

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.10 TO ESTABLISH A)
BUSINESSES FOOD WASTE REQUIREMENT.)

ORDINANCE NO. 18-1418
Introduced by Chief Operating Officer Martha
Bennett in concurrence with Council
President Tom Hughes

WHEREAS, Metro regulates solid waste generated within the Metro region pursuant to Metro's constitutional, statutory, and charter authority and as set forth in the Metro Code; and

WHEREAS, food represents 18 percent of the region's disposed waste—the largest single material sent to landfill and the largest single recoverable material sent to landfill; and

WHEREAS, when sent to landfill, food waste generates methane which is 25 times more potent of a greenhouse gas than carbon dioxide; and

WHEREAS, food waste is identified as a primary material for recovery within the region's Regional Solid Waste Management Plan, which guides Metro and local government work; and

WHEREAS, the State of Oregon Department of Environmental Quality, via Oregon Revised Statutes 459A.010 has set a food waste recovery goal of 25% by 2020; and

WHEREAS, the State of Oregon Department of Environmental Quality has added a required food waste collection program for nonresidential generators to the list of menu items available to local governments for compliance with state law under Oregon Administrative Rule 340 Division 90; and

WHEREAS, the Metro region has had a voluntary business food waste collection program in place for over ten years yet only fourteen percent of the total food waste is recovered; and

WHEREAS, the Metro Council has determined that in order for the region to significantly increase food waste recovery, a more aggressive approach to food waste recovery is necessary; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code 5.10 is amended to establish a Business Food Waste Requirement as set forth in Exhibit A to this Ordinance.

ADOPTED by the Metro Council this 26th day of July 2018.



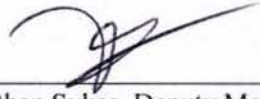
Tom Hughes, Council President

Attest:



Sara Farrokhzadian, Recording Secretary

Approved as to Form:



Nathan Sykes, Deputy Metro Attorney

Metro Ordinance No. 18-1418 – Exhibit A

BUSINESS FOOD WASTE REQUIREMENT

5.10.410	Purpose and Intent
5.10.420	Business Food Waste and Covered Businesses
5.10.430	Business Food Waste Requirement
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BUSINESS FOOD WASTE REQUIREMENT

5.10.410 Purpose and Intent

The business food waste requirement provides an opportunity to increase recycling of food waste and to assist the Metro region to achieve waste reduction goals. Metro does not intend for this requirement to apply to food that is fit for human consumption and accepted for donation by a charitable organization or the use of food waste for animal consumption in compliance with applicable regulations.

5.10.420 Business Food Waste and Covered Businesses

For the purpose of this section, business food waste is solid waste consisting of food waste removed from the food supply chain that is not fit for human or animal consumption. A covered business is a business that cooks, assembles, processes, serves, or sells food.

5.10.430 Business Food Waste Requirement

Local governments must require (1) covered businesses in their jurisdiction to source separate and recover business food waste; (2) delivery of collected business food waste to a facility authorized by Metro; and (3) persons, as defined by Metro Code Section 1.01.040(h), who provide space to a covered business to allow the source separation and collection of food waste.

5.10.440 Business Food Waste Requirement Performance Standards

The Chief Operating Officer will adopt administrative rules to address the business food waste requirement performance standards. The performance standards must include, without limitation, the following elements:

- (a) Provisions requiring that local governments
 - (1) Notify covered businesses and waste haulers of the business food waste requirement;
 - (2) Require covered businesses and waste haulers to comply with the business food waste requirement;
 - (3) Provide education and technical assistance to covered businesses and waste haulers regarding the business food waste requirement; and
 - (4) Enforce the business food waste requirement.

- (b) Provisions requiring local governments to compel persons providing space to a covered business to allow for the source separation and collection of business food waste.

The Chief Operating Officer may allow a local government to waive the business food waste requirement as to a specific business as provided in the administrative rules.

5.10.450 Temporary Waiver

The Chief Operating Officer may waive, for no longer than 365 days, the local government's implementation of the business food waste requirement only as provided in the administrative rules. The Chief Operating Officer may provide for an extension of the temporary waiver in the administrative rules

5.10.460 Metro Enforcement of Business Food Waste Requirement

Upon a request by a local government and as provided in an intergovernmental agreement, Metro will perform the local government function to ensure covered business compliance with the business food waste requirement.

5.10.470 Metro Model Ordinance

The Chief Operating Officer may adopt a business food waste requirement model ordinance for use by the local government. The model ordinance is advisory only.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 18-1418, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.10 TO ESTABLISH A BUSINESS FOOD WASTE REQUIREMENT IN ORDER TO INCREASE THE RECYCLING OF FOOD WASTE AND TO ASSIST THE METRO REGION WITH ACHIEVING WASTE REDUCTION GOALS.

