

# Metro | Agenda

Meeting: Solid Waste Alternatives Advisory Committee (SWAAC)  
Date: Wednesday, July 13, 2016  
Time: 10:00 a.m. to Noon  
Place: Metro, Council Chambers

*The purpose of the Solid Waste Alternatives Advisory Committee is to develop policy options that, if implemented, would serve the public interest by reducing the amount and toxicity of waste generated and disposed, or enhancing the effectiveness and sustainability of the system through which the region's solid waste is managed.*

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- |                 |           |   |                              |
|-----------------|-----------|---|------------------------------|
| <b>10:00 AM</b> | <b>1.</b> | <b>CALL TO ORDER AND DECLARATION OF A QUORUM</b>  | <b>Matt Korot, Chair</b>     |
| <b>10:02 AM</b> | <b>2.</b> | <b>COMMENTS FROM THE CHAIR AND SWAAC MEMBERS</b>  |                              |
| <b>10:07 AM</b> | <b>3.</b> | <b>** CONSIDERATION OF SWAAC MINUTES FOR MAY 11, 2016</b>   |                              |
| <b>10:10 AM</b> | <b>4.</b> | <b>INTRODUCTION OF NEW MEMBERS</b>  | <b>Matt Korot, Chair</b>     |
| <b>10:15 AM</b> | <b>5.</b> | <b>SOLID WASTE ROADMAP UPDATES</b>  | <b>Tom Chaimov, Metro</b>    |
|                 |           | <i>Purpose:</i><br>To update SWAAC members on recent planning activities related to Metro's Solid Waste Roadmap work, and to outline next steps.  |                              |
|                 |           | <i>Outcomes:</i><br>Understanding of Roadmap status and progress.   |                              |
| <b>10:30 AM</b> | <b>6.</b> | <b>** SOLID WASTE CODE (TITLE V) CHANGES</b>  | <b>Warren Johnson, Metro</b> |
|                 |           | <i>Purpose:</i><br>To review Metro staff's response to public comments and discuss proposed revisions to the update and housekeeping changes to Metro Code Title V.   |                              |
|                 |           | <i>Outcomes:</i> <ul style="list-style-type: none"><li>• Understanding of Metro responses to comments received during the public notice period.</li><li>• Understanding of revisions proposed to be made in response to the comments.</li><li>• Knowledge of the next steps of the project.</li><li>• Final SWAAC input on the Code changes and endorsement to bring them to Council.</li></ul> |                              |

*Continued on back...*

- 11:00 AM**     **7.    \*\*    SOLID WASTE FEE AND TAX POLICY EVALUATION**                      **Warren Johnson, Metro**
- Purpose:*  
To review and discuss a proposed study to evaluate Metro’s solid waste fee and tax policies.
- Outcomes:*
- Understanding of the purpose of the proposed evaluation study.
  - SWAAC members’ input on the scope of the proposed study.
  - Knowledge of the next steps of the project.
- 11:30 AM**     **8.            UPDATE ON SWAAC SUBCOMMITTEE ON MATERIAL RECOVERY AND CONVERSION TECHNOLOGY FACILITY REGULATORY CHANGES**                      **Bruce Walker, Portland**
- Purpose:*  
To update SWAAC members on the discussions held since the last report to SWAAC.
- Outcomes:*  
Understanding of the focus and outcomes of recent subcommittee meetings and plans for upcoming meetings.
- 11:45 AM**     **9.            CITIZEN COMMUNICATIONS TO SWAAC AGENDA ITEMS**
- 11:55 AM**     **10.          PREVIEW OF THE NEXT MEETING’S AGENDA AND FINAL COMMENTS**                      **Matt Korot, Chair**
- 11.            ADJOURN**

- \*            Material available on the Metro website.
- \*\*          Material will be distributed in advance of the meeting.
- #            Material will be distributed at the meeting.

Upcoming SWAAC Meetings:

- Wednesday, August 10, 2016 from 10 a.m. to 12 p.m. (noon) at the Metro Regional Center
- Wednesday, September 14, 2016 from 10 a.m. to 12 p.m. (noon) at the Metro Regional Center

For agenda and schedule information, call Matt Korot at 503-797-1760, e-mail: [matt.korot@oregonmetro.gov](mailto:matt.korot@oregonmetro.gov).  
To check on closure or cancellations during inclement weather please call 503-797-1700.

