

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.01 TO ESTABLISH)
LICENSING REQUIREMENTS FOR CERTAIN)
FACILITIES THAT RECEIVE AND PROCESS)
SOURCE-SEPARATED RECYCLABLE)
MATERIALS AND MAKE HOUSEKEEPING)
CHANGES)

ORDINANCE NO. 17-1411
Introduced by Chief Operating Officer Martha
Bennett in concurrence with Council
President Tom Hughes

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

WHEREAS, Metro Solid Waste Code Chapter 5.01 contains the requirements for Solid Waste Facility Regulation, including regulation of material recovery facilities; and

WHEREAS, Metro has previously exempted from regulation those material recovery facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; and

WHEREAS, collection methods, material composition, and market conditions for non-putrescible source-separated recyclable materials have changed significantly since Metro established the previous regulatory exemption; and

WHEREAS, these significant changes have increased the potential for material degradation, as well as the potential for adverse impacts from the facilities on neighboring communities; and

WHEREAS, the various amendments to Chapter 5.01 include removing licensing exemptions for certain material recovery facilities that receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; 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 that closed on July 14, 2017; and

WHEREAS, on August 9, 2017, 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

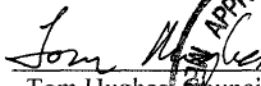
WHEREAS, the proposed amendments to Chapter 5.01 also include non-substantive housekeeping changes to delete references to requirements that are no longer effective, correct misnumbered cross-references, and clarify when certain documents and payments are due; and


WHEREAS, the Metro Council finds that these amendments to Metro Code Chapter 5.01 will further the goals of the agency and better protect the environment and the public's health; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

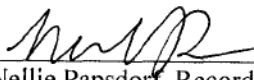
1. Metro Code Chapter 5.01 is amended as set forth in the attached Exhibit A.

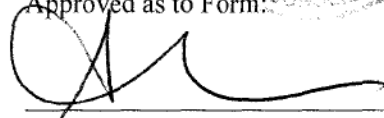
ADOPTED by the Metro Council this 26 day of October 2017.


Tom Hughes, Council President



Attest:


Nellie Papsdorf, Recording Secretary

Approved as to Form:

Alison R. Kean, Metro Attorney

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

Section Title

GENERAL PROVISIONS

5.01.010 Purpose
5.01.020 Authority and Jurisdiction
5.01.030 Prohibited Activities
5.01.040 Exemptions to Prohibited Activities

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees
5.01.060 Pre-Application Conference for Licenses
5.01.070 Applications for Licenses
5.01.080 License Issuance
5.01.090 License Contents
5.01.100 Record-keeping and Reporting for Licenses
5.01.110 License Renewal
5.01.120 Transfer of Ownership or Control of Licenses
5.01.130 Change of Authorizations for Licenses
5.01.140 Variances for Licenses

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.150 Franchise Requirements and Fees
5.01.160 Pre-Application Conference for Franchises
5.01.170 Applications for Franchises
5.01.180 Franchise Issuance
5.01.190 Franchise Contents
5.01.200 Record-keeping and Reporting for Franchises
5.01.210 Franchise Renewal
5.01.220 Transfer of Ownership or Control of Franchises
5.01.230 Change of Authorizations for Franchises
5.01.240 Variances for Franchises

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.250 General Obligations of All Regulated Parties
5.01.260 Obligations and Limits for Selected Types of Activities
5.01.270 Direct Haul of Putrescible Waste

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms
5.01.290 Inspections, Audits and other Investigations of Solid Waste Facilities
5.01.300 Regional System Fees

5.01.310 Determination of Rates

ENFORCEMENT AND APPEALS

5.01.320 Enforcement Provisions

5.01.330 Penalties

5.01.340 Appeals

MISCELLANEOUS PROVISIONS

5.01.350 Miscellaneous Provisions

Repealed

5.01.010 Definitions

(Repealed Ord. 14-1331)

5.01.065 Issuance and Contents of Certificates

(Repealed Ord. 03-1018A Sec. 7)

5.01.080 Term of Franchise

(Repealed Ord. 98-762C Sec. 21)

5.01.085 Franchises for Major Disposal System Components

(Repealed Ord. 98-762C Sec. 21)

5.01.190 Right to Purchase

(Repealed Ord. 98-762C Sec. 46)

5.01.230 – Additional Provisions Relating to the Licensing of Yard Debris Processing

5.01.380 Facilities and Yard Debris Reload Facilities

(Repealed Ord. 98-762C Sec. 49)

5.01.130 Administrative Procedures for Franchisees

(Repealed Ord. 98-762C Sec. 29)

5.01.131 Designation and Review of Service Areas and of Demand

(Repealed Ord. 12-1272 Sec. 4)

5.01.160 Reports from Collection Services

(Repealed Ord. 98-762C Sec. 42)

5.01.210 Acceptance of Tires at a Disposal Site

(Repealed Ord. 98-762C Sec. 48)

5.01.220 Additional Provisions Relating to Issuance of a Franchise for a Facility

Processing Petroleum Contaminated Soil

(Repealed Ord. 98-762C Sec. 48)

5.01.400 Treatment of Existing Licenses and Franchises

(Repealed Ord. 03-1018A Sec. 23)

GENERAL PROVISIONS

5.01.010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to:
- (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; and
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes. [Ord. 81-111, Sec. 3; Ord. 95-621A, Sec. 2; Ord. 98-762C, Secs. 2-3; Ord. 02-974; Ord. 16-1387.]

5.01.020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is derived from the Oregon Constitution, ORS Chapter 268 for solid waste and the Metro Charter. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) All solid waste regulation 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 or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. [Ord. 98-762C, Secs. 4-5; Ord. 02-974; Ord. 16-1387.]

5.01.030 Prohibited Activities

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

- (a) Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) Any person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.

- (c) A licensee or franchisee to receive, process or dispose of any solid waste unless authorized by the license or franchise.
- (d) Any person to transport any solid waste to or to dispose of any solid waste at any place other than a solid waste facility or disposal site that is operated by a licensee or franchisee or is otherwise exempt under Section 5.01.040.
- (e) A licensee or franchisee to violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to Section 5.01.280.
- (f) Any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.
- (g) Any person to store electronic device waste uncovered and outside of a roofed structure. [Ord. 81-111, Sec. 4; Ord. 87-217, Sec. 1; Ord. 95-621A, Sec. 3; Ord. 98-762C, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 2; Ord. 06-1102, Sec. 1; Ord. 16-1387.]

5.01.040 Exemptions to Prohibited Activities

- (a) The provisions of this chapter do not apply to:
 - (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
 - (2) Disposal sites, transfer stations, or solid waste facilities owned or operated by Metro, except that Metro must pay regional system fees per Section 5.01.300.
 - ~~(3) Facilities that (A) exclusively receive non-putrescible source-separated recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them.~~
 - (3) Conversion technology facilities that exclusively receive non-putrescible waste for use as feedstock that has been:
 - (A) Extracted from other solid waste: and
 - (B) Processed to meet prescribed specifications for direct introduction into a conversion technology process.
 - (4) Specific material recyclers that receive and process a single type of non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or similar commodities.
 - ~~(4)~~(5) Facilities that exclusively receive, process, transfer or dispose of inert waste.
 - ~~(5)~~(6) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
 - ~~(6)~~(7) Residences, parks, community gardens and homeowner associations.

~~(7)~~(8) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.

~~(8)~~(9) An operation or facility that processes wood wastes, unless:

(A) The wood wastes are processed for composting; or

(B) The operation or facility is other-wise regulated under this chapter.

~~(9)~~(10) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process solid waste, provided that Metro finds an emergency situation exists.

~~(10)~~(11) Persons who own or operate a mobile facility that processes petroleum contaminated soil at the site of origin and retains any treated petroleum contaminated soil on the site of origin.

- (b) Notwithstanding Section 5.01.040(a), all persons must comply with Sections 5.01.030(a), (b), (d) and (f).
- (c) The provisions of Section 5.01.290 apply to the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(~~10~~11). [Ord. 81-111, Sec. 5; Ord. 82-136, Sec. 1; Ord. 91-422B, Sec. 2; Ord. 95-621A, Sec. 4; Ord. 98-762C, Sec. 7; Ord. 00-866, Sec. 2; Ord. 02-933, Sec. 1; Ord. 02-974; Ord. 03-1018A, Sec. 3; Ord. 06-1102, Sec. 2; Ord. 07-1147B, Sec. 2; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees

- (a) A Metro solid waste license is required of any person owning or controlling a facility at which the person performs any of the following activities:
 - (1) Processing non-putrescible waste.
 - (2) Processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.
 - (3) Processing of yard debris or yard debris mixed with residential food waste.
 - (4) Reloading solid waste.
 - (5) Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under this chapter.
- (b) The annual fee for a solid waste license may not exceed \$300.00.
- (c) The application fee for a new or renewal license is \$300.00. The application fee is due at the time of filing.
- (d) The annual solid waste license fee is in addition to any other fee, tax or charge imposed upon a licensee.

