurred.~~ subsection (b).

(Ordinance No. 14-1337.)

#### 5.05.033090 Contents of Designated Facility List and Council Adoption Every Five Years

(a) The designated facility list will include ~~(1) the name and address of the:~~

(1) The designated facilities located outside the Metro region; and ~~(2) the name and address of~~

(2) Metro-owned facilities.

(b) Disposal sites ~~or~~ and solid waste facilities within Metro's boundary that are subject to Metro regulatory authority are designated facilities of the system but will not be included on the list. described in subsection (a).

~~(b)~~ (c) In addition to any resolution adopted under Metro Code Sections 5.05.031070 and 5.05.032, ~~no later than July 2015 and every five years thereafter, the Metro~~ 080, the Council will adopt by resolution a list of designated facilities at least every five years.

(Ordinance No. 14-1337.)

#### 5.05.034100 Agreements with Designated Facilities

(a) The Chief Operating Officer ~~is authorized to may~~ execute an agreement, ~~or an amendment to an agreement,~~ between Metro and a designated facility located outside the region for any solid waste ~~other than putrescible waste~~ that Council approves pursuant to Section 5.05.070. This authority includes any later amendments to the agreement.

(b) An agreement ~~or amendment to an agreement~~ between Metro and a designated facility ~~located outside~~ must specify the ~~region for putrescible~~ types of waste ~~shall be subject to approval by that~~ the facility can accept from within Metro ~~Council before execution by the Chief Operating Officer.~~ boundaries..

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

~~(d) An agreement between Metro and a designated facility shall~~may not authorize the acceptance of non-putrescible waste, ~~which has not yet undergone material recovery,~~ originating or generated ~~with~~within Metro boundaries if the waste has not yet undergone material recovery, unless:

- (1) ~~Such~~The designated facility receives non-putrescible waste ~~is received~~ from a facility that Metro has ~~been~~ issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
- (2) ~~Such~~The designated facility receives non-putrescible waste ~~is received~~ from a designated facility that has ~~entered into~~ an agreement with Metro authorizing it to perform material recovery on non-putrescible waste; or
- (3) The designated facility ~~has entered into~~and Metro have an agreement ~~with Metro~~ authorizing ~~it~~the facility to perform material recovery on non-putrescible waste ~~in accordance with~~pursuant to subsection ~~(e) of this section.~~d).

~~(e) And~~ Any agreement between Metro and a designated facility that authorizes the facility to accept non-putrescible waste that (i) has not yet undergone material recovery, (ii) is not comprised of processing residual, and (iii) originated or generated within Metro boundaries ~~shall,~~ must:

- (1) Require ~~such~~the designated facility to perform material recovery on ~~such~~the waste; and
- (2) Demonstrate, in a manner that can be verified and audited, that ~~such~~the processing achieves material recovery substantially comparable to that required of an in-region material recovery ~~facilities by facility under~~ Metro Code Section 5.01.~~425~~260 by either:

- (A) Meeting ~~such~~the material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
  - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
- (3) Demonstrate, in a manner that can be verified and audited, that ~~such~~the facility substantially complies with:
- (A) The performance goals described in Metro Code Sections 5.01.~~053~~(i090 (c)) and 5.01.~~073~~(n190 (c)); and
  - (B) The rules, performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative ~~procedures~~rules pursuant to Metro Code Section 5.01.~~132~~280.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 2; Ordinance No. 92-471C, Sec. 1; Ordinance No. 93-483A, Sec. 1; Ordinance No. 01-917, Sec. 8; Ordinance No. 02-979, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1019, Sec. 3; Ordinance No. 03-999; Ordinance No. 05-1081, Sec. 1; Ordinance No. 05-1083, Sec. 1; Ordinance No. 07-1138, Sec. 4; Ordinance No. 07-1147B, Sec. 10.; Ordinance No. 08-1195; Ordinance No. 08-1197A; and Ordinance No. 14-1337.)

#### 5.05.~~040~~—110 Non-System License to Use Non-System Facility

(a) A ~~waste hauler or other non-system license is required for any person may to transport-, or cause to be transported, any solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any~~ any non-system facility ~~only by obtaining a non system license in the manner provided for in~~

~~this section. Applications for subsequent processing or disposal.~~

~~(b) The Chief Operating Officer may approve or deny applications for non-system licenses for to transport residential yard debris containing food waste, residential food waste, non-putrescible waste, special waste and cleanup material contaminated by hazardous substances shall be subject to approval or denial by the Chief Operating Officer. Applications for.~~

~~(c) The Metro Council may approve or deny an application for a non-system licenses for license to transport putrescible waste shall be reviewed by after the Chief Operating Officer and are subject to approval or denial by the Metro Council reviews the application.~~

(Ordinance No. 14-1337.)

#### 5.05.041120 Application for Non-System License

~~(a) Any waste hauler or other person desiring to obtain requesting a non-system license shall make application must apply to the Chief Operating Officer, which application shall be filed on forms or in the format provided by that the Chief Operating Officer requires. Applicants may apply for a limited-duration non-system license which that has a term of not more than 120 days and is not renewable.~~

~~(b) An application for anya non-system license shall must set forth the following information:~~

- ~~(1) The applicant's name and address of the waste hauler or person making such application;~~
- ~~(2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated waste generation site location;~~
- ~~(3) The nature of the solid waste proposed to be covered by the non system license;~~
- ~~(4) The expected tonnage of the solid waste proposed to be covered by the non system license, including:~~

- (A) The total tonnage if the application is for a limited duration non-system license; or
- (B) The annual tonnage if the application is for any other non-system license;

- (5) ~~A statement of the~~ The facts and circumstances ~~which, in the opinion of that~~ the applicant, ~~warrant the issuance of~~ believes justifies Metro to issue the proposed non-system license;
- (6) The non-system facility at which the solid waste ~~proposed to be covered by the non-system license~~ is proposed to ~~would~~ be transported, disposed of or otherwise processed; and
- (7) The beginning date of the non-system license ~~is to commence; and, (or~~ for limited duration non-system licenses, the ~~period of time the non-system license is to remain valid~~ term, not to exceed 120 days~~).~~).

~~In addition, the~~ (c) The Chief Operating Officer may also require the applicant to provide, ~~in writing, such~~ written information ~~concerning the proposed non-system license~~ as the Chief Operating Officer ~~deems~~ considers necessary ~~or appropriate in order~~ to determine whether ~~or not~~ to issue the proposed non-system license.

(d) An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries ~~shall~~ must provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01. ~~125~~ 260.

(Ordinance No. 14-1337.)