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# Metro | Meeting minutes

Meeting: Solid Waste Alternatives Advisory Committee  
Date/time: Wednesday, May 11, 2016; 10:00 a.m. to Noon  
Place: Metro Council Chambers

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## **Attendees**

Casey Camors, City of Milwaukie  
Mike Leichner, Pride Disposal  
Kathy Kaatz, City of Tualatin  
Scott Keller, City of Beaverton  
Theresa Koppang, Washington County  
Keith Ristau, Far West Recycling  
Amy Roth, Association of Oregon Recyclers  
Alando Simpson, City of Roses Disposal & Recycling  
Bruce Walker, City of Portland  
Matt Korot, Metro

## **Absent**

Audrey O'Brien, Oregon Dept. of Environmental Quality  
Amy Pepper, City of Troutdale

## **Presenters:**

Tim Collier, Metro  
Dan Pitzler, CH2M  
Bruce Walker, City of Portland BPS

### **1. CALL TO ORDER AND DECLARATION OF A QUORUM**

Chair Matt Korot called the meeting to order and declared a quorum.

### **2. COMMENTS FROM THE CHAIR AND SWAAC MEMBERS**

Chair Korot notified members that work is continuing on SWAAC membership for the next term. Staff will provide Metro Council President Hughes with the list of applicants. He will then decide who to appoint, after which Chair Korot will notify all applicants. Confirmation of the new members by the full Council had originally been scheduled to for May 26, 2016, but it will likely be later. Chair Korot will notify everyone of the new date and his hope is that the new membership will be in place for the July 2016 meeting.

### **3. CONSIDERATION OF SWAAC MINUTES FOR APRIL 13, 2016**

The minutes of the April 13, 2016 SWAAC meeting were approved.

### **4. SOLID WASTE ROADMAP: TRANSFER SYSTEM CONFIGURATION PROJECT**

Tim Collier of Metro and Dan Pitzler of CH2M presented recommendations from the Transfer System Configuration Project, in order to solicit feedback from the committee. Mr. Collier brought the committee up-to-date on Council input and next steps, and Mr. Pitzler reviewed comments from yesterday's Task Force meeting.

Mr. Collier reminded committee members that there was a task force meeting on February 17, 2016 and on February 25 SWAAC members provided input that was incorporated into staff's discussion with Council at a work session on March 1. or SWAAC review today. Members will once again be asked for feedback after reviewing the presentation today. Next steps will include a meeting with the Solid Waste Directors at the end of the month, and then recommendations and various inputs will be put into a draft resolution to be brought before Council on June 21, 2016, with formal adoption of the resolution likely in July.

The Council gave general support for the existing system and for self-haul and household hazardous waste recommendations. The Council is interested in finding ways to enhance the public benefits in seven elements of the system:

1. Tonnage allocation based on percentage
2. Improved tonnage allocation process
3. Flexibility to pursue new services / technology
4. Small business opportunities
5. Promote efficient off-route travel
6. Improve cost transparency at public stations
7. Rate transparency at private stations

The attached presentation, (exactly the same as was presented to the task force on May 10, 2016) outlines these seven elements for enhanced public benefits with detail provided for each element. (Attachment A)

Clarification from SWAAC members on details of the seven elements included a comment from Mr. Simpson (also a task force member) regarding the proposal in Element 4 that no single firm can transfer more than 40% of the waste in the region. He noted that this represents 40% of the total waste, not a portion of the 60% waste going to private facilities. Mr. Collier concurred.

Ms. Koppang asked what was meant by sub-regional growth in relation to Element 5: *Promote efficient off-route travel*. Mr. Collier responded that this would mean growth in a particular portion of the region that may be generating more waste at that point than overall.

Mr. Collier noted that a lively discussion ensued during the task force meeting during the discussion of Element 7: *Three options for rate transparency at private stations*. He explained that after implementing one or more options to improve transparency, if private tip fees

appear to be substantially higher than costs, Metro will develop guidelines to implement rate regulation.