- (e) The licensee must pay the license fee in the manner and at the time required by the Chief Operating Officer. [Ord. 81-111, Sec. 15; Ord. 98-762C, Secs. 8-9; Ord. 98-762C, Sec. 40; Ord. 98-767, Sec. 5; Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 02-974; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.060 Pre-Application Conference for Licenses

- (a) An applicant for a new license must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing another application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.070 Applications for Licenses

- (a) An applicant for a new or renewal license must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) A license application must also include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal

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

- (6) Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.080 License Issuance

- (a) The Chief Operating Officer may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer considers appropriate.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officers considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Before approving or denying a license application, the Chief Operating Officer must provide public notice and an opportunity for public comment on the license application.
- (d) The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:
 - (1) Submitted application,
 - (2) Chief Operating Officer's investigation regarding the application information, and
 - (3) Public comments.
- (e) If the Chief Operating Officer does not approve or deny a new license application within 180 days after the applicant files a complete application, the license is deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then the license will contain the standard terms and conditions included in other comparable licenses issued by Metro.

- (f) At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:
 - (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or
 - (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (g) An applicant may withdraw its application at any time before the Chief Operating Officer's decision and may submit a new application at any time thereafter.
- (h) If the Chief Operating Officer denies a license request, the applicant may not file a new application for the same or substantially similar license for at least six months from the denial date. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.090 License Contents

- (a) A license will specify authorized activities, the types and amounts of wastes the solid waste facility may accept, and any other conditions the Chief Operating Officer imposes.
- (b) In addition to this section's requirements, if a license authorizes the licensee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading, the license is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to Section 5.01.260.
- (c) The license must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.

- (5) **Reloading.** Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) **Record-keeping.** A licensee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes.
- (d) A license term may not exceed five years, except that the Chief Operating Officer may extend the license term for up to one year. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.100 Record-keeping and Reporting for Licenses

- (a) A licensee must maintain accurate records of the information that the Chief Operating Officer requires. A licensee must report the required information on the forms, in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. The licensee or its authorized representative must sign the report and certify it as accurate.
- (b) A licensee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A licensee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the licensee received the complaint, and any response by the licensee to the complaint.
- (d) A licensee must retain all records required by this chapter for three years (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.
- (e) Any information the licensee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the licensee requests exception from disclosure consistent with Oregon Law. [Ord. 98-762C, Secs. 38-39; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.110 License Renewal

- (a) The Chief Operating Officer is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.
- (b) A licensee seeking renewal of a license must submit a request as required by this section a renewal license not less than 120 days before the license's expiration date.

~~The licensee must: The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.~~

~~(c) A licensee requesting a license renewal must:~~

- (1) File a completed application for renewal;
- (2) Pay a \$300.00 application fee; and
- (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.

~~(c)~~ The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed renewal is not in the public interest. The Chief Operating Officer may attach conditions to any renewed license.

~~(d)~~ The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387.]

5.01.120 Transfer of Ownership or Control of Licenses

- (a) A licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfers control of the license to another person, whether whole or in part. The transferee of a license must meet the requirements of this chapter.
- (b) The term for any transferred license is for the remainder of the original term unless the Chief Operating Officer establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.130 Change of Authorizations for Licenses

- (a) A licensee must submit an application pursuant to Section 5.01.070 when the licensee requests authority to:
 - (1) Accept wastes other than those the license authorizes, or
 - (2) Perform activities other than those the license authorizes, or
 - (3) Modify other limiting conditions of the applicant's license.
- (b) The licensee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations or limits to the applicant's license does not substitute for an application that Metro would otherwise require under Section 5.01.050.

- (d) A licensee must notify Metro in writing when the licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.140 Variances for Licenses

- (a) The Chief Operating Officer may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees to protect public health, safety and welfare.
- (b) In order to grant a variance, the Chief Operating Officer must find that the licensee or applicant can achieve the purpose and intent of the particular license requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or licensee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A licensee or applicant must request a variance in writing and must concisely state why the Chief Operating Officer should grant the variance. The Chief Operating Officer may investigate the request as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must approve or deny the variance request within 60 days.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (f) If the Chief Operating Officer denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.
- (g) If the Chief Operating Officer denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the date of denial. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.150 Franchise Requirements and Fees

- (a) A Metro solid waste franchise is required of any person owning or controlling a facility at which the person performs any of the following activities:

- (1) Processing putrescible waste other than yard debris and yard debris mixed with residential food waste.
 - (2) Operating a transfer station.
 - (3) Operating a disposal site or an energy recovery facility.
 - (4) Any process using chemical or biological methods whose primary purpose is reduction of solid waste weight or volumes.
 - (5) Any other activity not listed in this section or exempted by Metro Code Section 5.01.040.
- (b) The annual fee for a solid waste franchise is \$500.00.
 - (c) The franchise fee is in addition to any other fee, tax or charge imposed upon a franchisee.
 - (d) The franchisee must pay the franchise fee in the manner and at the time required by the Chief Operating Officer.
 - (e) The application fee for a new or renewal franchise is \$500.00. The application fee is due at the time of filing. [Ord. 98-762C, Secs. 8-9. Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.160 Pre-Application Conference for Franchises

- (a) An applicant for a new franchise must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing any application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.170 Applications for Franchises

- (a) An applicant for a new or renewal franchise must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) An application for a franchise must include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the franchise term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;

- (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the franchise or refuses any franchise renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and
 - (6) Any current permit and a list of anticipated permits that any other governmental agency may require. If the applicant has previously applied for other permits, the applicant must provide a copy of the permit application and any permit that another governmental agency granted as a result.
- (d) An analysis of the factors described in Section 5.01.180(f) must accompany an application for a franchise. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.180 Franchise Issuance

- (a) The Chief Operating Officer will review franchise applications filed under Section 5.01.170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officer considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer will make a recommendation regarding whether the:

- (1) Applicant is qualified;
 - (2) Proposed franchise complies with the Regional Solid Waste Management Plan;
 - (3) Proposed franchise meets the requirements of Section 5.01.170; and
 - (4) Applicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer will provide the recommendations required by subsection (c) to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application. If the Chief Operating Officer recommends that Council grant the application, the Chief Operating Officer may also recommend specific conditions of the franchise.
- (e) After Council receives the Chief Operating Officer's recommendation, the Council will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, the order is effective immediately.
- (f) The Council will consider the following factors when determining whether to issue a franchise:
- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Solid Waste Management Plan;
 - (2) The effect that granting a franchise will have on the cost of solid waste disposal and recycling services for the citizens of the region;
 - (3) Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
 - (4) Whether granting a franchise is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
 - (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.280 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.
- (g) If the Council does not approve or deny a new franchise application within 180 days after the applicant files a complete application the franchise is deemed granted for the solid waste facility or disposal site requested in the application. The deadline for the Council to 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.

- (h) At any time after an applicant files a complete franchise application, the deadline for the Council to approve or deny the application is extended if:
 - (1) The Council extends the deadline for up to an additional 60 days, which the Council may do only once for any single application;
 - (2) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Council to act is restarted as of the date Metro receives the applicant's modifications; or
 - (3) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (i) An applicant may withdraw its application at any time before the Council's decision and may submit a new application at any time thereafter.
- (j) If the Council denies a franchise request, the applicant may not file a new application for the same or substantially similar franchise for at least six months from the denial date.
- (k) A franchise term may not exceed five years, except that the Chief Operating Officer may extend the term of a franchise for up to one year. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.190 Franchise Contents

- (a) The franchise is the Council's grant of authority to accept the waste and perform the activity or activities described in the franchise, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority.
- (b) Franchises must be in writing and include:
 - (1) The term of the franchise;
 - (2) The specific activities the franchisee may perform and the types and amounts of waste the franchisee may accept at the solid waste facility;
 - (3) Any other conditions the Council considers necessary to ensure the franchisee complies with the intent and purpose of this chapter; and
 - (4) Indemnification of Metro in a form acceptable to the Metro Attorney.
- (c) A franchise that authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to Section 5.01.280. The franchise must require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
- (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record-keeping. A franchisee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.200 Record-keeping and Reporting for Franchises

- (a) A franchisee must maintain accurate records of the information the Chief Operating Officer requires and report that information on the forms or in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. A franchisee's authorized representative must sign the report and certify it as accurate.
- (b) A franchisee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A franchisee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the franchisee received the complaint, and any response by the franchisee to the complaint.
- (d) A franchisee must retain all records required by this chapter (except for the complaint records in subsection (c)) for three years and allow the Chief Operating Officer to inspect them.