#### 5.05. ~~042~~—130 Non-System License Application Fees



~~Every application shall be accompanied by payment of~~An applicant must pay an application fee, ~~part of which may be refunded to along with the applicant application in an amount as specified in the event that the application is denied, as provided in this section. The following application fees shall apply~~table:

- ~~(1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.~~
- ~~(2) For an application for a non system license seeking authority to deliver no more than 500 tons of solid waste per year to a non system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non system license authorizing the delivery of no more than 500 tons of solid waste per year to a non system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non system license authorizing the delivery of no more than 500 tons of solid waste per year to a non system facility shall be one hundred dollars (\$100).~~
- ~~(3) For all applications for a non system license seeking authority to deliver more than 500 tons of solid waste per year to a non system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application~~

~~for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).~~

~~(4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in section 5.02.045, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.~~

<u>Type of Non-System License Application</u>	<u>Application Fee for a New Non-System License</u>	<u>Application Fee for the Renewal of a Non-System License</u>	<u>Application Fee for Change in Authorization to an Existing Non-System License</u>
<u>Non-system licenses that authorize a limited-duration term of 120 days or less.</u>	<u>\$250</u>	<u>Not applicable. Limited-duration non-system licenses are not subject to renewal.</u>	<u>\$250</u>

<u>Type of Non-System License Application</u>	<u>Application Fee for a New Non-System License</u>	<u>Application Fee for the Renewal of a Non-System License</u>	<u>Application Fee for Change in Authorization to an Existing Non-System License</u>
<u>Non-system licenses that authorize the transport of 500 tons or less of solid waste per year.</u>	<u>\$500</u>	<u>\$100</u>	<ul style="list-style-type: none"> <li>• <u>\$250 for change resulting in authorization of 500 tons or less per year.</u></li> <li>• <u>\$500 for change resulting in authorization of more than 500 tons per year.</u></li> </ul>
<u>Non-system licenses that authorize the transport of more than 500 tons of solid waste per year.</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$250</u>
<u>Non-system licenses that authorize the transport of waste that is exempt from the payment of Metro's regional system fee.</u>	<u>\$100</u>	<u>\$50</u>	<u>\$50</u>

(Ordinance No. 14-1337.)

5.05.043140 Factors to Consider ~~To Determine Whether to~~  
Issue Regarding Non-System License Issuance

The Chief Operating Officer or ~~Metro~~ Council, as applicable, ~~shall~~will consider the following factors to the extent relevant to determine whether ~~or not~~ to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which ~~such~~those wastes pose a future risk of environmental contamination;
- (2) The ~~record of~~non-system facility owner's and operator's regulatory compliance ~~of the non-system facility's owner and operator~~record with federal, state and local requirements, including but not limited to public health, safety and environmental ~~rules and~~ regulations;
- (3) The adequacy of the non-facility's operational practices and management controls ~~at the non-system facility~~;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The ~~consistency of issuing the license~~proposed non-system license's effect with Metro's existing contractual arrangements;
- (6) The applicant's record ~~of the applicant~~ regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental ~~rules and~~ regulations; and
- (7) ~~Such~~Any other ~~factors as~~a factor the Chief Operating Officer ~~deems~~considers appropriate ~~for purposes of making such determination~~.

(Ordinance No. 14-1337.)

~~5.05.044 Timetables To Determine Whether to Issue a~~150  
Non-System License Issuance Timetable for Non-Putrescible Waste.

~~(1) Non(a)~~ The Chief Operating Officer will issue a non-system licenses~~license~~ for non-putrescible waste, special waste, cleanup material ~~contaminated by hazardous substances,~~ yard debris mixed with residential food waste, residential food waste or any other solid waste other than putrescible waste, according to the following timelines and circumstances:

(1) ~~(A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination within~~non-system licenses. Within 60 days after receipt of a new the Chief Operating Officer receives a completed application,~~including receipt of~~ along with any additional information required by the Chief Operating Officer ~~in connection therewith~~may require, the Chief Operating Officer will determine whether to issue the non-system license and will inform the applicant in writing of that determination.

(2) ~~(B) License Non-system license renewals. An application for renewal of an existing~~

(A) A non-system license shall~~renewal~~ application must be substantially similar to the existing non-system license with regard to waste type, quantity and destination.

(B) A holder of a non-system license shall~~licensee must~~ submit a completed non-system license renewal application to renew the license at least 60 days before the ~~expiration of the~~ existing non-system license, ~~including receipt of~~ expires, along with any additional information ~~required by~~ the Chief Operating Officer ~~in connection therewith.~~ may require.

(C) The Chief Operating Officer shall~~will~~ determine whether ~~or not~~ to renew the non-system license and ~~shall~~will inform the applicant in writing of ~~such~~that

determination before the ~~expiration of the~~  
existing non-system license. expires.

~~(A)~~ (D) The Chief Operating Officer is not obligated to make a determination earlier than the non-system license's expiration date ~~of the existing license,~~ even if the licensee files the renewal request ~~is filed~~ more than 60 days before the existing non-system license expires.

~~(2) Non system licenses for putrescible waste. (b)~~  
The Chief Operating Officer ~~shall formulate and provide to the Council may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances to accomplish the purposes of this chapter.~~

#### 5.05.160 Non-System License Issuance Timetable for Putrescible Waste.

(a) The Chief Operating Officer will make recommendations to the Council regarding whether ~~or not~~ to issue or renew a non-system license for putrescible waste. If the Chief Operating Officer recommends that Council issue or renew the non-system license ~~be issued or renewed for putrescible waste,~~ the Chief Operating Officer ~~shall will~~ recommend to the ~~council~~ Council specific conditions of the non-system license.

(b) ~~(A) New non-system licenses.-~~ The Council ~~shall will~~ determine whether ~~or not~~ to issue the non-system license and ~~shall will~~ direct the Chief Operating Officer to inform the applicant in writing of ~~such that~~ determination within 120 days after ~~receipt of~~ Metro receives a completed application for a non-system license for putrescible waste, including receipt of any additional information ~~required by~~ the Chief Operating Officer ~~in connection therewith~~ may require.

(c) ~~(B) License Non-system license~~  
renewals.

(1) An application for renewal of an existing non-system license ~~shall must~~ be substantially similar to the existing non-system license with regard to waste type, quantity and destination.

(2) A ~~holder of a non-system license shall licensee~~  
must submit a completed application to renew the



non-system license at least 120 days before the ~~expiration of the~~ existing non-system license, ~~including receipt of expires, along with~~ any additional information ~~required by~~ the Chief Operating Officer ~~in connection therewith.~~ requires.

(3) The Council ~~shall~~will determine whether ~~or not~~ to renew the non-system license ~~and shall.~~ The Council will inform the applicant in writing of ~~such that~~ determination before the ~~expiration of the~~ existing non-system license. expires.

~~(1)~~(4) The Council is not obligated to make a determination earlier than the expiration date of the existing non-system license, even if the licensee files its renewal request ~~is filed~~ more than 120 days before the existing non-system license expires.

~~(e)(d)~~ ~~(3)~~ At the discretion of the ~~The~~ Chief Operating Officer or ~~the~~ Council, ~~the Chief Operating Officer or Council as applicable,~~ may impose ~~such~~ conditions on the issuance of a new or renewed non-system license ~~as deemed for~~ putrescible waste as they consider necessary ~~or appropriate~~ under the circumstances.

(Ordinance No. 14-1337.)