Lastly, Mr. Collier identified other methods of providing public benefits, namely, no loads would be direct hauled to a disposal facility more than 40 miles from the Metro region boundary, to encourage GHG reduction and greater efficiency.

Mr. Pitzler then summarized comments relevant to the specific polices suggested at the task force meeting of May 10, 2016. There were several comments in relation to the 95% threshold of percentage tonnage allocations, and whether there was flexibility around that, noting that the system is very dynamic. For example, it was asked how the threshold would be counted if there was construction at a station that required diversion or an emergency of some sort. Another question arose regarding an average annual calculation taking into account variances between concurrent years, with one above the threshold and one below, for example.

There was also a comment on the percentage tonnage allocations regarding the necessity of letter from local governments, and concern over the amount of time that it would take to evaluate forecasts, and so forth. Some wondered if there would be a way to make the process timelier. There were also questions around advanced material recovery, for which a timeline has yet to be determined.

Regarding improving cost transparency at public stations, there were questions about details in the background costs for some of the materials used to generate the cost table, and assumptions that were made when those costs were calculated.

In regard to rate transparency at private stations, there were concerns raised about how costs would be evaluated. There are many judgments and allocation decisions to be made, and there was concern expressed regarding the methodology that would be used. There is concern about Metro regulating rates while a competitor in the system. Some questioned Metro's need to be involved since local governments already analyze rates at private transfer stations.

A few task force members recommended striking options 2 & 3 of Element 7. There was some feeling that transparency may not be worth the administrative costs. Finally, there was conversation regarding whether forty miles represented the right distance, and whether these would be wet waste or dry waste trucks. The response from Metro was that this generally refers to wet waste materials. Mr. Walker asked for clarification on the forty mile distance, if that is forty miles from the Metro region boundary, which Mr. Pitzler affirmed. Mr. Pitzler and Mr. Collier then asked for comments from the two task force members who are also members of SWAAC, Mr. Leichner and Mr. Simpson.

Mr. Leichner commented that there needs to be flexibility on the 95% cap, if a transfer station cannot take tonnage because of some modification or perhaps a fire. He suggested a two year average that would take into account various factors. As far as setting rates, there was considerable discussion regarding judgment calls made when Metro sets the rates. Mr. Leichner feels that there needs to be a check on that. He also noted that part of the reason for the 40% minimum is to spread their costs out economically and have a good benchmark for rates.

Mr. Simpson noted that there were questions about the forty mile distance when the task force was closing in on the conversation regarding GHG reduction, as we may not have fully assessed what is within that forty mile boundary. There was concern about losing customers because folks could potentially be hauling directly to Covanta, for example, under the impression that they are going to meet some zero waste business model. There is a need to figure out the most logical, feasible, sustainable approach with the distance traveled to the most geographically beneficial facility.

Ms. Koppang clarified that the forty mile distance referred to a disposal facility, such as Covanta or Riverbend and not a transfer facility. She inquired about other disposal facilities that may be a destination for direct haul. Mr. Roy Brower of Metro offered that Wasco County Landfill and Cowlitz Co. Landfill in Longview are both within proximity. Mr. Pitzler also referenced a concern regarding a hauler who may decide for some reason that they do not want to use a particular facility, and decides to direct haul to a landfill, and whether Metro would support that.

Chair Korot then asked for comments from SWAAC members.

Ms. Koppang offered that it was stated previously that local governments have already examined new transfer station rates; she noted that Washington Co. does not do that, they use Metro rates as a benchmark. Mr. Leichner responded that the intent of the comment was to say that when jurisdictions review disposal reports, an *X* amount of dollars is used to find the rate, and then the per ton rate will be compared to Metro's rate as a benchmark. Ms. Koppang stated that in the past there has been a correction for that difference.

Mr. Korot asked if Ms. Koppang had a preference of the three given options to Element 7 regarding rate transparency. Ms. Koppang replied that it would be ideal to have rate transparency, to know more about what goes into rates, and have greater confidence in them. Mr. Leichner responded given that each station has different costs, the question remains how to evaluate a fair return investment or to set a rate of return so it is fair to both sides. There is concern that there are details missing. Mr. Collier stated that his feeling is in theory, stations that found a way to be more efficient could be punished. If they were to find more efficiency within a rate similar to Metro's, there may be little incentive to do better.