- (e) All information that the franchisee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the franchisee requests exception from disclosure consistent with Oregon Law. [Ord. 14-1332; Ord. 16-1387.]

5.01.210 Franchise Renewal

- (a) The Council approves or denies a solid waste facility franchise renewals. A franchisee seeking renewal of a franchise must submit a request as required by this section not less than 120 days before the franchise's expiration date. The franchisee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$500.00 application fee; ~~not less than 120 days before the franchise term expires;~~ and
 - (3) Provide a statement of proposed material changes from ~~its initial~~ the previous franchise application ~~for the franchise,~~ along with any other information the Chief Operating Officer or the Council requires.
- (b) The Chief Operating Officer will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.180. The Council must approve renewal of a solid waste facility franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria outlined in Section 5.01.180. The Council may attach conditions or limitations to the renewed franchise.
- (c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387.]

5.01.220 Transfer of Ownership or Control of Franchises

- (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise transfers control of the franchise to another person, whether whole or in part. The transferee of a franchise must meet the requirements of this chapter.
- (b) The term for any transferred franchise is for the remainder of the original term unless the Council establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.230 Change of Authorizations for Franchises

- (a) A franchisee must submit an application pursuant to Section 5.01.170 when the franchisee requests authority to:
 - (1) Accept wastes other than those the franchise authorizes, or
 - (2) Perform activities other than those the franchise authorizes, or

- (3) Modify other limiting conditions of the applicant's franchise.
- (b) The franchisee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorization or limits to the applicant's franchise does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (d) A franchisee must notify Metro in writing when the franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.240 Variances for Franchises

- (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon conditions the Council considers necessary to protect public health, safety and welfare.
- (b) In order to grant a variance, the Council must find that the franchisee can achieve the purpose and intent of the particular franchise requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or franchisee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A franchisee or applicant must request a variance in writing and must concisely state why Council should grant the variance. The Chief Operating Officer may make an investigation as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must recommend to the Council whether to approve or deny the variance within 120 days after Metro receives the variance request.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (f) If the Council denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.
- (g) If the Council denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the denial date. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.250 General Obligations of All Regulated Parties

All persons regulated by this chapter must:

- (a) Allow the Chief Operating Officer reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the license or franchise, and the performance standards and administrative rules adopted pursuant to Section 5.01.280.
- (b) Ensure that solid waste transferred from the facility goes to the appropriate destination under ~~Section 5.01.280~~this chapter, ~~under~~ Metro Code Chapter 5.05, and ~~other~~under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- (c) Maintain insurance during the license or franchise term in the amounts specified in the license or franchise or any other amounts as state law may require for public contracts, and to give 30 days' written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (d) Indemnify and save harmless Metro, the Council, the Chief Operating Officer, Metro employees and Metro agents from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the licensee's or franchisee's performance of or failure to perform any of its obligations under the license or franchise or this chapter.
- (e) Agree to no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:
 - (1) Any provision or requirement of the license or franchise;
 - (2) Metro's enforcement of the license or franchise; or
 - (3) Any determination that a license or franchise or any part thereof is invalid. [Ord. 81-111, Sec. 13; Ord. 98-762C, Sec. 28; Ord. 02-974; Ord. 03-1018A, Sec. 15; Ord. 16-1387.]

5.01.260 Obligations and Limits for Selected Types of Activities

- (a) ~~A solid waste facility that receives non-putrescible waste and is subject to licensing or franchising under this chapter must: A material recovery facility licensee or transfer station franchisee must perform material recovery from non-putrescible waste that it accepts at the facility as specified in this section or as otherwise specified in its license or franchise, or it must deliver the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.~~
 - (1) Perform material recovery from non-putrescible waste that it receives at the facility as specified in this section or as otherwise specified in its license or franchise, or

- ~~(2) Transport the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.~~
- ~~(b) Notwithstanding subsection (a) above, a facility that exclusively receives non-putrescible source-separated recyclable material is not subject to the requirements of this section.~~
- ~~(b) A licensee or franchisee subject to subsection (a) must recover at least 25 percent by weight of non-putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste excludes both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section is a violation enforceable under Metro Code Sections 5.01.320 and 5.01.330. After December 31, 2008, the requirements of this subsection are not applicable to licensees or franchisees unless the Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.260(c).~~
- (c) ~~Effective January 1, 2009, a~~ A licensee or franchisee subject to subsection (a) must:
- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. The processing residual may not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension.
 - (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of the sampling to Metro in the monthly report due the month following the end of that quarter.
- (d) Based on observation, audits, inspections and reports, Metro inspectors will conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.290(c). Failure to maintain the recovery level specified in Section 5.01.260(c)(1) is a violation enforceable under Metro Code. Metro will not impose a civil penalty on the first two violations of this subsection by a single licensee or franchisee.
- (e) Failure to meet the reporting requirements in subsection (c)(2) is a violation enforceable under Metro Code.
- (f) A transfer station franchisee:
- (1) Must accept putrescible waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
 - (2) Must not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.

- (3) Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the Council in approving the transfer station franchise application.
- (4) Must provide an area for collecting source-separated recyclable materials without charge at the franchised solid waste facility, or at another location more convenient to the population being served by the franchised solid waste facility.
- (g) A reload facility licensee must ~~deliver-transport~~ all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (h) A solid waste facility licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste unless the:
 - (1) Size reduction is a specific step in the facility’s material recovery operations, reload operations, or processing residual consolidation or loading operations; and
 - (2) Licensee or franchisee described the size reduction in a Metro-approved operating plan. [Ord. 98-762C, Secs. 30-31; Ord. 00-866, Sec. 5; Ord. 01-916C, Sec. 4; Ord. 02-952A, Sec. 1; Ord. 03-1018A, Sec. 16; Ord. 07-1147B, Sec. 3; Ord. 12-1272, Sec. 3; Ord. 13-1306, Sec. 3; Ord. 16-1387.]

5.01.270 Direct Haul of Putrescible Waste

A franchisee authorized by Metro to deliver putrescible waste directly to a disposal site must:

- (a) ~~Deliver-Transport~~ the putrescible waste to Metro's contract operator for disposal of putrescible waste;
- (b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to Section 5.01.280; and
- (c) Provide transportation or arrange for transportation by a transportation service provider that complies with the following performance standards for long-haul transportation by highway:
 - (1) All solid waste transported through the city limits of Arlington, Oregon, is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
 - (2) All equipment satisfies all federal, state, and local regulations. In addition, the use of exhaust brakes is prohibited.
 - (3) All solid waste is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and is capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers

using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.

- (4) The average weight of solid waste payloads transported during each calendar month is not less than 25 tons.
- (5) Any staging areas used is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- (7) Use of rest areas, turnouts, scenic vista points, and state parks is limited to cases of emergency.
- (8) Transportation is prohibited in the Columbia River Gorge NSA during the following times:
 - (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - (B) Daylight hours on Saturdays in June, July, August, and September.
 - (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste is transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste is transported by use of vehicles and equipment that is suitably painted and presents an acceptable appearance.
- (11) A franchisee representative and its transportation carrier must annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The franchisee must report to Metro any accidents, citations, and vehicle inspections involving vehicles of the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A franchisee representative and its transportation carrier must meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee must immediately report any violations of this subsection to Metro. [Ord. 98-762C, Secs. 32-33; Ord. 02-974; Ord. 16-1387.]

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

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

- (a) The Chief Operating Officer may adopt or amend rules, performance standards, and forms to implement any provision of this chapter. Any rule, performance standard, or form adopted or amended under this section has the same force and effect as any other chapter provision.
- (b) Before the Chief Operating Officer adopts or amends a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule or performance standard; the location at which a person may obtain a copy of the full text of the proposed rule or performance standard; the method for submitting public comments; and the deadline for submitting public comments.
- (c) In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. The public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.
- (d) During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period.
- (e) After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.
- (f) Any rule or performance standard adopted under this section takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.

- (g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.
- (h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.
- (i) Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is 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. [Ord. 98-762C, Secs. 34-35; Ord. 01-916C, Sec. 5; Ord. 02-974; Ord. 07-1138, Sec. 3; Ord. 12-1272, Sec. 5; Ord. 16-1387.]