#### 5.05.~~045~~170 Issuance of Non-System License; Contents

Each non-system license ~~shall~~must be in writing and ~~shall~~must set forth the following:

- (1) The name and address of the waste hauler or other person to whom ~~such~~ Metro issues the non-system license ~~is issued;~~
- (2) The nature of the solid waste ~~to be~~ covered allowed by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste ~~to be covered~~ allowed by the non-system license;
- (4) The non-system facility ~~or facilities at which or~~ to which where the licensee will transport the

solid waste ~~covered~~allowed by the non-system license ~~is to be transported or, or the facilities at which the licensee will otherwise processed~~process the solid waste;

- (5) The expiration date of the non-system license, ~~which. The expiration~~ date ~~shall be~~may not be more than:
- (A) 120 days from the issue date ~~of issuance~~ for a limited-duration non-system license;
  - (B) Three years from the issue date ~~of issuance~~ for a new full-term non-system license; and
  - (C) Two years from the issue date of ~~issuance of~~ a renewed full-term non-system license.
- (D) Notwithstanding the provisions of this subsection, the Chief Operating Officer may extend the term of any non-system license for up to an additional six months beyond the original expiration date.
- (6) Any conditions ~~imposed by~~ the Chief Operating Officer imposes as provided above and which the licensee must be compliedcomply with ~~by the licensee during the term of such~~ non-system license term, including but not limited to conditions that address the factors in Section 5.05.~~043~~140.

(Ordinance No. 14-1337.)

5.05.~~046~~—180 Non-System Licensee Requirements ~~to be met by License Holder~~

Each ~~waste hauler or other person to whom a~~ non-system ~~license~~licensee is ~~issued shall be~~ required to:

- (1) ~~——— (1) ———~~ Maintain complete and accurate records of, including but not limited to, the information required by the Chief Operating Officer regarding all solid waste transported, disposed ~~of~~ or otherwise processed pursuant to the non-system license, and make ~~such~~those records available to Metro or its duly designated

agents for inspection, auditing and copying upon not less than three days written notice from Metro;

~~(2)~~ Report ~~in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires,~~ the number of tons of solid waste transported, disposed or otherwise processed each month pursuant to ~~such~~the non-system license ~~during the preceding month; and~~

~~(2)~~ ~~(3)~~ Pay to Metro, ~~not by no~~ by no later than the 15th day following the end of each month, ~~commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires;~~

~~(2)~~ (3) Pay to Metro a fee equal to the Regional System Fee and Excise Tax multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed each month pursuant to ~~such~~the non-system license ~~during~~by no later than the preceding 15th day following the end of each month;

~~(3)~~ (4) ~~(4)~~ When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the licensee must report to Metro that the load in its entirety shall be reported to Metro by the non-system licensee as having been generated within the Metro boundary ~~and.~~ The licensee must pay the Regional System Fee and Excise Tax ~~shall be paid~~ on the entire load unless the non-system licensee provides Metro with documentation regarding records demonstrating the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, ~~or~~

~~unless Metro has agreed in writing to another method of reporting.; and~~

- (5) Comply with all conditions and requirements found in the non-system license.

(Ordinance No. 14-1337.)

5.05.047190 Failure to Comply with Non-System License

~~In the event that any waste hauler or other person to whom~~  
(a) If a non-system license is issued licensee fails to fully and promptly~~comply with the requirements set forth in Section 5.05.045 above170 or with any conditions of such non-system license condition imposed pursuant to Section 5.05.043, then, upon discovery of such non-compliance180, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following~~may:

(1) Impose penalties, or

(2) Modify, suspend, or terminate the date of such notice of non compliance or such longer period as non-system license pursuant to Section 5.05.250.

(b) If the Chief Operating Officer may determine to grant as provided below, the licensee fails to find a violation, the Chief Operating Officer will provide written notice to the licensee describing the violation and requiring the licensee to correct the violation within the time specified in the notice.

~~(1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non system license or that the licensee has fully corrected such non compliance; and~~

~~(2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non compliance;~~

~~Then, and in such event such non system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided~~

~~below. If, in the judgment of the Chief Operating Officer, such non compliance cannot be corrected within such 20 day period but the licensee is capable of correcting it and within such 20 day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20 day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non compliance.~~

(Ordinance No. 89-319; Ordinance No. 91-388; Ordinance No. 01-917, Sec. 9; Ordinance No. 02-979, Sec. 2; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-992B, Sec. 1; Ordinance No. 03-1019, Sec. 4; Ordinance No. 06-1098B, Sec. 3; Ordinance No. 06-1105; Ordinance No. 07-1138, Sec. 5; Ordinance No. 07-1139, Sec. 3; Ordinance No. 07-1161, Sec. 2; Ordinance No. 07-1147B, Sec. 11; and Ordinance No. 14-1337.)

#### 5.05.050200 Issuance of Required Use Orders

(a) The Chief Operating Officer may issue a "required use order" to any ~~waste hauler or other~~ person within Metro, ~~requiring. This order requires~~ the recipient to deliver waste to a specific designated facility. ~~In issuing a required use order, the~~ The Chief Operating Officer ~~shall~~ must comply with the provisions of this section and Section 5.05.055210 ~~if the Chief Operating Officer issues a required use order.~~

(b) The following priorities ~~shall govern the Chief Operating Officer in apply when~~ determining whether to issue a required use ~~orders~~ order:

- (1) ~~To Metro will allow persons to use the designated facility of their choice to the extent doing so is consistent with state, Metro and local regulations, and facility obligations and facility limitations, waste haulers and other persons should be allowed to utilize the designated facility of their choice; and~~
- (2) It may be necessary for the Chief Operating Officer to override the facility choice of a ~~waste hauler or other~~ person if the Chief Operating Officer finds that allowing specific ~~haulers~~ persons to exercise their choice appears likely to ~~result in:~~

(A) ~~The overloading~~Overload or ~~under utilization~~  
~~of underutilize~~ a specific designated  
facility or facilities; or

(B) ~~Other~~Create system inefficiencies or  
negative impacts on the public health,  
safety or welfare as specified by the Chief  
Operating Officer.

(c) ~~If, after considering the priorities in subsection (b) of this section, the Chief Operating Officer determines that~~  
When determining whether it is necessary to issue or amend a  
required use order~~(s)~~, the Chief Operating Officer may do so  
~~giving due regard to~~will consider the following factors:

- (1) The location of the ~~waste hauler or other~~  
person's route and/or facilities in relation to  
designated facilities, in terms of travel time  
and/or distance;
- (2) The equipment being utilized by the ~~hauler~~person  
at the time of the order's issuance ~~of the order~~  
in relation to the equipment handling  
capabilities of designated facilities;
- (3) The types of waste being disposed of by the ~~waste~~  
~~hauler or other~~ person, in relation to the  
capabilities of designated facilities to most  
appropriately process those wastes; and
- (4) Other considerations ~~deemed relevant by that~~ the  
Chief Operating Officer finds relevant, including  
but not limited to other health, safety and  
welfare considerations.