Ms. Camors commented that when rate analysis is done with haulers in Milwaukie, they go through all the financial reports and apply an 8-12% return on investment (per code); she questions if it is worth the investment in time to do that, or to go with option one or two, which is more of an estimate. Mr. Collier noted that this same concern was brought up in the task force meeting, asking if 'the juice was worth the squeeze'. Mr. Korot noted that the rate makers, (Ms. Camors, Ms. Koppang, Ms. Katz and Mr. Walker), are the ones to answer that question. Metro is acknowledging that there must be proportional value to the local governments. Ms. Camors queried if there was any estimate on the time it would take to go through this process. Mr. Collier answered that there has been no detailed analysis at this point, but it could be done for option three.

Mr. Leichner commented that with Metro setting rates and also competing for tonnage, it makes for a tough argument. Mr. Walker asked if the three options indicate Metro will establish a rate, or if it is informational and there is an estimate for financial review. Mr. Collier replied that options one through three are essentially informational; the fourth option may be rate regulation. Mr. Leichner wondered what the number perceived as "too high" would be, when public entities would then have to look at regulating or implementing

rates. He questioned the margin, and stated it would be difficult to justify making an investment in the business and then having to decide it cannot be done because rates were regulated. Mr. Leichner feels there are many questions.

Ms. Camors clarified that the rate regulation would only come into play if there were major questions about the rate that is set. Mr. Collier agreed that there has been no clarification of what would trigger rate setting. There would be a process of going through each of the other options without getting the desired results, which would then trigger going to the fourth option, if necessary.

Mr. Simpson gave an example of an entity such as Home Forward, which hauls its own waste, who may enter into an agreement with a private transfer station. If they see value in the relationship between that private entity and the non-profit, opening that up to regulation could be very sensitive or even hostile. The consensus of the task force yesterday was to find the highest, best and safest approach at this point. Mr. Korot asked what would make the relationship more hostile between government entities and private collectors. Mr. Simpson replied that essentially forcing oversight on private businesses making their own capital investments would make the relationship more hostile. He noted the different tax advantages, margins and challenges for each type and size of business.

Ms. Koppang commented that reasonable costs are allowed for in rate setting; the goal is to ensure costs are not arbitrary or capricious. To the extent she can assuage concerns, most of the costs are allowed in collection rate, allow as long as they are reasonable. There is a way to account for variability; there is already an enormous amount of variability in the five companies operating now. Mr. Leichner responded that with four private facilities and two public facilities, there could be rate differences because the tonnage is lower or they lack the right number of customer accounts, with rate setting it could result in essentially dictating where the tonnage goes. Now, everyone is competing for tonnage at the same basic rate, and that has been the benchmark forever.

Mr. Walker stated that he tends to agree that transparency would be helpful. His view is at this point we need to take it to a higher level. He sees it playing out not in relation to the Metro rate, but instead used an example where transparency would be most helpful. He cited a hauler who owns his/her own stations and reports disposal \$25 higher per ton at their facility, where disposal costs may be being over-reported to pad expenses. Mr. Leichner replied that is a good fear to have. Looking at dump fees on the annual report and the per ton rate, the higher rate could be questioned and disallowed. Mr. Walker opined that what would bolster this estimate is some independent analysis of the rates origin. Were substantial investments made or is it a shell game, trying to get greater profitability. Mr. Leichner countered that given the final say of allowing a facility to pass on the extra charge or not, the facilities would have to beat the current rate or the collectors would just go back to the transfer station.

Mr. Walker stated that he does not see the current rate-making process as hugely problematic. Mr. Simpson noted that the real question may be whether there is there an issue with the current rate-making process that municipalities have to entertain. If there are no concerns, because there are parameters such as a benchmark and open book capability, we can be pragmatic. If it is not broken, keep working it. Mr. Simpson clarified for Ms. Koppang that "open book" refers to access to rate reviews from collection, not transfer stations.