5.01.290 Inspections, Audits, and other Investigations of Solid Waste Facilities

- (a) The Chief Operating Officer is authorized to make such inspection, audit, or other investigation as the Chief Operating Officer considers appropriate to ensure compliance with this chapter, the Code, the franchise or license, and administrative rules and performance standards adopted pursuant to Section 5.01.280. Licensed or franchised facilities must allow access to the facility premises, and all other solid waste facilities, at all reasonable times during business hours with or without notice, and during non-business hours with 24 hours notice.
- (b) Inspections, audits, or other investigations authorized under subsection (a) will occur regularly and as the Chief Operating Officer determines necessary. The Chief Operating Officer will report the results of each inspection, audit, or other investigation in the format approved by the Chief Operating Officer.
- (c) The Chief Operating Officer may access and examine any records during the inspections, audits, or other investigations if the Chief Operating Officer considers the records pertinent to the license or franchise, or to the provisions of this chapter. These records include but are not limited to the licensee’s, franchisee’s or solid waste facility operator’s books, papers, records, equipment, blueprints, operation and maintenance records, logs and operating rules and procedures. As part of the inspections, audits, or other investigations, the Chief Operating Officer may take samples and conduct analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer will coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to avoid redundant requirements on operations.

- (d) Any violation discovered by an inspection, audit, or other investigation is subject to the penalties provided in Section 5.01.330. [Ord. 98-762C, Secs. 36-37; Ord. 02-974; Ord. 03-1018A, Sec. 18; Ord. 07-1147B, Sec. 4; Ord. 16-1387.]

5.01.300 Regional System Fees

- (a) Pursuant to Chapter 5.02, regional system fees apply to solid waste facilities and disposal sites that Metro owns, operates, licenses or franchises, or which are liable for payment of the fees pursuant to a special agreement with Metro.
- (b) Regional system fees are in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.
- (c) Regional system fees must be separately stated upon records of the solid waste facility or disposal site.
- (d) Regional system fees and finance charges on those fees must be paid as specified in Metro Code Chapter 5.02. [Ord. 81-111, Sec. 16; Ord. 86-214, Sec. 1; Ord. 91-422B, Sec. 4; Ord. 93-509, Sec. 2; Ord. 95-621A, Sec. 7; Ord. 98-762C, Sec. 41; Ord. 00-866, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 19; Ord. 14-1332; Ord. 16-1387.]

5.01.310 Determination of Rates

- (a) The Council may establish facility rates if it finds that setting facility rates is in the public interest as a matter of metropolitan concern.
- (b) Notwithstanding any other provision of this section:
 - (1) Licensees are exempt from all rate setting; and
 - (2) Franchisees are exempt from rate setting unless Metro requires rate setting as a franchise condition. [Ord. 81-111, Sec. 19; Ord. 82-136, Sec. 4; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 43-44; Ord. 03-1018A, Sec. 20; Ord. 16-1387.]

ENFORCEMENT AND APPEALS

5.01.320 Enforcement Provisions

- (a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.
- (b) The Chief Operating Officer may investigate whether there is sufficient cause to suspend, modify or revoke a franchise or license. If there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Chief Operating Officer will notify the franchisee or licensee in writing of the alleged violation, and the necessary steps the violator must take to correct the violation. If the franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after Metro sends notice, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.330 or that Metro will suspend, modify or revoke the franchise or license.

- (c) The Chief Operating Officer will send the notice upon finding that the franchisee or licensee has:
- (1) Violated the franchise or license, the administrative rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated there under or any other applicable law or regulation;
 - (2) Misrepresented material facts or information in the franchise or license application, or other information that Metro requires the licensee or franchisee to submit;
 - (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides written notification and reasonable opportunity to do so;
 - (4) Misrepresented the gross receipts from the operation of the licensed or franchised site, facility or station;
 - (5) Failed to pay when due the fees required under this chapter; or
 - (6) Violated a city or county ordinance if the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.
- (d) Except as provided in subsection (e), if the Chief Operating Officer revokes, modifies or suspends a license or franchise, it does not become effective until Metro gives the licensee or franchisee an opportunity to request a contested case hearing under Metro Code 2.05.
- (e) If Metro finds a serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee, the Chief Operating Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the Chief Operating Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If Metro immediately suspends a franchise, the franchisee has 30 days from the suspension date to request a contested case hearing under Code Chapter 2.05.
- (f) If Metro revokes a franchise or license, all franchisee or licensee rights in the franchise or license become void. [Ord. 81-111, Sec. 20; Ord. 82-136, Sec. 5; Ord. 95-621A, Sec. 8; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 45; Ord. 02-974; Ord. 03-1018A, Sec. 21; Ord. 14-1332; Ord. 16-1387.]

5.01.330 Penalties

- (a) Each violation of this chapter is punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. Metro may join separate offenses in one Notice of Violation in several counts.

- (b) If the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise, or the administrative rules or performance standards adopted pursuant to Section 5.01.280, the Chief Operating Officer will provide written notice to the violator describing the violation and requiring the violator to correct the violation within the time specified in the notice.
- (c) If a licensee or franchisee fails to correct the violation within the specified time period, the Chief Operating Officer will issue a Notice of Violation, indicating the continuing violation, the date of re-inspection and the fine imposed as specified in subsection (a).
- (d) If after re-inspection, the Chief Operating Officer finds the licensee or franchisee has failed to correct the violation, the violation is punishable by a fine as specified in subsection (a). Metro will give notice of a final deadline for correcting the violation at the time of re-inspection.
- (e) If the licensee or franchisee fails to correct the violation after the final deadline, the licensee or franchisee must cease the activity resulting in the violation.
- (f) Metro will conduct further inspections to ensure that the licensee or franchisee suspends the offending activity. If the licensee or franchisee fails to suspend the offending activity, the Chief Operating Officer may:
 - (1) Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
 - (2) Suspend all solid waste activities on site;
 - (3) Impose a lien on the property for the amount of the fines; or
 - (4) Suspend, modify or revoke the license or franchise pursuant to Section 5.01.320.
- (g) In addition to subsection (a), Metro may enjoin any violation of this chapter upon suit in a court of competent jurisdiction, and the violator may also be subject to a civil penalty not to exceed \$500.00 per day for each day of violation. [Ord. 81-111, Sec. 22; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 47; Ord. 98-767, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 22; Ord. 14-1332; Ord. 16-1387.]

5.01.340 Appeals

- (a) Any applicant, franchisee or licensee may request a contested case hearing pursuant to Code Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance.
- (b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.

- (c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.
- (d) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing. [Ord. 81-111, Sec. 11; Ord. 95-621A, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 14; Ord. 16-1387.]

MISCELLANEOUS PROVISIONS

5.01.350 Miscellaneous Provisions

- (a) The Chief Operating Officer is responsible for the administration and enforcement of this chapter.
- (b) Metro's granting of a license or franchise does not vest any right or privilege in the licensee or franchisee to receive specific quantities of solid waste during the license or franchise term.
- (c) Metro has the power to regulate, in the public interest, the exercise of the privileges it grants by a license or franchise. Metro may establish or amend rules, regulations or standards regarding matters within Metro's authority and enforce those requirements against licensees or franchisees.
- (d) No waiver of any license or franchise condition is effective unless it is in writing and signed by the Chief Operating Officer. If Metro waives a license or franchise condition, that waiver does not waive or prejudice Metro's right to require performance of the same condition or any other condition.
- (e) Metro will construe, apply and enforce a license or franchise in accordance with the laws of the State of Oregon.
- (f) If a court of competent jurisdiction determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect the validity of the remaining provisions in the license or franchise.
- (g) Nothing in this chapter limits the power of a federal, state, or local agency to enforce any provision of law relating to any solid waste facility or disposal site that it is authorized or required to enforce or administer.
- (h) Nothing in this chapter should be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities. [Ord. 98-762C, Secs. 52-53; Ord. 02-974; Ord. 03-1018A, Sec. 24; Ord. 14-1332; Ord. 16-1387.]

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1411 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO ESTABLISH LICENSING REQUIREMENTS FOR CERTAIN FACILITIES THAT RECEIVE AND PROCESS SOURCE-SEPARATED RECYCLABLE MATERIALS AND MAKE HOUSEKEEPING CHANGES

September 22, 2017

Prepared by: Dan Blue
503-797-1863

Adoption of Ordinance No. 17-1411 will amend Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing. This ordinance will also make various other non-substantive technical amendments to the chapter to improve clarity and ease of understanding.