Date: July 19, 2018

Prepared by: Jennifer Erickson
503-797-1647

Food is the single largest portion of greater Portland's waste stream and a major contributor to the creation of methane when disposed in a landfill. More than half of the food disposed from the greater Portland area comes from businesses. For more than 20 years, Metro has been working to reduce the impacts of food waste on the environment, and Ordinance No. 18-1418 is a critical part of these efforts. By requiring the collection of food scraps at food service businesses and delivering those food scraps to facilities that can turn them into compost and energy, and by supporting business food waste prevention and edible food donation programs, Metro can take one of the most significant actions possible to address climate change through its stewardship of the region's garbage and recycling system.

If adopted, Ordinance No. 18-1418 will amend Metro Code Chapter 5.10 to add the Business Food Waste Requirement. Under this ordinance, each local government must require: (1) covered businesses in its jurisdiction to separate and recover food waste; (2) delivery of collected business food waste to a facility authorized by Metro; and (3) property owners and managers who provide space to a covered business to allow the source separation and collection of food waste. If Ordinance No. 18-1418 is approved by the Metro Council, the Chief Operating Officer will adopt administrative rules to set performance standards for the collection and processing of food scraps from businesses.

BACKGROUND

Metro's Solid Waste Roadmap is a work program consisting of six interrelated projects that will help define the region's garbage and recycling system in the future. The Food Scraps Capacity Development work, one of the six projects, is tasked with developing alternatives for answering the question of what actions Metro should take to accelerate recovery of food scraps and ensure there is adequate and proximate capacity to transfer and process food scraps collected from the region's businesses.

This effort is ultimately intended to help ensure the greater Portland area has a sustainable food scraps recovery system: one that generates enough high quality material to make processing facilities economically viable, supports an adequate transfer system, and has enough stable processing capacity to allow growth in the collection of food scraps from the region over time.

In 2014, the Metro Council reviewed the region's current commercial food scraps recovery efforts and staff introduced some potential paths forward to ensure that the region has a stable and sustainable food scraps transfer and processing system for the long term. The Council confirmed its desire to accelerate the region's recovery of food scraps and its wish to process those food scraps in or as close to the region as possible.

The Council determined that in order to increase food scraps recovery and attract stable, local processing capacity, the region should:

1. Require certain businesses to separate their food scraps for recovery and eventually prohibit the disposal of food from businesses.
2. Determine how to efficiently collect and deliver food scraps for processing.
3. Secure local and stable processing capacity.

Based on Council direction, staff developed policies and initiatives to fulfill these objectives.

ANALYSIS/INFORMATION

Ordinance No. 18-1418 and the first draft of the administrative rules were crafted over a twelve-month period by Metro staff from Property and Environmental Services, the Council Office and the Office of Metro Attorney, with significant input from representatives from Beaverton, Clackamas County, Gresham, Portland, Washington County, and Oregon DEQ. The policy requires local governments within the region to adopt a mechanism for requiring separation of food scraps by certain types of businesses. The objective is a policy that provides clarity and consistency for the affected businesses and, at the same time, allows for some implementation flexibility for local governments. The administrative rules guiding the policy implementation and performance standards are undergoing public comment in accordance with Metro Code 5.01.280 and are expected to be presented to the Metro Chief Operating Officer for adoption this fall.

The key elements of the ordinance are:

- A requirement that local governments adopt an enforceable mechanism (such as a code amendment, business license requirement or other legally binding instrument) that requires that certain food service businesses separate food scraps from other waste and recyclables.
- Flexibility for local governments in program implementation (e.g., geographically, by hauler franchise, areas of business concentration, etc.), in a manner that makes sense locally as long as commercial food waste collection programs meet regional performance standards. Governments may also, on a limited basis, grant waivers to businesses that are unable to comply.
- A three-phase roll-out, beginning with businesses that generate the most food scraps that, when fully implemented in 2023, would affect approximately 3,300 businesses in the region. This represents about 4 percent of the overall business community. The phases would be as follows:
 - Group 1 (March 2020): those businesses that generate 1,000 pounds or more of food scraps per week.
 - Group 2 (March 2021): those businesses that generate 500 pounds or more of food scraps per week.
 - Group 3 (Sept. 2022): K-12 schools and businesses that generate 250 pounds or more of food scraps per week.
- A resolution for Council consideration, concurrent with the consideration of this ordinance, that conveys an intent to implement a regional food scraps disposal prohibition no earlier than January 2025, based on an assessment of implementation of the required separation policy.

As with the Business Recycling Requirement adopted by the Metro Council in 2008, Metro will provide funding to support program rollout to assist local governments and businesses with implementation during the first five years of the program.