Mr. Walker reiterated that under review, if rate makers were able to identify a rate that was out of line there is still no regulatory authority or insight into what is driving the higher rate. Mr. Simpson inquired as to whether haulers complain about margins. Ms. Koppang noted that interestingly, that issue has arisen with the potential Metro Council resolution to prohibit Washington County waste from going to the Riverbend landfill. Metro's analysis that the waste could go to Arlington put it way out of whack with the other transfer station. In order to present all the variables to the decision-makers more transparency would be welcome. Ms. Roth noted that with mandatory minimum wage-rate increases looming, the impact on transfer rates should be under consideration; she wondered if that was being factored in, and if there might be some emergency consideration in this instance. Mr. Collier stated that Metro would be susceptible to the same issue, so in theory, a minimum wage-increase would be factored in.

Mr. Walker commented that in his recollection, Element 8 was not discussed at the previous SWAAC update. The benefit of a transfer station is to consolidate waste for transfer and get trucks back on route quickly, and it seems there is general agreement that the regions private/public system is working very well. He questioned why direct haul is under consideration for route trucks, and why it would be beneficial for the region. Mr. Collier agreed that it would not be beneficial for the region, the goal of this element is to limit direct haul as opposed to driving a long distance with route trucks. It is not a major issue at this point, but is a potential concern for some regulators. Mr. Simpson added that is only the wet waste rate under consideration.

Mr. Walker questioned why any waste would be transported out of the region. Why not use the facilities here and the transfer trailers that are going to appropriate locations? Ms. Koppang replied that there are some businesses in Washington Co. outside the Metro boundary that are direct hauling; Mr. Walker pointed out that these businesses are hauling materials collected outside the region. He stated that some businesses want to incinerate their waste, but he wondered if there is a less GHG generating way of getting material there. He advocates for using the facilities in place for their designed purpose.

Mr. Korot asked for further comments from members; there were none.

Mr. Collier informed the committee that the next step is to go before local governments solid waste directors before the end of the month. Both the task force and the SWAAC members will be informed of what will be presented to Council at the June 21, 2016 meeting.

## **5. UPDATE ON SWAAC SUBCOMMITTEE ON MATERIAL RECOVERY AND CONVERSION TECHNOLOGY FACILITY REGULATORY CHANGES**

Bruce Walker provided an update for SWAAC members on the work of the subcommittee on material recovery and conversion technology facility regulatory changes.

Mr. Walker spoke of the very real challenges with how best to provide the appropriate level of oversight or regulation, or to decide that things are working well. In the broadest terms he can outline what some of the steps might be. Regulating facilities might mean franchise, permit or license. Some feel regulation is a reasonable step for handling source-separated material, while others doesn't see the need for regulation. The other end of the spectrum is that perhaps there is no need for regulation. Mr. Walker choose to use the word 'oversight' as a middle ground for some of the steps that could be taken or for Metro to provide information to local governments, but also to broader citizen



representatives and environmental groups who have questions regarding how materials are handled. There has been a very vibrant discussion, with another meeting planned next week. The goal is to work through the words and/or steps that will lead the committee to some agreement, and bring that recommendation to SWAAC and ultimately to Council on the appropriate action to take.

Mr. Walker also spoke to the question of the Metro code definition of recyclables and solid waste, with further clarification from Mr. Shane Abma that Metro's code is broader than State law. This will inform the decision-making process on single-source recycling. Mr. Walker added that Mr. Korot gave a brief history of other elements including DEQ, the State of Washington, and the regional EPA, regarding standards set for MRF's since 2008. He explained that part of reason for the differences between standards in Washington and Oregon is single-stream recycling. Metro ultimately chose to hire a consultant to look at performance of MRF's in the region. Mr. Korot explained that Metro was not looking to establish performance standards, but instead to provide some framework based on the ongoing discussion to move forward with oversight or regulation or to continue with the status quo.

Mr. Walker continued, noting the fair amount of information reviewed by the various members of the subcommittee, with each taking a different view. In the last meeting the subcommittee began honing in on key discussion points, and Mr. Walker hopes the next meeting will provide more framework, so he may report back to SWAAC with more definitive work.

Mr. Korot asked for comments from the committee. Mr. Blue stated that the agenda for the next meeting will go out next week.

## **6. CITIZEN COMMUNICATION TO SWAAC AGENDA ITEMS**

There were no citizen comments.