This ordinance is a companion to Ordinance 17-1410 which proposes adding two new definitions to Metro Code Chapter 5.00 (Solid Waste Definitions) which are related to implementing the Code amendments proposed under this ordinance. The Metro Council will consider both of these ordinances collectively at its meetings on October 5 and October 26, 2017.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improve 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. Metro will further support this effort by developing 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). 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 thorough public engagement process for soliciting input on the proposed code changes.

Because Metro is the agency tasked with planning, management, and oversight of the region's solid waste system, it 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.

Metro Code currently exempts from licensing certain material recovery and conversion technology facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program. However, collection methods, material composition, and market conditions for source-separated recyclable materials have changed significantly since Metro initially established that regulatory exemption. These significant changes over the years have resulted in greater potential for material degradation at recovery facilities and adverse impacts on neighboring communities.

In December 2015, Metro's Solid Waste Alternatives Advisory Committee (SWAAC) commissioned a subcommittee to consider whether material recovery and conversion technology facilities that receive source-separated recyclable materials should be subject to Metro's licensing and inspection requirements similar to that of other solid waste facilities. Also, if so, the subcommittee was with charged identifying which licensing requirements were appropriate for such material recovery and conversion technology facilities.

The 15-member subcommittee, comprised of industry, local government, nonprofit, and general public representatives, held a series of meetings throughout 2016 and recommended that Metro establish regulatory requirements for certain material recovery and conversion technology facilities that receive and process source-separated recyclable materials. The subcommittee's recommendation was subsequently endorsed by SWAAC. The proposed code amendments described in this ordinance, as well as the companion Ordinance No. 17-1410, reflect SWAAC and the subcommittee's recommendations.

On May 10, 2017, 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 May 12 through July 14, 2017. The comments received and staff's response to those comments is provided as Attachment 1.

Staff presented the comments received and responses to those comments to SWAAC at its meeting on August 9, 2017. Staff then reviewed the proposed code changes with Metro Council at its work session meeting on September 19 and 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 extensive public outreach and solicited input on the proposed changes to Chapter 5.01. The public outreach for the proposed code changes included:

1. SWAAC review and SWAAC Subcommittee review :
 - (a) December 2015 – SWAAC commissioned a 15-member subcommittee to consider regulation of material recovery and conversion technology facilities. The subcommittee held seven meetings (between January and October 2016) and recommended that Metro establish authorization requirements for material recovery and conversion technology facilities.
 - (b) October 2016 – SWAAC endorsed the subcommittee’s recommendations.
 - (c) May 2017- SWAAC endorsed staff’s draft code changes and the opening of a 60- public review period.
 - (d) August 2017– SWAAC reviewed the public comments received by Metro, staff’s responses, and proposed revisions. SWAAC endorsed presenting the final proposal to Metro Council.

2. Public review and comment period:
 - (a) Metro opened a 60-day public review and comment period from May 15 through July 14, 2017.
 - (b) Metro also held two public workshops on May 31 and June 13, 2017 to review the proposal and answer questions.
 - (c) Metro received three written comments related to the proposed code changes (see Attachment 1).
 - (d) Staff prepared a detailed response to the written comments received during the public review period (see Attachment 1).

3. Other outreach:
 - (a) Metro established a dedicated web page that was used to post the proposed code change information and related documents at <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>
 - (b) Staff sent routine status updates and other correspondence to interested parties via email.

PROPOSED AMENDMENTS TO CHAPTER 5.01

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

1. Establish Licensing Requirements for Material Recovery Facilities that Receive Source-Separated Recyclables.

Currently, facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program are exempted from Metro’s licensing and franchising requirements. However,

there have been significant changes in the solid waste system over the years such as an increased practice of “commingled” collection (mixing most recyclables together in a cart or container which has increased contamination), the consistently changing composition of materials placed out at the curb for recovery, and the volatile nature of recycling markets locally, nationally, and globally. These significant changes over the years have increased the potential for material degradation and adverse impacts from facilities on neighboring communities. The COO finds that it is in the public’s interest for Metro to implement greater regulatory oversight of the facilities that receive and process source-separated recyclable materials. The COO recommends removing the current licensing exemption for this class of facilities and requiring that these facilities be subject to Metro’s licensing, inspection, and reporting requirements similar to other solid waste facilities.

2. Create Exemption for Specific Material Recyclers.

The COO recommends that facilities that exclusively receive and process a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets be exempted from the requirement to obtain a solid waste license. For purposes of Metro Code, specific material recyclers are defined as facilities that receive and process materials that include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. Specific material recyclers do not include facilities that processes commingled source-separated recyclables collected through curbside residential or commercial collection programs.

3. Create Exemption for Certain Conversion Technology Facilities.

The COO recommends that conversion technology facilities that exclusively receive non-putrescible waste for use as feedstock that has been (A) extracted from other solid waste and (B) processed to meet prescribed specifications for direct introduction into a conversion technology process be exempted from the requirement to obtain a solid waste license.

4. General Housekeeping Changes (Non-Substantive).

In addition to the changes described above, the COO recommends amending Metro Code Chapter 5.01 with several non-substantive housekeeping changes which include deleting a reference to a requirement that is no longer effective, correcting a misnumbered cross-reference, and clarifying when certain documents and payments are due.

ANALYSIS / INFORMATION

1. Known Opposition

One operator of a material recovery facility within the region is known to oppose the proposed code amendments and licensing requirements for material recovery facilities

that receive and process source-separated recyclable material (see Attachment 1). A representative of the facility operator participated on the SWAAC subcommittee which considered this issue and the operator also had the opportunity to provide further input throughout the subsequent public engagement process.

The SWAAC subcommittee and SWAAC subsequently endorsed the proposed code amendments to establish additional regulatory oversight for material recovery and conversion technology facilities that receive and process source-separated recyclable materials.

2. Legal Antecedents

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

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapter 5.01 to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing as provided in Exhibit A. If Council adopts this ordinance, then material recovery and conversion technology facilities that receive non-putrescible source-separated recyclable materials would be required to apply for and obtain a solid waste license by January 1, 2019.

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. 17-1411

Material Recovery Facility & Conversion Technology Facility Project (MRF/CT)
Compilation of Feedback Received, Metro Response, and Actions Taken
Topic: Proposed Changes to Title V, Chapters 5.00 and 5.01
August 1, 2017

On May 12 2017, Metro opened a 60-day public review and comment period to solicit input on proposed changes to Metro Code Chapters 5.00 and 5.01 related to the regulation of certain material recovery facilities (MRFs) and conversion technology (CT) facilities. The public comment period closed on July 14, 2017. At that time, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. If Metro Council were to adopt amendments to Metro Code, then Metro would subsequently open a formal public review and comment period for the proposed administrative rules as provided in Metro Code Section 5.01.280.

The following is a summary of the written comments that Metro received during the public comment period and Metro's responses to those comments related specifically to the proposed changes to Metro Code. All comments were received in writing by email. A copy of each comment received is also attached to this document.

All documents related to this project are located on Metro's website here:

<http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

For questions or concerns regarding the project please contact Dan Blue at 503-797-1863 or dan.blue@oregonmetro.gov.

NOTE: Due to the length and varied nature of the comments received and for clarity, pertinent sections of the comments are italicized. Responses to those comments are in *bold and are italicized*. Copies of all comments received are attached to the end of this document.

Scott Farling (SF) representing Agilyx, by email on July 13, 2017:

Comment 1. *5.01.030 (b) should include "conversion to petrochemical products" along with reuse and recycling as accepted means of disposal for source-separated recyclable materials. (Note: 5.01.040 (b) refers back to 5.01.030 (a), (b), (d), and (f).)*

Metro Response: *This suggested change is outside the scope of the current proposed changes to 5.00 and 5.01. No change made.*

Comment 2. *5.01.040(a)(4) should include the information under the heading "Characteristics of CT Facilities Exempt from Obtaining a Metro License" from page 10 of the MRF-CT Recommendations for SWAAC Final.*

CT facilities that receive feedstocks that have already been extracted from mixed solid waste and otherwise processed to conform to prescribed specifications and largely resemble commodity feedstocks (material streams) for direct introduction into a conversion technology process may have the following characteristics:

- The facility does not accept unprocessed, mixed solid waste from collection trucks/containers, reload facilities, or other solid waste generators.
- A majority of feedstock material is used productively in conversion process.
- Feedstock specifications are prescribed to conform to the specific conversion technology industrial process requirements.