(Ordinance No. 89-319. Sec. 5.05.040 repealed and replaced with  
Ordinance No. 91-388, Sec. 3; Ordinance No. 01-917, Sec. 11;  
Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

#### 5.05.055210 Content of Required Use Orders; Notice

(a) Required use orders ~~issued by the Chief Operating~~  
~~Officer shall set forth~~will contain the following:

- (1) The names of the ~~waste haulers or~~ persons ~~to be~~  
subject to the required use order, together with



~~their addresses~~ the person's address or places place of business and telephone numbers number;

- (2) The type and quantity of solid waste subject to the required use order;
- (3) The name and location of the designated facility that the recipient is required to use ~~pursuant to the order~~;
- (4) The effective date of the required use order, ~~which date, in the absence of. Absent~~ an emergency, ~~shall~~ the effective date may not be less than 10 days from the date of the order; ~~and~~
- ~~(5) A brief description of the procedure for how a brief description of the procedure for requesting recipient may request that the Chief Operating Officer reconsider either issuance of the order, or specific details of the order; and~~
- ~~(5) A brief description of the procedure for requesting that the Chief Operating Officer reconsider issuance of the order, or specific details of the order; and~~
- (6) ~~Such~~ Any other information ~~as~~ the Chief Operating Officer ~~may consider~~ considers necessary ~~or appropriate~~.

(b) Within two days after the date of any required use order, the Chief Operating Officer ~~shall cause~~ will give notice of ~~such~~ the required use order ~~to be given~~ as follows:

- (1) By United States mail, postage prepaid, to each ~~waste hauler and~~ person ~~to be~~ subject to ~~such~~ the required use order at the person's last known address ~~thereof~~; and
- (2) By any other method ~~deemed by that~~ the Chief Operating Officer ~~as~~ considers necessary, and most likely, to ensure actual notice to the ~~waste hauler or other~~ person subject to the order.

(c) The failure of any ~~waste hauler or~~ person subject to a required use order to receive notice ~~thereof shall~~ of the order

~~does~~ not affect the order's validity ~~of such required use order~~  
~~nor~~ and it does not excuse ~~such waste hauler or any~~ person from  
complying with the order's terms ~~thereof~~.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 4; and  
Ordinance No. 14-1337.)

#### 5.05.060220 Requests for Reconsideration of Required Use Order

(a) Any ~~waste hauler or other~~ person receiving a required  
use order may request that the Chief Operating Officer  
reconsider issuance of the order or specific details of the  
order. The requesting person may premise the request ~~may be~~  
~~premised~~ on any matter that was relevant to the order's issuance  
~~of the order~~, as specified in Metro Code Section 5.05.~~050~~200.

(b) A request for reconsideration must be in writing, and  
on a form provided by Metro. To be timely, the Chief Operating  
Officer must receive a request for reconsideration ~~must be~~  
~~received by the Chief Operating Officer~~ within 30 days of the  
~~date of issuance of the~~ required use ~~order~~ order's issuance date,  
as specified in the order.

(c) The Chief Operating Officer ~~shall~~will review a request  
for reconsideration and, within 15 days of receipt, ~~issue a~~  
~~written affirmance of the original order, either affirm or a~~  
~~modified~~ modify the order.

(1) The affirmance or modification ~~shall~~will be  
considered timely if Metro deposits it-is  
~~deposited~~ in the mail within the 15-day period,  
with regular first class postage and addressed to  
the person requesting review.

(2) The affirmance or modification ~~shall~~must include  
a brief statement of the decision's basis ~~for the~~  
~~decision~~, and a brief statement ~~of on how~~ the  
~~procedure for~~ requesting ~~review of the decision~~  
~~by party may request that~~ the Chief Operating  
Officer review the decision.

(d) ~~Review by the Chief Operating Officer of a request~~  
~~for~~ The reconsideration process is intended to be informal, ~~and~~.  
It may include personal, written, or telephone contact between  
the ~~waste hauler or other persons~~ requesting party and the Chief  
Operating Officer or Finance and Regulatory Services staff.

(e) If the Chief Operating Officer fails to issue a timely decision, the ~~waste hauler or other~~ person receiving the order may appeal the decision to a hearings officer as specified in Metro Code Section 5.05.~~065~~230.

(f) A request for reconsideration ~~shall~~does not stay the order issued. A required use order ~~shall be~~is effective on the date issued, and ~~shall will~~ remain in effect until ~~modified~~Metro modifies or ~~revoked~~revokes the order.

~~(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)~~

(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

#### 5.05.~~065~~230 Appeals to the Hearings Officer

(a) ~~A waste hauler or other~~Any person receiving a required use order may appeal the ~~Chief Operating Officer's affirmance or modification of the~~ order to a hearings officer. The hearings officer may ~~be asked to~~ review any matter that was relevant to ~~the order's issuance of the order~~, as ~~specified~~set forth in Metro Code Section 5.05.~~050~~200.

(b) An appeal to the hearings officer ~~shall~~must be in writing and on a form provided by Metro. ~~To be timely, The~~ hearings officer must receive the appeal ~~must be received by the~~ hearings officer within 30 days of the ~~date of order's~~ issuance ~~of the Chief Operating Officer's affirmed date~~ or modified orderaffirmance date.

(c) ~~The hearings officer shall review a request for reconsideration and, within~~Within 15 days of ~~receipt, receiving~~ the appeal, the hearings officer must issue a written order either affirming or modifying the Chief Operating Officer's decision ~~of the Chief Operating Officer~~.

- (1) The ~~affirmance or modification shall be~~ consideredhearings officer's order is timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the ~~person requesting~~ reviewappellant.

- (2) The ~~affirmance or modification shall~~hearings officer's order must include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the ~~Metro~~ Council.

(d) If ~~a waste hauler or other person~~the appellant is not satisfied with the hearings officer's ~~decision~~order, or if the hearings officer fails to issue a timely ~~decision~~order, the ~~waste hauler or other~~ person receiving the Order may appeal the ~~decision~~order to the ~~Metro~~ Council as a contested case proceeding. ~~Review in such proceedings shall~~The contested case hearing will be limited to the following whether:

- (1) ~~Whether exceptional~~Exceptional circumstances of the ~~waste hauler or other person warrant revocation or modification of~~person justify Council to revoke or modify the order; or
- (2) ~~Whether the~~The order is likely to cause extreme financial hardship to the ~~waste hauler or other~~ person subject to the order, ~~warranting revocation or modification of the order.~~

(e) ~~A request for reconsideration shall~~An appeal does not stay the order issued. A required use order ~~shall be~~is effective on the date issued, and ~~shall remain~~remains in effect until modified or revoked.