## **7. PREVIEW OF THE NEXT MEETING'S AGENDA AND FINAL COMMENTS**

The SWAAC meeting scheduled for June 8, 2016, conflicts with the Association of Oregon Recyclers conference which many members will be attending. The June meeting has been cancelled.

The next SWAAC meeting will be July 13, 2016, 10:00 am to 12:00 p.m., in Council Chambers. A complete agenda will be sent to members and posted on the website in advance of the meeting.

Meeting adjourned at 11:07 a.m.

## Solid Waste Roadmap Update – July 2016

*Summarized from an oral update given by Tom Chaimov at the 7/13/2016 Metro SWAAC meeting*

Following is a progress update of Solid Waste Roadmap work. More information on Roadmap work can be found at [oregonmetro.gov/solidwasteroadmap](http://oregonmetro.gov/solidwasteroadmap).

The Roadmap program encompasses six policy-related projects (#1-6 below), plus one technical support project (#7), together investigating ways to *get the most of what we don't want*.

1. Food Scraps
2. Metro South
3. Transfer System
4. Long-term management of discards
5. Landfill Capacity Policy
6. Fee & Tax Policy
7. Foundational Modeling

**Food Scraps Capacity.** The purpose of food scraps recovery is to reduce greenhouse gas emissions from landfills and instead of burying food, use it as a feedstock to produce useful products, such as compost and energy. The key question of Metro's Food Scraps Capacity work is: What actions should Metro take to ensure adequate and reasonably proximate capacity to transfer and process food scraps collected from the region's businesses and residents?

The basic chicken-and-egg problem that has remained unsolved for over a decade is that a regional food recovery program would benefit both from more local processing capacity than we currently have and increased separation and collection of food scraps. Neither one works without the other. Earlier this year, Metro focused on processing when we issued a Request for Qualifications that ultimately qualified nine firms as eligible to propose on adding processing capacity for the region. If the Metro Council directs staff to issue a Request for Proposals to those nine firms, it will happen after we have a better understanding of how to get enough quality feedstock delivered to make a facility viable. Right now, a large body of work is focused on understanding the most effective way to get more participation from businesses that generate food scraps. Metro is reaching out to about 300 commercial food generators by phone, in person, and with online surveys to develop an understanding of why businesses that separate food choose to do so, why those who don't, don't, and why some businesses who used to separate no longer do. This information, along with additional analysis, will inform a discussion with SWAAC in September and the Metro Council later this fall. Metro is also investigating the costs and benefits of requiring certain types and sizes of food-generating businesses to have food recycling programs in place.

**Metro South Station.** As a response to the question, *What service alternatives should Metro pursue at Metro South Station and in the vicinity to provide the full suite of needed services?*, SWAAC members and other stakeholders helped fashion a number of plans for potentially reconfiguring Metro South Transfer Station—built over 30 years ago in Oregon City—to maximize its functionality in the modern system. Of the two plans still under review, one would keep self-haul services on site and the other would move self-haul to another site, location TBD. At this time, whether or not to invest in reconfiguring Metro

South Station depends on what is expected of that site for the future. For example, it is possible that moving ahead with reconfiguration may be triggered by the need for Metro South to step up and provide commercial food scraps reload service. But we will not know for sure until we know if and where new food scraps processing capacity is established. There may be other triggers. A recent constructability review indicated that moving self-haul offsite is likely the more feasible of the two remaining options.

**Transfer System Configuration.** Metro South Station operates within the larger regional transfer system. The key question for the transfer system is: What model of the public-private transfer system (e.g., tonnage allocations, service levels, rates) best provides for the public interest?

SWAAC saw last month that Metro Council intends to maintain largely status quo configuration for the remainder of the decade, with a few new policies for Council to consider on July 21, 2016 to shore up the system's delivery of public benefits. The specific policy proposals and an explanation of the process used to form them can be found on [Metro's website](#). Two of the more significant new policies include Metro's willingness to allocate no more than 60% of wet waste to private firms (thus preserving at least 40% of wet waste to the public transfer stations), and a policy of progressive steps to improve transparency in transfer station charges region-wide. With any new policy, there can sometimes be unintended consequences, so, if adopted, staff anticipates that over the next three years—till 2020, implementation will be viewed as transitional, to monitor how these new policies play out and to make adjustments as needed.