1. Known Opposition

- There was one comment in opposition from a local resident received during the first round of public comment stating that businesses are already separating food waste and a mandate is not necessary.
- The City of Hillsboro, while supporting the efforts to keeping food out of the landfill, consistent with city goals, remains concerned about the costs of the program and the lack of transfer capacity on the west side of the region, and does not support the Access to Services Payment that replaces the participation waiver.
- The Oregon Restaurant and Lodging Association (ORLA) supports food waste collection, but does not support a mandatory approach.

2. **Legal Antecedents** Metro Charter Chapter II, Sections 4 and 6; Oregon Revised Statutes Chapter 268, Section 317; Oregon Revised Statutes 459A.010; Oregon Administrative Rules Chapter 340; Metro Code Title V, Chapter 5.10; Metro Ordinance No. 08-1200.

3. Anticipated Effects

Local Government Effects

The program requires a one-time demand on local government staff and elected officials to adopt the ordinance. Ongoing additional staff time by local governments and Metro will be required for education, implementation, compliance and reporting throughout the implementation period. Education and technical assistance services will continue to be provided to the business community by those jurisdictions receiving direct program funding from Metro. If the Business Food Waste Requirement and accompanying local ordinances are enacted, the Property and Environmental Services Department intends to include in its annual budget proposal to the Chief Operating Officer that Metro provide additional funding to local governments to support their technical assistance services to businesses for the first five years of the requirement to mitigate local government implementation costs. Metro funds would support technical assistance staff time and supplies for businesses. In 2016, Metro conducted a survey of food-generating businesses, the vast majority of which indicated the importance of this technical assistance to their ability to successfully introduce and maintain food scraps recycling programs. A more complete summary of funding assistance covering the program implementation is included in *Section 4. Budget Impacts*.

Effects on Participating Businesses

There are two main impacts on businesses that will have to participate in this program: changes to their operations and accompanying costs, and changes to the rates they pay for solid waste collection services.

For the first, businesses will have to alter their practices slightly to accommodate separation of food scraps from garbage within their businesses. Based on the experiences of the approximately 1,500 businesses in the region that are already doing this on a voluntary basis, this change, once adjusted to, generally has minimal impact on operations and labor costs.

For the second impact, there are three primary contributors to changes to the service rates that businesses will pay: the cost of collection, the distance and cost to transfer or processing facilities, and the cost of processing the food scraps into energy or compost. Almost every local government in the region is providing food scraps collection service to businesses currently and setting a rate for it

(Portland does not set rates for commercial services). Staff expects that this ordinance, by adding more businesses to routes, will help improve the efficiency of the current collection system.

To mitigate the costs of taking the food scraps from the collection route to a transfer point or processor, implementation of this ordinance would be accompanied by temporary Access to Transfer Services payments to offset additional costs from transporting separated food scraps a longer distance than they currently are when collected as garbage. These payments would go to local governments (or possibly haulers) in order to mitigate the additional costs of collection service.

The third cost contributor is the amount of the food scraps tip fee. The current tip fee at Metro Central Transfer Station is \$66.23 per ton, which is approximately \$9.00 per ton less than the actual cost. The Metro Council chose to subsidize the commercial food scraps rate in order to stabilize the rate and aid in the development of the region’s food scraps system. The future cost and tip fee is uncertain, as Metro is in negotiations for a new anchor facility to process the region’s food scraps into energy.

Finally, as rate setters, local governments have influence over waste collection rates. Some jurisdictions have structured food scraps collection rates to spread the costs across all businesses, mitigating the costs to participating business and acknowledging the broad public good that comes from recycling food scraps. Businesses will also have some control over the rates they would pay. If a business can substantially reduce its garbage service, that may outweigh any additional costs associated with food scraps service. This is likely only possible for the largest generators.

Local Recovery Effects

Metro and local governments estimate that commercial food scrap recovery tonnages from the covered businesses would be as follows:

Business Group 1, starting in 2020	Business Group 2, starting in 2021	Business Group 3 (including K-12 schools), starting in 2022	Total Tons	Total tons at 50% separation rate
25,000–59,000 tons per year	Additional 6,000–14,000 tons per year	Additional 4,000–9,000 tons per year	35,000–82,000 tons per year	59,000 tons per year

Sources for Business Generation Estimates: Cascadia Consulting Group. *2014 Generator-Based Characterization of Commercial Sector Disposal and Diversion in California*. Publication # DRRR 2015-1543. California Department of Resources and Recycling and Recovery, September 2015, and State of Oregon Employment Department, Workforce and Economic Research Data.

Total recovery will be affected by the separation efficiency of each business (how much of their total food waste is separated from garbage and recycling) and the type of business in each group. The largest expected food waste generators are in the first group. The ranges noted above are from a low of 30 percent to a high of 70 percent separation efficiency rate. It is anticipated that most businesses will reach an average of 50 percent separation efficiency.