(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

~~(Ordinance No. 91-388, Sec. 5; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)~~

#### 5.05.070240 Solid Waste Tracking System

The Chief Operating Officer ~~shall establish and will~~ maintain a system for tracking ~~of~~ solid waste that is generated, collected, transported or disposed within or outside Metro for the purpose of ensuring compliance with the requirements of this chapter ~~and to ensure equitable application of the requirements of this chapter. The Chief Operating Officer in developing the tracking system shall consider the following:~~

~~(a) Establishment of a permit or licensing system for waste haulers or persons generating, collecting, transporting or disposing of solid waste.~~

~~(b) Use of franchises.~~

~~(c) Use of personnel to monitor compliance with the requirements of this chapter.~~

~~(d) Intergovernmental agreements for exchange of information.~~

~~(e) Equipment identification.~~

~~(f) Reporting requirements by waste haulers or persons generating, transporting or disposing of solid waste.~~

~~(g) Such other criteria or methods which the Chief Operating Officer considers reasonable and appropriate.~~

(Ordinance No. 89-319; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

#### 5.05.080250 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

(a) Any ~~waste hauler or~~ person who violates ~~or fails to comply with~~ any provision of this chapter ~~or who fails to comply with the terms and conditions of~~, any non-system license condition, or a required use order ~~shall be~~ is subject to the fines and penalties set forth in this section, ~~which fines and penalties shall be assessed by the~~.

(b) The Chief Operating Officer may assess the following fines and penalties:

(1) A fine ~~in the amount of~~ not to exceed \$500 for each violation; and

(2) ~~Such waste hauler or person shall not be extended any~~ A revocation of credit by Metro for the use of any system facility ~~constituting a part of the system until such time as the violator pays in full~~ all fines owing under this chapter as a result of such any violation ~~or failure to comply have been paid in full~~.

(~~b~~c) In addition to the ~~foregoing~~ fines and penalties ~~in~~ subsection (b):

- (1) Any ~~waste hauler or~~ person who fails to comply with ~~the terms and conditions of~~ any non-system license ~~shall be required to~~ condition must pay to Metro a fine in ~~thean~~ amount equal to (i) the regional system fee multiplied by (ii) the number of tons (or fractions thereof) of solid waste generated within Metro transported, disposed of or otherwise processed in violation of the ~~terms and conditions of such~~ non-system license conditions;
- (2) Any ~~waste hauler or~~ person who, without having a non-system license then in effect, transports solid waste generated within Metro to, or utilizes or causes to be utilized for the ~~disposal or other~~ processing or disposal of any solid waste generated within Metro, any non-system facility ~~shall be required to~~ must pay to Metro a fine in an amount equal to the non-system license application fee that would have otherwise been required to authorize the waste disposed, plus an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, recycled, disposed of or otherwise processed to or at any non-system facility; and
- (3) Any ~~waste hauler or~~ person who violates Metro Code Section 5.05.~~025~~040(b) by falsely stating the origin of waste transported to a system facility ~~shall be required to~~ must pay to Metro a fine in an amount equal to the regional system fee ~~multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported to such system facility, plus the~~ and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the ~~District~~Metro regional boundary transported to ~~such~~the system facility.

~~— (c) If in the judgment of the Chief Operating Officer such action is warranted,~~



~~(d) Metro shall~~may commence an appropriate ~~action in a state court of competent jurisdiction for the purpose of collecting~~legal action to collect the fines and penalties provided for above ~~and/or enjoining~~. Metro may also seek to enjoin any ~~violations of the provisions~~violation of this ~~Chapter 5.05~~chapter or any ~~non-compliance~~failure to comply with ~~the terms and conditions~~any condition of ~~any~~any non-system license or required use order.

~~(d) A required use order may be enforced by~~ An authorized gatehouse ~~employees~~employee may enforce a required use order at any Metro facility, by denying facility access to a ~~waste hauler or other~~any person ~~whenever~~if the person is ~~subject~~:

(1) Subject to a required use order, ~~and is~~attempting

(2) Attempting to deliver waste to a facility not specified in the required use order.

This enforcement ~~shall be~~is in addition to the fines and penalties that Metro may ~~be levied~~levy pursuant to this section.

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 6; Ordinance No. 01-917, Sec. 12; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-992B, Sec. 2; Ordinance No. 06-1104, Sec. 2; and Ordinance No. 14-1337.)

#### ~~5.05.090 260 Adoption and Amendment of Administrative Rules and Performance Standards~~

#### 5.05.260 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.

~~Except for the system tracking pursuant to Section 5.05.070 hereof, the Chief Operating Officer is hereby authorized and empowered to make such administrative rules and regulations as the Chief Operating Officer considers proper to effectively carry out the purposes of this chapter 5.05.~~

(Ordinance No. 89-319; Ordinance No. 91-388, Sec. 7; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

#### 5.05.100-270 Contested Case Proceedings

Any ~~waste hauler or other~~ person ~~desiring~~wishing to contest any decision made by the Chief Operating Officer under this chapter ~~5.05 shall~~may commence a contested case proceeding pursuant to Chapter 2.05 of the Metro Code.

(Ordinance No. 89-319; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1337.)

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 16-1389 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 TO ADD, REMOVE, AND AMEND CERTAIN SOLID WASTE FLOW CONTROL REQUIREMENTS AND MAKING OTHER HOUSEKEEPING CHANGES

October 14, 2016

Prepared by: Warren Johnson  
503-797-1836

Adoption of Ordinance No. 16-1389 will amend Metro Code Chapter 5.05 (Solid Waste Flow Control) to add, remove, and amend certain solid waste flow control 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),<sup>1</sup> 5.01 (Solid Waste Facility Regulation),<sup>2</sup> and 5.02 (Disposal Charges and User Fees)<sup>3</sup> 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

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<sup>1</sup> Ordinance No. 16-1386

<sup>2</sup> Ordinance No. 16-1387

<sup>3</sup> Ordinance No. 16-1388

effort will be further supported by the development of the Regional Solid Waste Management Plan during 2017 and 2018.

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 5.05. 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](http://oregonmetro.gov/solidwasteupdates).
- (b) Staff sent routine status updates and other correspondence to interested parties via email throughout the process.

## **PROPOSED AMENDMENTS TO CHAPTER 5.05**

Metro Code Chapter 5.05 (Solid Waste Flow Control) governs the transportation, transfer, disposal, and other processing of all solid waste generated within the Metro region. Metro-area waste that is transported outside of the region must be transported to a designated facility or under authority of a non-system license. The Chief Operating Officer (COO) recommends the proposed changes to Chapter 5.05 as described below and further detailed in Exhibit A.

### **1. Non-System License and Designated Facility Requirements**

The COO recommends amending certain non-system license and designated facility requirements to align similar administrative practices, clarify requirements, and provide greater predictability for businesses. Specifically, these proposed changes include:



- (a) Clarifying that the Metro Council may consider any factor as necessary to accomplish the purposes of Chapter 5.05 when determining whether to remove a facility from Metro's list of designated facilities.
- (b) Clarifying that the COO may impose any condition in a non-system license as necessary to accomplish the purposes of Chapter 5.05.
- (c) Authorizing the COO to make decisions on and issue non-system licenses for the transport of yard debris mixed with residential food waste to facilities located outside of the Metro region. The proposed change is similar to current provisions in Metro Code that authorize the COO to administratively approve non-system licenses for other types of solid waste and is consistent with similar changes proposed for Metro Code Chapter 5.01.<sup>4</sup>
- (d) Establishing that the COO may administratively extend the term of a non-system license by up to an additional six months. This new provision would authorize the COO to administratively extend the term of a non-system license or franchise by up to six months if the COO determines it to be necessary (such as to better align authorization decisions-making or to accommodate unforeseen circumstances that may impact the timely renewal of an authorization).
- (e) Clarifying that a non-system licensee must comply with all of the requirements of its license and amending the enforcement procedures in Chapter 5.05 to make them consistent with other Metro Code chapters.