- Shredding, mixing, right-sizing or other similar treatment of already sorted and processed feedstocks typical in a manufacturing process does not constitute “processing of solid waste”.
 - The facility’s receipt and processing of the feedstock presents low potential risk to the environment, or to neighboring businesses and residential communities (e.g., odors, dust, noise, vectors, litter, fire safety etc.).
- Metro Response: The “Characteristics of CT Facilities Exempt from Obtaining a Metro License” were developed to inform the discussion and deliberation of the MRF/CT Subcommittee which led to the Subcommittee’s subsequent recommendations to Metro’s Solid Waste Alternatives Advisory Committee (SWAAC). While this language helps to clarify what types of facilities would be exempt under the proposed code changes, Metro staff does not concur that this level of specificity is needed in the Code and recommends that the proposed code language is sufficient. Metro staff will consider including this level of detail in the draft administrative rules should Council elect to modify the Code as proposed. No change made.***
-

Matt Cusma, Representing Schnitzer Steel, by letter sent by email July 14, 2017:

Schnitzer Steel Industries appreciates the opportunity to submit these comments on the proposed amendments to Metro Code Chapters 5.00 and 5.01 dated May 12, 2017. The proposed amendments are the result of many months of effort by the Solid Waste Alternatives Advisory Committee’s MRF/CT Subcommittee, other stakeholders, and Metro staff. Schnitzer believes this collaborative approach and deliberate effort to involve stakeholders in the Metro Solid Waste Code revision process improved on the code revisions originally proposed in 2015. Schnitzer commends Metro on this renewed commitment to collaboration and stakeholder engagement at the outset of any discussions regarding whether changes to Metro’s Solid Waste Code are necessary and, if so, what those changes should be.

One purpose of the proposed amendments is to clarify that recyclers that receive and process non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets (e.g., scrap metal, plastic, paper, and similar commodities) will remain exempt from Metro’s solid waste license and franchise requirements. See Proposed Sec. 5.01.040(a)(5). This exemption appropriately recognizes that these types of recyclable materials are managed as valuable commodities, not waste, and present little risk of harm to human health or the environment. Much of this recyclable material never enters the solid waste stream because of its recycling value. Based on these considerations and others, Metro has long recognized facilities that process such materials as a unique type of commercial recycling facility and has exempted them from solid waste facility licensing requirements. The proposed amendments appropriately codify a specific exemption that covers these types of facilities: the “Specific Material Recycler” exemption.

Schnitzer fully supports the clarification of the Specific Material Recycler exemption, but believes the proposed language is unnecessarily narrow. As drafted, the exemption applies to: “Specific material recyclers that receive and process a single type of nonputrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or other similar commodities.” But for recyclers that receive recyclable materials with intrinsic value and manage those materials as valuable commodities, it should not matter whether the recycler receives and processes only a single type of material. That is, eligibility for the exemption should depend on the type of material accepted by the recycler (i.e., recyclable materials that hold intrinsic value in established markets), not whether the recycler accepts more than one type of such material.

Comment 1. To address this issue, Schnitzer urges Metro to remove the phrase “a single type of” from the exemption, so that the exemption would apply to specific material recyclers that receive and process “nonputrescible recyclable materials that hold intrinsic value in established reuse and recycling markets, such as scrap metal, paper, or other similar commodities.” The phrase “a single type of” would also need to be removed from the definition of “specific material recycler,” which Metro is proposing to add to Section 5.00.010.

This limited expansion of the Specific Material Recycler exemption would be consistent with the purposes of Metro's solid waste facility regulations. See Sec. 5.01.010(a). Because Schnitzer's proposed changes would not expand or change the types of materials that would fall within the exemption, the proposed changes would not undermine Metro's ability to protect and preserve the health, safety, and welfare of its residents. See Sec. 5.01.010(a)(1). Moreover, the proposed changes would create additional incentive for facilities that receive and process recyclable materials with intrinsic value to reduce the volume of solid waste disposal. See Sec. 5.01.010(a)(4). Schnitzer would welcome the opportunity to discuss this proposed revision to the Specific Material Recycler exemption with Metro staff.

Metro Response: Use of the phrase "a single type of" is intended to distinguish between a facility that predominately receives multiple homogeneous types of source-separated recyclable materials from a facility that receives commingled source-separated recyclables from curbside commercial and residential collection programs. Staff finds that removing the phrase "a single type of" from the definition of Specific Material Recycler may cause confusion for facility operators as to which types of facilities would be exempted, and which would not. Staff has revised the proposed definition of Specific Material Recycler to include the following statement for additional clarification: "The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs." Staff will also consider providing further clarification of this distinction as part of administrative rule.

As such, the proposed definition in Metro Code Section 5.00.010 has been revised to read: "Specific material recycler" means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs.

Jeff Murray, Representing EFI, by letter send by email July 14, 2017:

EFI has an interest in and would be effected by the Proposed Ordinances because EFI is located within the Metro Region and receives significant volumes of Commercial Commingled Recyclables collected by EFI trucks and licensed refuse haulers from businesses located inside and outside the Metro Region. A majority of the recycling that EFI processes at its facility on Swan Island is source segregated recyclables (ie OCC, Office Paper and other various grades of recyclables separated by the generator by grade). *Competitors that only receive and process source segregated recyclables will not be subject to licensing by Metro and the requirements associated with licensing, placing EFI in a competitive disadvantage with these facilities.*

Comment 1. *EFI opposes the Proposed Ordinances because it is a dramatic change in Metro Code that violates a stated policy in the Metro RSWMP and is in violation of Oregon State Statute (ORS 459A.075).*

Metro Response: Metro has thoroughly discussed and evaluated the need for this ordinance with a stakeholder subcommittee, SWAAC, the public and Metro Council over the last two years. While EFI states its opposition to this ordinance, Metro staff finds that the proposed amendments to Metro Code are in the public interest. Metro staff has found that many in the solid waste industry, local government officials, and the public are in support of these changes. The 2008 Metro Regional Solid Waste Management Plan (RSWMP) states that certain facilities including those that exclusively handle source-separated recyclable materials "are not required to obtain authorization from Metro to operate." That statement is found in the section of the

RSWMP entitled “Current System,” which is intended to simply describe Metro’s current solid waste system. It is a factual statement and not intended to be a policy statement or a prohibition on future regulation.

The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. Finally, Metro’s definition of solid waste includes source-separated recyclables. No change made.

Comment 2. Past reports by staff have downplayed the potential negative impacts of the Proposed Ordinances and we have deep concerns that licensing can place facilities, such as EFI, that handle commingled recyclables and that are located within the Metro Region at a strong disadvantage to those outside the Region.

Metro Response: Metro is responsible for and has broad regulatory authority over all solid waste within the region and, in particular, has identified concerns about potential nuisance, odor, litter and dust generated by some facilities. Metro currently issues licenses or franchises to over 30 solid waste facilities within the region to ensure that the region’s solid waste is managed appropriately and that nearby residents and business are not adversely impacted. Currently some MRFs inside the region are subject to Metro authorization while others are not. The proposed legislation would establish similar and consistent requirements for solid waste facilities performing similar functions. No change necessary.

Comment 3. The Proposed Ordinances would, through licensing, allow Metro to impose unnecessary requirements on source separated recycling facilities, including design requirements, operating requirements, performance standards and reporting of detailed, confidential account information.

Metro Response: No performance standards are being proposed at this time. Operating, design and reporting requirements are being proposed with the full and unanimous support of the MRF/CT Subcommittee and SWAAC and are contained within the draft administrative rules that accompany the proposed Code amendments. No change necessary.

Comment 4. To this point there has only been discussion related to already existing administrative rules.

Metro Response: Metro does not currently have administrative rules related to the operation or regulation of MRFs that receive source-separated recyclables (SSR). The preliminary administrative rules that staff posted for public review are proposed in draft form for information only.

Metro will not adopt an administrative rule related to regulation of SSR MRFs unless the Metro Council first adopts Code amendments that authorizes regulation of SSR MRFs. To date Metro staff has engaged with stakeholders in a variety of ways to solicit input on potential operating requirements for SSR MRFs including initiating an “informal” public comment process related to proposed administrative rules.

As part of the public engagement process, the proposed amendments to Code, and preliminary drafts of administrative rules, were provided to SWAAC, MRF/CT Subcommittee members and interested parties on May 2, 2017 and discussed at the May 10, 2017 SWAAC meeting. A stakeholder workshop was held on May 31, 2017 to discuss proposed changes to Code chapters 5.00 and 5.01 as well as draft administrative rules. A second public workshop was also held on June 12, 2017.