Environmental, Economic and Community Effects

Landfills are significant emitters of methane, and food scraps are a primary contributor to the production of methane in landfills. Methane is a very potent greenhouse gas—28 to 36 times that of carbon dioxide (CO₂) over a 100-year period. Methane emitted today lasts about a decade on average, which is much less time than CO₂ but methane also absorbs much more energy than CO₂. The net effect

of the shorter lifetime and higher energy absorption is reflected in its much higher global warming potential. Methane also accounts for some indirect effects, such as the fact that it is a precursor to ozone, and ozone is itself a greenhouse gas.

The goal of collecting food scraps is to capture environmental and economic benefits of turning that material into useful products or creating energy while reducing the negative environmental impacts associated with disposal. Putting food scraps in the garbage is a missed opportunity to capture these benefits. These benefits and the prevalence of food in our waste stream are the reasons it is identified as a primary material for recovery within the region's Regional Solid Waste Management Plan.

In addition to the benefits from recovering food scraps, the technical assistance that local governments and Metro will provide as part of this program will also advance businesses' efforts to prevent the wasting of food and donate any remaining edible food. Preventing the wasting of food has significant greenhouse gas emissions benefits and, in addition, wasted food is a main contributor to deforestation and the depletion of global water resources. Food donation programs help to address the needs of the 1 in 7 residents of our region who struggle to put enough food on the table. While many area food service businesses currently participate in edible food donation programs, experience in other communities indicates that food scraps separation requirements and collection programs result in increased donation of edible food. Vermont saw a 60 percent increase in food donations between 2015 and 2016 after implementation of its food scraps disposal prohibition, and Massachusetts saw a 25,000 ton increase in food donations in the year after implementation of its policy.

The government-to-business technical assistance is enhanced by two partnerships Metro has established to advance prevention and donation. The first is the *Food Waste Stops With Me* partnership with the Oregon Restaurant and Lodging Association, area food service businesses and local governments, Oregon Department of Environmental Quality and the World Wildlife Fund to co-develop resources and assist food service and hospitality businesses. The second, with the Oregon Food Bank, local governments and food pantries, is aimed at supporting food donation by grocers.

4. Budget Impacts

Technical Assistance Funds:

The Metro budget for fiscal year 2018-19 for funding to local governments for staff to provide food scraps recycling assistance to businesses is \$400,000. If the Metro Council approves a region-wide required food scraps separation program, Metro staff intends to propose a revised budget for funding local government technical assistance to affected food generating businesses beginning in fiscal year 2019-20. Staff is in the process of determining the funding levels based on:

- the numbers of businesses in each jurisdiction,
- the anticipated staff hours required to bring businesses into compliance, and
- when these businesses will be brought into the program between 2020 and 2024.

Early estimates put that budget amount at between the current \$400,000 and \$720,000 annually, based on actual data from local government implementation of the voluntary program over the past 10 years.

Estimated Resources	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Total Local Government FTE	7	8	9	5	5
Budget (\$80,000 per FTE)	\$560,000	\$640,000	\$720,000	\$400,000	\$400,000
Increase over FY 2018-19 funding	+\$160,000	+240,000	+320,000	0	0

Labor hours increase as business groups are added over the implementation timeline due to the fact that as new businesses are added, follow-up visits and assistance for businesses brought into compliance during previous years will continue to be needed.

Access to Transfer Service Payments

As noted in the Anticipated Effects section above, staff proposes that implementation of the business food waste requirement include payments (to local governments or possibly haulers) to help offset additional costs related to collection and delivery of food scraps to transfer or processing facilities that are more distant than existing garbage facilities. In the worst-case scenario, in which all loads from the region must go to Metro Central Transfer Station only, these payments could range between a total of \$100,000 and \$550,000 per year between fiscal years 2019-20 and 2023-24, as listed below.

Access to Transfer Service Payments Highest Cost Scenario – Metro Central Only	
<u>Fiscal Year</u>	<u>Total Payments</u>
2019-20	\$104,000
2020-21	\$415,000
2021-22	\$503,000
2022-23	\$549,000
2023-24	\$141,000
Program Total	\$1,712,000

The addition of any other transfer location would considerably lower the amount of these payments

The amount of these payments equates to an increase of approximately \$0.29 to \$0.38 per ton on the Regional System Fee. The fee may not actually need to increase by these amounts based on other variables affecting it including the actual amount of the payments, increased availability of transfer services and ability to absorb payments in the existing budget.

The Access to Transfer Services Payment is temporary, serving as a bridge to mitigate collection cost impacts as the region works to provide additional and more geographically dispersed transfer options.

RECOMMENDED ACTION

Staff recommends adoption of Ordinance No. 18-1418.