## 2. Regional System Fees and Excise Tax for Mixed Waste Loads

The COO recommends amending current Section 5.05.046(4) 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 and taxes 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 and taxes 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

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<sup>4</sup> Ordinance No. 16-1387

Chapter 5.05. 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 5.02.

#### 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 5.05 as provided in Exhibit A.

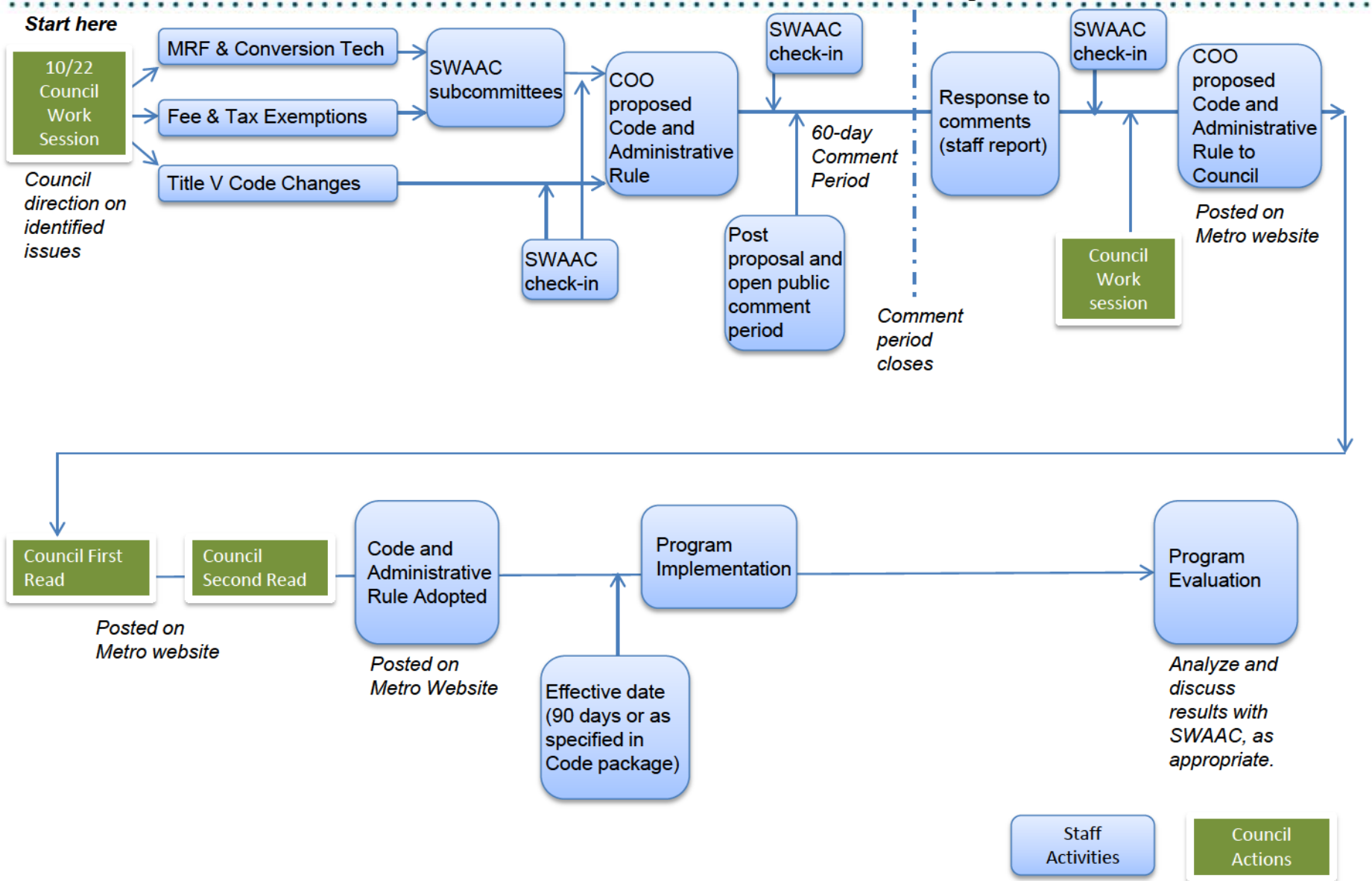
## **4. Budget Impacts**

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

## **RECOMMENDED ACTION**

The COO recommends adoption of Ordinance No. 16-1389.

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

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**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

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**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Friday, February 19, 2016 2:44 PM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto: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](mailto:warren.johnson@oregonmetro.gov)

Metro | Making a great place  
[www.oregonmetro.gov](http://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](mailto: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

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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.” *76<sup>th</sup> 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.” *76<sup>th</sup> 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

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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:

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Jim Smith

Wood Waste Management, In.

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Rick Franklin

McFarlane's Bark, Inc.:

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Dan McFarlane

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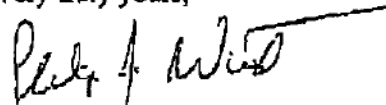




Mr. Warren Johnson -Metro's Solid Waste Code Update  
April 27, 2016 - Page 3

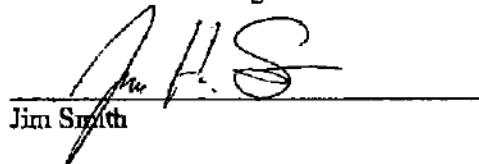
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Philip J. Wuest

Jim Smith Excavating:

  
Jim Smith

Wood Waste Management, Inc.

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McFarlane's Bark, Inc.:

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Dan McFarlane

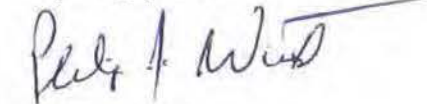
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Mr. Warren Johnson –Metro's Solid Waste Code Update  
April 27, 2016 – Page 3

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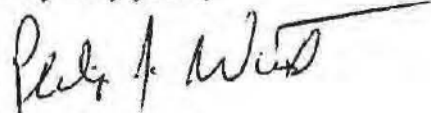
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Mr. Warren Johnson --Metro's Solid Waste Code Update  
April 27, 2016 -- Page 3

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

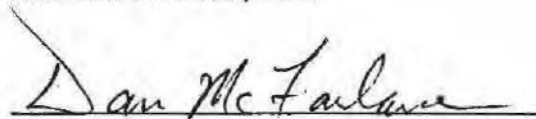
Jim Smith Excavating:

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Wood Waste Management, In.