If the Metro Council adopts the proposed Code changes and requires that SSR MRFs obtain authorization from Metro, then Metro will subsequently open a formal public comment process and hold a public hearing for any proposed administrative rules as provided in Metro Code Chapter 5.01. No change necessary.

Comment 5. *We have two specific concerns related to the administrative rules: 1) Are there more administrative rules to come specifically related to source separated commingle facilities?*

Metro Response: *Much useful input was received on the draft administrative rules for both CT and for SSR MRFs during the two stakeholder workshops on May 31 and June 12, 2017 as well as the initial “informal” public comment period on the rules that closed July 14, 2017. If the Metro Council adopts the proposed Code amendments, then staff will revise the draft administrative rules based on the preliminary stakeholder input that has already been provided and will open another public comment period on a revised set of administrative rules as provided in Metro Code Chapter 5.01. No change necessary.*

Comment 6. *2) If there are more administrative rules, will there be a committee established to help developed these rules before Metro Council votes on the Proposed Ordinances? Without finalized Administrative Rules, we do not yet know what the full implication of licensing will mean to our business.*

Metro Response: *The proposed administrative rules that will accompany the Code amendment package will be open to a formal public review period and hearing process if the proposed Code changes are adopted by Metro Council. Adoption of any subsequent amendments or new administrative rules would be considered as provided in Metro Code Section 5.01.280. No change necessary.*

EFI may be harmed and the regional refuse / recycling system as a whole may suffer unintended consequences by the Proposed Ordinances for the following reasons:

- 1) Within the City of Portland, recycling facilities in the appropriate zones have outright use. Solid waste facilities are not allowed within some of the zones and need conditional use in the limited number of zones that they are allowed.

Comment 7. *In the event that EFI became a licensed solid waste facility, we may need conditional use to make any significant changes to our facility. This is particularly troubling if Metro were to require the changes.*

Metro Response: *Metro staff has researched this issue, which was raised and discussed in the MRF/CT Subcommittee and with city of Portland officials. Metro has not received any evidence suggesting that local land use decisions would, or have been, influenced by the issuance of a Metro solid waste license. The actual “use” of EFI’s property remains unchanged regardless of Metro’s proposed licensing requirements. Because land use regulations are based on “use” of the property, then a Metro requirement to license a facility should not automatically change any land use decisions affecting that property if the use remains the same. As indicated in the referenced “attachment A” Table 140-1 (a City of Portland planning document) “Industrial Service (Includes Recycling)” is an outright approved use. No change made.*

- 2) Currently, most of the commingled recyclables collected in the state of Oregon are received and sorted at facilities within the Metro region. In the event that Metro were to license commingle recycling facilities within the region the following may happen:

Comment 8.

- a. *Commingled recyclables collected outside the region that are currently delivered to facilities within the region may travel to facilities currently outside the region. This would raise the cost per ton to receive and sort the material that continues to be delivered to the facilities*

within the Metro region. Fewer commingle tons also raises the per ton cost to handle source segregated recyclables (separated by type), placing EFI at a competitive disadvantage on our segregated portion of our business.

- b. Commingled recyclables collected in the region may be delivered, or reloaded and delivered to facilities outside the region. There is a commingled recycling facility located in Salem, OR that may draw commingle material from the south end of the region and there are a number of facilities in the Puget Sound area that are currently running under capacity. The facilities in the Puget Sound market are much closer to the port. A few dollars difference in pricing and more stringent controls on the commingled material may be enough to send the material north to facilities owned by haulers that also provide collection service in the metro area.*
- c. Licensing of commingle recycling facilities in the Metro region may cause recyclers currently in the region to relocate outside the region.*

Metro Response: The concerns outlined in a – c above are speculative. Metro’s intent in this Code change package is to ensure that nuisance, odor, vector, dust and litter impacts for residents and businesses located nearby MRFs and CT facilities are minimized. There is no evidence to suggest that the proposed changes to Code are likely to result in any of the impacts outlined above (comments a. – c.) for facilities that are already meeting the minimum standards proposed in the rules. No change necessary.

Comment 9. The result of Metro licensing facilities that handle commingled recycling may result in giving Metro and local governments less information about and control over the source separated commingled recyclables collected in the region.

Metro Response: This is both speculative and contrary to the expected outcome of the proposed changes. Staff believes that adoption of these changes will result in a much better understanding of the regional solid waste system and that many information gaps will be filled in that will better inform future policy choices and planning efforts. No change made.

Metro’s Authority to Regulate Solid Waste

Comment 10. EFI does not question Metro’s authority to regulate solid waste; however, we do not agree that source separated recycling and / or source separated commingled recycling are solid waste, therefore Metro does not have the authority to license source separated recycling facilities. The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.

459A.075 Exemptions. Nothing in ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665 applies to recyclable material which is: (1) Source separated by the generator; and (2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. [Formerly 459.192]. The source separated recycling described above is exempted from all pertinent sections of 459 and 459A.

Metro Response: Metro staff recommends the following passage of the Oregon Recycling Opportunity Act in 1983 as a point of reference. In 1984, the Oregon Department of Environmental Quality (DEQ) sought legal advice from the Oregon Attorney General as to whether recyclable material was still considered “solid waste” for regulatory purposes under state law. The specific question was whether facilities “that receive only source separated recyclable materials [were] now exempt by definition, from the Department’s solid waste management rules?” (See Oregon Department of Justice letter to William Dana, DEQ, dated June 21, 1984.) The Oregon Department of Justice unequivocally stated that “recyclable material” is considered “solid waste” for regulatory purposes. The Attorney General’s Office further explained:

“The overall policy of the Act, the expressed concerns of individual legislators, and the specific language of particular sections all indicate that the Legislative Assembly intended that ‘recyclable material’ continue to be a sub-category of ‘solid waste,’ and that facilities for collecting and sorting recyclable materials continue to be regulated as ‘disposal sites.’

** * **

[I]t appears to be the intent that DEQ continue to have power to regulate materials which meet the definition of ‘solid waste,’ whether such materials are recyclable or not.”

For similar Oregon Department of Justice interpretations, see Memorandum from Assistant Attorney General Larry Edelman to DEQ, dated February 27, 1996, and Letter from Assistant Attorney General Larry Edelman to Mark Morford, dated November 4, 2002.

In addition, ORS 268.317(8) gives Metro explicit statutory authority to “Receive, accept, process, recycle, reuse and transport solid and liquid wastes.” This statute indicates that the legislature considers “recyclable materials” as a sub-category of “solid waste.” Further, the definition of “Solid Waste Management” in ORS 459.005 (25) references “recycling” from “solid waste.”

Finally, it is not entirely clear what is meant by the comment: “The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.” Metro’s sources of solid waste legal authority are its home rule Charter, the Metro Code, the RSWMP, Oregon Revised Statutes (ORS) Chapters 268, 459 and 459A.

NOTE: The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. No change made.

Why Regulate Commingle Recycling Facilities?

The answers that we have been given by staff were primarily related to storage of recycling and “house-keeping”. Local regulators had concerns that certain recycling facilities were stock-piling large volumes recyclable materials outside. In a few cases, for extended period. This caused a concern that the facilities were becoming nuisances and that the material would degrade and become unmarketable. There was also a general concern related to the house-keeping at these same facilities. Before the MRF / CT Subcommittee held its last meeting, the electronics recycler in Washington County was cited by DEQ and closed its doors shortly thereafter, and a commingle facility that was of concern shuttered its business.