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Rick Franklin

McFarlane's Bark, Inc.:

  
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Dan McFarlane

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1144148





April 28, 2016

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

**SUBJECT: Metro Solid Waste Code Updates**

Dear Mr. Johnson,

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

As an initial matter, Schnitzer Steel is concerned that Metro may not recognize the full effect of its proposed changes. Metro describes the proposed changes as proposed improvements and housekeeping changes.<sup>1</sup> Metro also suggests that it is simply [c]leaning up the code.<sup>2</sup> 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]

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<sup>1</sup> 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).

<sup>2</sup> *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.<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>3</sup> *Id.*

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.

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<sup>5</sup> Metro, 2015 Metro Solid Waste Code Improvements (Title V) (Sept. 3, 2015), [http://www.oregonmetro.gov/sites/default/files/Code\\_workshop\\_presentation\\_20150903.pdf](http://www.oregonmetro.gov/sites/default/files/Code_workshop_presentation_20150903.pdf).

<sup>6</sup> 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

Page 15

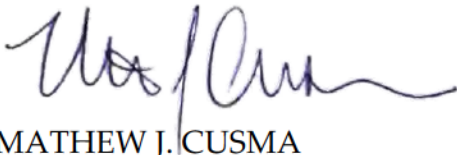
## V. CONCLUSION

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 156<sup>th</sup> Avenue Beaverton, Oregon 97006

(503) 690-3143 (Tel)

(503) 536-6708 (Fax)

[davidw@orra.net](mailto: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.

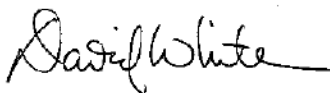
Metro's definition of Solid Waste varies significantly from the state's definition. Specifically Metro's definition deletes the words "useless and discarded" and adds the words "commingled recyclable material" and "source-separated recyclable material".

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 97071  
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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

<b><u>Revision</u></b>	<b><u>Initial Draft 02/05/2016</u></b>	<b><u>Revised Draft 07/06/2016</u></b>
<b>1</b>	<p><b><u>Chapter 5.00 – Solid Waste Definitions</u></b></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><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></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>
<b>2</b>	<p><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></p> <ul style="list-style-type: none"> <li>• "Designated facility" means <del>one of the facilities constituting a facility that Metro designates as</del> part of the system <del>designated from time to time</del> pursuant to Chapter 5.05.</li> <li>• "Metro designated facility" means a facility in the system of solid waste facilities and disposal sites that <del>Metro authorizes is authorized</del> under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.</li> </ul>	<p><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></p> <ul style="list-style-type: none"> <li>• "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><del>means one of the facilities constituting a part of the system designated from time to time pursuant to Chapter 5.05.</del></li> <li>• <del>"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.</del></li> </ul>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
3	The initial draft did not include a definition for the term "electronic device."	<p><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></p> <p><u>"Electronic device" means:</u></p> <ol style="list-style-type: none"> <li><u>(1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;</u></li> <li><u>(2) A desktop computer or portable computer;</u></li> <li><u>(3) A television of any type having a viewable area greater than four inches measured diagonally;</u></li> <li><u>(4) A computer peripheral; or</u></li> <li><u>(5) A printer.</u></li> </ol> <p><u>The term electronic device does not include:</u></p> <ol style="list-style-type: none"> <li><u>(1) Any part of a motor vehicle;</u></li> <li><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></li> <li><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></li> <li><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></li> </ol>
4	<p><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></p> <ul style="list-style-type: none"> <li>• "Regional system fee" means <del>those fees which pay the cost of the a fee that pays</del> Metro waste management system <u>costs</u>.</li> <li>• "Regional transfer charge" means <del>those fees which pay a fee that pays</del> the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities.</li> </ul>	<p><b><u>Chapter 5.00 - Solid Waste Definitions</u></b></p> <ul style="list-style-type: none"> <li>• "Regional system fee" means <del>those fees which pay the cost of the a fee that pays</del> the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. <del>Metro waste management system.</del></li> <li>• <del>"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.</del></li> </ul>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
5	<p><b><u>Chapter 5.00 – Solid Waste Definitions</u></b></p> <p><del>"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.</del></p>	<p><b><u>Chapter 5.00 – Solid Waste Definitions</u></b></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><b><u>Section 5.01.010 - Purpose</u></b></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 <del>protect</del>:</p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; <del>to implement</del></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; <del>to provide a</del></p> <p><u>(4) Provide</u> coordinated regional disposal, <u>management</u> and resource recovery <del>program and a solid waste management plan programs</del> to benefit all citizens of Metro; <del>and to reduce</del></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><b><u>Section 5.01.010 - Purpose</u></b></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 <del>protect</del>:</p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; <del>to</del></p> <p><u>(2) Implement the Regional Solid Waste Management Plan</u> cooperatively with federal, state and local agencies; <del>the Regional Solid Waste Management Plan; to</del></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 <del>to</del></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><b><u>Section 5.01.030 – Prohibited Activities</u></b></p> <p><i>The initial draft did not include a prohibition on the outdoor storage of "electronic devices."</i></p>	<p><b><u>Section 5.01.030 – Prohibited Activities</u></b></p> <p><u>(g) Any person to store electronic device waste uncovered and outside of a roofed structure.</u></p>



<b><u>Revision</u></b>	<b><u>Initial Draft 02/05/2016</u></b>	<b><u>Revised Draft 07/06/2016</u></b>
8	<p><b><u>5.01.040 – Exemptions to Prohibited Activities</u></b></p> <p><del>(D) Operations or facilities that chip or grind wood wastes, unless:</del></p> <p><del>(i) such chipped or ground wood wastes are processed for composting;</del></p> <p><del>or</del></p> <p><del>(ii) such operations or facilities are other-wise regulated under Metro Code Section 5.01.045.</del></p>	<p><b><u>5.01.040 – Exemptions to Prohibited Activities</u></b></p> <p><del>(8) (D) An Operation</del> or facility <del>ies</del> that <del>chip or grind</del><u>processes</u> wood wastes, unless:</p> <p>(i) <del>The</del><u>such</u> <del>chipped or ground</del> wood wastes are processed for composting; or</p> <p>(ii) <del>The</del><u>such</u> operations or facility <del>ies</del> <u>is</u> <del>are</del> other-wise regulated under <del>Metro Code Section 5.01.05045</del><u>this chapter.</u></p>
9	<p><b><u>5.01.050 – License Requirements and Fees</u></b></p> <p>(5) <del>Chipping or grinding</del><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><b><u>5.01.050 – License Requirements and Fees</u></b></p> <p>(5) <del>Chipping or grinding</del><u>Processing</u> wood waste for use as an industrial fuel if such facility is otherwise regulated under <del>this Section 5.01.045 of this chapter.</del></p>
10	<p><b><u>Section 5.01.050 - License Requirements and Fees</u></b></p> <p><del>(6) Shredding, milling, pulverizing, or storing outdoors any electronic waste.</del></p>	<p><b><u>Section 5.01.050 - License Requirements and Fees</u></b></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>

Revision	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
11	<p><b><u>Section 5.01.080 – License Issuance</u></b></p> <p>(e) If the Chief Operating Officer does not <del>act to grant</del> or deny a license application within 120 days after the <del>filing of applicant files</del> a complete application, the <del>license shall be deemed granted for</del> applicant may send a <del>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.</del></p> <p>(f) If the applicant substantially modifies the application during the course of the review, the review period for the decision <del>shall be</del> 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 <del>prior to before</del> the Chief Operating Officer's decision and may submit a new application at any time thereafter.</p>	<p><b><u>Section 5.01.080 – License Issuance</u></b></p> <p>(e) If the Chief Operating Officer does not <del>act to grant</del> <u>approve</u> or deny a <del>new</del> license application within <del>180</del> <u>20</u> days after the <del>filing of applicant files</del> a complete application, the license <del>shall be</del> 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) <del>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:</del></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 <del>prior to before</del> the Chief Operating Officer's decision and may submit a new application at any time thereafter.</p>
12	<p><b><u>5.01.110 – License Renewal</u></b></p> <p>(a) The Chief Operating Officer <del>shall renew</del> <u>may approve or deny a license renewal of</u> a solid waste facility <del>license.</del></p>	<p><b><u>5.01.110 – License Renewal</u></b></p> <p>(a) The Chief Operating Officer <del>shall renew a solid waste facility license is</del> <u>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><b><u>Section 5.01.180 – Franchise Issuance</u></b></p> <p>(g) The Council <del>shall act to</del><u>must</u> grant or deny a franchise application within 120 days after the <del>filing of applicant files</del> a complete application. <del>The, unless the</del> deadline <del>for the Council to act to grant or deny an application</del> <u>may be</u> extended as provided in this section. <del>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.</del></p> <p>(h) At any time after <del>the filing of an applicant files</del> a complete franchise application, the deadline for the Council to <del>act to</del> grant or deny the application <del>shall be</del> extended if:</p> <ol style="list-style-type: none"> <li>(1) The Council <del>acts to extend</del><u>extends</u> the deadline for up to an additional 60 days, which the Council may do <del>one time only once</del> for any single application;</li> <li>(2) The applicant substantially modifies the application during the <del>course of the review period</del>, in which case the 120 days review period for the Council to act <del>shall be</del> restarted as of the date Metro receives the applicant's modifications; or</li> <li>(3) The applicant and <del>the</del> Chief Operating Officer <u>mutually</u> agree to extend the deadline for <del>the Council to act for</del> a specified <u>time</u> period <del>of time</del>.</li> </ol>	<p><b><u>Section 5.01.180 – Franchise Issuance</u></b></p> <p>(g) <del>If</del> <u>If</u> the Council <del>shall act to</del><u>does not grant approve</u> or deny a <u>new</u> franchise application within <del>120</del><u>180</u> days after the <del>applicant files filing of</del> a complete application <u>the franchise is deemed granted for the solid waste facility or disposal site requested in the application.</u> <del>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.</del></p> <p>(h) At any time after <del>the filing of an applicant files</del> a complete franchise application, the deadline for the Council to <del>act to grant</del><u>approve</u> or deny the application <del>shall be</del> extended if:</p> <ol style="list-style-type: none"> <li>(1) The Council <del>acts to extend</del><u>extends</u> the deadline for up to an additional 60 days, which the Council may do <del>one time only once</del> for any single application;</li> <li>(2) The applicant substantially modifies the application during the <del>course of the review period</del>, in which case the <del>120</del><u>180</u> days review period for the Council to act <del>shall be</del> restarted as of the date Metro receives the applicant's modifications; or</li> <li>(3) The applicant and <del>the</del> Chief Operating Officer <u>mutually</u> agree to extend the deadline for <del>the Council to act for</del> a specified <u>time</u> period <del>of time</del>.</li> </ol>

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14	<p><b><u>5.01.320 – Enforcement Provisions</u></b></p> <p>(f) <del>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.</del></p>	<p><b><u>5.01.320 – Enforcement Provisions</u></b></p> <p>(f) <del>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.</del></p>
15	<p><b><u>5.02.050 Source Separated Recyclable Disposal Charge Credit</u></b></p> <p><del>Notwithstanding the provisions of Metro Code Section 5.02.025,</del></p> <p>(a) <del>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.</del></p>	<p><b><u>5.02.050 Source-Separated Standard Recyclable Materials Disposal Charge Credit</u></b></p> <p><del>Notwithstanding the provisions of Metro Code Section 5.02.025,</del></p> <p>(a) <del>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.</del></p>
16	<p><b><u>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</u></b></p> <p>(a) <del>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.</del></p>	<p><b><u>Section 5.02.060 - Charges for Management of Household Hazardous Wastes</u></b></p> <p>(a) <del>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.</del></p>



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17	<p><b><u>Section 5.02.120 - Regional System Fees</u></b></p> <p>(a) The regional system fee <del>shall be</del> the dollar amount per ton of solid waste adopted by <del>an</del>Council ordinance <del>effor</del> the <u>purpose of paying for Metro waste management system costs.</u> <del>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.</del></p>	<p><b><u>Section 5.02.120 - Regional System Fees</u></b></p> <p>The regional system fee <del>shall be</del> the dollar amount per ton of solid waste adopted by <del>an</del>Council ordinance <del>effor</del> 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> <del>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.</del></p>
18	<p><b><u>Section 5.05.010 - Purpose</u></b></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><b><u>Section 5.05.010 - Purpose</u></b></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><b><u>Section 5.05.080 - Removing From and Amending the Designated Facilities List</u></b></p> <p>(6) <del>Any other factor the Council considers appropriate.</del></p>	<p><b><u>Section 5.05.080 - Removing From and Amending the Designated Facilities List</u></b></p> <p>(6) <del>Any other factor the Council considers appropriate to accomplish the purposes of this chapter.</del></p>
20	<p><b><u>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</u></b></p> <p>(b) The Chief Operating Officer <del>shall formulate and provide to the Council</del> <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><b><u>Section 5.05.150 - Non-System License Issuance Timetable for Non-Putrescible Waste</u></b></p> <p>(b) The Chief Operating Officer <del>shall formulate and provide to the Council</del> <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><b><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt Rules, Standards, Procedures, and Forms</u></b></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><b><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms</u></b></p> <p>(a) The Chief Operating Officer may adopt <u>or amend</u> rules, performance standards, <del>procedures</del> and forms to implement any provision of this chapter. Any rule, performance standard, <del>procedure and or</del> <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 <del>nor</del> 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 adopted under this section take 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><b><u>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</u></b></p> <p>(g) Notwithstanding subsections (b) <del>and (c)</del>, the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, <del>or comment or hearing</del> upon a <u>written</u> finding that <del>a</del> 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>(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.</u></p> <p><u>(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.</u></p> <p><u>(j) For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.</u></p>