Comment 11. *Metro has stated in the 2008 RSWMP: “Certain facilities, such as those exclusively handling inert wastes or source-separated recyclable materials, are not required to obtain authorization from Metro to operate. However, Metro retains the authority to inspect and audit these operations to periodically confirm compliance with Metro Code.” Similar language also existed in the 1995 RSWMP. EFI asks the following questions: 1) When and how often has Metro exercised this Authority?*

Metro Response: *Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3) i.e. exclusively accepting source-separated recyclable materials. However, under current Code requirements, such visits are typically pre-scheduled with the operator and performed for the purpose of determining whether the facility exclusively receives source-separated recyclable materials for reuse or recycling. Currently, SSR MRFs are not subject to licensing or franchising requirements and Metro does not have any authorization mechanisms in place to establish and enforce operating conditions at these types of facilities.*

Comment 12. *2) What has the response been by facilities that handle commingled recyclables when Metro has informed the facility operators that the facility is out of compliance?*

Metro Response: *As explained in Metro's response above, SSR MRFs are not subject to licensing or franchising requirements under current Metro Code. Metro does not have any authorization mechanisms in place at this time to establish and enforce operating conditions at these types of facilities. As stated earlier, Metro's intent with these proposed changes is to minimize nuisance, odor, vector, litter and dust from these operations, and to avoid material degradation due to improper handling. Given that local, national and global commodity markets ebb and flow, it is critical that periodic unannounced, random site visits are conducted to reduce undue impacts on communities.*

Comment 13. *3) Has any facility that handles source separated commingled recyclables turned down a request by Metro to enter the property or to respond in a positive manner when metro staff has recommended / requested a change to improve their operation?*

Metro Response: *As explained in Metro's response above, Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3). Currently, such visits are typically pre-scheduled, limited in scope, and subject to approval by the operator. Metro staff has found that SSR MRF operators have generally accommodated Metro's requests to allow site access over the years. However, Metro does not have any authorization mechanisms in place to require site access or other operating conditions at these types of facilities.*

Comment 14. *Regulation of commingle facilities will have little if any positive impact on the quality of the outgoing product from commingle facilities.*

Metro Response: *Improving the quality of outgoing materials is not an objective of this proposed Code change. However, the proposed regulations will likely have a positive impact in those cases in which source-separated recyclable materials are either stored or mishandled in such a way as to lead to significant degradation of that material (as Metro staff has observed at one MRF in the region) making that material unmarketable. Additionally, the proposed regulations will likely have a positive impact on the people living and working nearby these types of facilities in that it will result in establishing operating requirements that will help minimize nuisance conditions such as litter, dust, and vectors.*

Material recovery facility (MRF) and conversion technology (CT) Subcommittee

EFI has several concerns regarding the process followed in developing the final draft recommendations. A primary concern is that the end product is no different than what was presented at the end of summer, 2015.

Comment 15. *The committee process did not address the initial concerns of the recycling community and local governments that brought about their initial support for oversight / regulation of these facilities.*

Metro Response: *The MRF/CT Subcommittee was charged with considering whether MRFs that process source-separated recyclable materials and facilities that convert waste to energy, fuel, or other products should be subject to authorization and inspection similar to other facilities and if so to identify which requirements were appropriate. The MRF/CT Subcommittee deliberated over the course of seven meetings*

with the result being unanimous support for a set of recommendations that included authorizing material recovery facilities processing source-separated recyclables and establishing operating standards for those facilities. The MRF/CT Subcommittee, SWAAC, and Metro Council were clear that the scope of the subcommittee did not include performance standards (material quality) and that consideration of performance standards should be addressed through the upcoming regional waste planning process. No change made.

Comment 16. *Further, I brought forward a motion to recommend Certification of Commingle Recycling Facilities as an alternative to licensing and staff interrupted the motion and later made their own. (Attachment B)*
Metro Response: *The MRF/CT subcommittee did receive a copy of Mr. Murray’s certification proposal, and did discuss third-party certification as well as a Metro-issued certificate, license, or franchise. Through deliberation, the subcommittee elected to focus on a broader statement recommending that such facilities be subject to a Metro “authorization.” Metro Code provides for two types of facility authorizations - solid waste license or franchise. Rather than creating a third type of authorization and developing an additional apparatus in Code, staff recommended removing the current licensing exemption for this type of facility. Therefore, Metro staff recommends using a solid waste license as the form of authorization for this particular class of facility. This approach is consistent with current Code, and Metro’s current regulatory oversight of the region’s solid waste system.*

Comment 17. *Why didn't Metro staff tell members at this second meeting that their list of issues would NOT be addressed in the sub-committee?*

Metro Response: *The deliberation of the Subcommittee, taken in whole, addressed many of the issues included in Mr. Murray’s comment letter attached to this document. Those issues not specifically addressed in the subcommittee were identified to be better suited to the upcoming regional waste planning process.*

This information was clearly articulated, as mentioned in these public comments, at the Subcommittee’s March 17 meeting (Meeting No. 3). The summary notes for the above-mentioned meeting are available on the Metro website at: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>.

Mr. Murray began his presentation indicating that it had been mentioned many times in the Subcommittee that so called “clean mrf’s” and “dirty mrf’s” were similar now, and that his presentation was to show that they are still very different. Mr. Murray then showed a series of slides from both types of facilities indicating that dry waste facilities and SSR MRFs were indeed different in terms of the mixes of materials they receive and the composition of materials leaving the facilities (both to markets and to landfill). Mr. Murray showed a short video from a dry waste MRF and clarified that the outgoing residuals from the two different types of facilities were quite different with far more residuals going to landfill from the dry waste facilities than what comes out of the SSR MRF’s.

During the same meeting Jeff made a motion to consider Certification as an option. The motion was interrupted by staff and staff asked if they could first give their presentation.

Comment 18. *Jeff was not given another opportunity to present his motion.*

Metro Response: *At the May 20 meeting the various available options for “authorization” of these types of facilities was discussed. The Subcommittee discussed the certification option, and coalesced around the suggested language that ultimately became the key recommendation contained in the*

MRF/CT Recommendation Memo. Mr. Murray's (and EFIs) focus on the certification is acknowledged and was well-represented in Subcommittee discussions, however the rest of the MRF/CT Subcommittee seemed comfortable with the broader term "authorization" for its recommendations going forward and reliance on staff to recommend the exact type of appropriate authorization. This position is further evidenced by the thorough review, editing, and subsequent adoption of the final MRF/CT Recommendation Memo dated October 5, 2016. Finally, it is Metro staff's recommendation that licenses are the appropriate legal form of authorization for this class of facility. Metro licenses can be developed to address conditions specific to a class of facilities. A Metro-issued certificate would only be a different name for a Metro-issued authorization – and it would not be any more restrictive or expansive than a license.

Has Metro Council and / or staff discussed the possibility of:

Comment 19. *1) Building or utilizing an existing facility the purpose of sorting source separated commingled recycling collected within the Metro region?*

2) Bidding out the processing of source separated commingled recycling collected within the Metro region?

3) Flow controlling source separated commingled recycling collected within the Metro region to either a publicly or privately-owned facility?

Metro Response: *The three questions above are not relevant to the proposed changes to Metro Code Chapters 5.00 and 5.01 for which Metro has sought public comment. Metro entering into any of the activities described above would be the result of a policy decision. Policy direction comes from Metro Council. Metro Council has not directed staff to explore any of the three activities described in the questions above.*

Comment 20. *EFI requests that Metro re-instate the policy stated in Objective 4.3 of the Metro 1995 RSWMP in the RSWMP currently under development.*

Metro Response: *Thank you for this comment. It is, however, not related to the proposed changes to Metro Code. Please be sure to provide these comments through the Regional Waste Plan process. Information is available here: <http://www.oregonmetro.gov/public-projects/future-garbage-and-recycling>. No change made.*

Conclusion

In summary, EFI appreciates the opportunity to comment on the Proposed Ordinances. We request that Metro staff and Council give serious consideration to the concept of certification of source separated commingled recycling facilities. We continue to ask the question:

Comment 21. *Why does Metro need to license source separated commingled recycling facilities when they have not fully exercised their "authority to inspect and audit these operations to periodically confirm compliance with Metro Code."*

Metro Response: *While code provides "authority to inspect and audit these operations to periodically confirm compliance with Metro Code" the Code does not include sufficient details or operating requirements related to the operation of these types of facilities. The MRF/CT Subcommittee and SWAAC, have endorsed additional regulatory oversight including establishing design and operating standards as well as reporting for SSR MRFs. The proposed removal of the licensing exemption for*

this class of facilities accomplishes the recommendations of the Subcommittee and SWAAC. No change made.

Administrative Rule Process:

The comments received and responded to in this document were focused entirely on the proposed changes to Metro Code Chapters 5.00 and 5.01. When the proposed code changes were put out for public comment, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. Staff received comments on the draft administrative rules from the following:

- Keith Ristau, Far West Recycling
- Andy Kahut, KB Recycling
- Dave Claugus, Pioneer Recycling
- Chris McCabe, Northwest Pulp and Paper Association

If Metro Council adopts the proposed changes to Metro Code Chapters 5.00 and 5.01, Metro will subsequently adopt administrative rules as provided in Metro Code Section 5.01.280. Specifically, staff will post revised, draft administrative rules for public review and comment which will take into consideration the preliminary input that Metro received during the informal comment period that ended on July 14, 2017. At the conclusion of the next public comment period for the proposed rules, Metro staff will provide written responses to all comments received during the formal public comment period.

All project materials are located on Metro's website here: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

Questions or concerns regarding the project can be directed to Dan Blue at 5023-797-1863 or dan.blue@oregonmetro.gov.