**Long-term Management.** The current Regional Solid Waste Management Plan provides relatively detailed guidance on waste reduction programs, but is less specific about what to do with the garbage that remains after all reduction efforts. Therefore, the key question of the Long-term Management project is: What should the region do with materials that aren't reused, recycled or composted? For decades, landfill has been the default answer. To start, Metro took a look at over a dozen garbage management technologies (gasification, pyrolysis, anaerobic digestion of garbage, etc.), and culled everything as technically infeasible for our region except for Waste-to-Energy (WTE) and possibly Advanced Material Recovery (AMR).

On WTE, Metro Council directed staff engineers to work with Covanta staff, the operators of the Marion County WTE facility in Brooks, this summer and fall to better understand the specifics of a proposed expansion at that site. Associated with that fact finding, Metro intends to conduct a rapid Health Impact Assessment (HIA) comparing two specific scenarios: landfilling 200,000 tons per year somewhere in eastern Oregon or eastern Washington vs. sending that same waste to an expanded Covanta Marion facility. The HIA will take into account transportation and processing impacts and will look at tradeoffs from one part of the state to another. As part of this assessment, Metro will also conduct a life-cycle greenhouse gas analysis of the two scenarios. There will be public involvement in the HIA, but we do not yet know precisely what that will look like. We will keep SWAAC informed as our plans develop. Staff will roll out final HIA results probably in February-March 2017.

Related, the Metro Council will be hearing about the Durham/York (Ontario, Canada) WTE facility at its July 21, 2016 meeting. At that meeting, the Director of Waste Management Services from the Durham regional government will share her region's thinking that led to the establishment of North America's first greenfield waste-to-energy facility in 20 years. The purpose of this invited visit is to understand the

factors, considerations, and the mindset that led the Durham, and partner York, communities to pursue a WTE solution instead of continued landfilling or other alternatives.

On Advanced Material Recovery, generally, Metro believes that the technology works in concept. This is technology to pull recyclables or energy-recoverable materials from mixed waste. We think it will be prudent to await results from the State of Oregon's 2016-17 waste composition study to see if there is enough good stuff in the garbage to warrant running it through a sophisticated—and probably expensive—sorting process.

**Fee and Tax Policy.** A basic question of Metro fee and tax policy is: How should Metro recover the cost of solid waste services and programs, and general government, to improve stability, equity and predictability? In general, Metro believes that its fee and tax policies are appropriate; however, there may be specific opportunities to better align those policies with desired outcomes and public benefits, especially given recent and anticipated future changes in the region's solid waste system.

For example, Metro has a long-standing policy to exempt certain types of waste from Metro fees or taxes, to encourage certain behaviors, such as material recovery. Metro doesn't levy fees and taxes on recycled material. Similarly, some special wastes, such as environmental cleanup material, also are mostly exempted from fees and excise tax. Metro is taking an opportunity to re-examine current practices, to ensure consistency with desired outcomes. As a first step, Metro will refresh a 10-year-old study of Metro's fee and tax policies, specifically related to exemptions. That refreshed study should be completed before year end, in time for a new subcommittee of SWAAC to convene beginning in early 2017. The report will provide a basis for discussion and debate, as that new subcommittee develops options to improve Metro's fee and tax policies. The Fee and Tax process is expected to resemble the MRF/Conversion Tech process that is wrapping up now.

**Landfill Capacity Policy.** Earlier this year the Metro Council asked staff to develop a draft landfill policy to answer a key question: How should capacity of landfills inform where Metro directs waste for landfill disposal?

Acknowledging that our region has access to ample landfill space, the proposed policy would direct waste generated in the region to only those landfills that do not have to expand to accommodate more waste. On May 26, 2016 the Metro Council adopted a Resolution finding that staff had fulfilled its obligation to develop such a landfill capacity policy, *and* Council deferred any action relative to such a policy until December 1, 2016 or later.

**Foundational Work.** Metro is developing a model to inform all sorts of long-range planning, not just the Roadmap or a Roadmap project. This model is not about policy-making, but is a technical tool to provide information for various policy-making efforts. The basic question the model sets out to answer is: What is the amount and nature of waste that might be disposed in the future, and how will various alternatives perform in managing it?

The basic structure of the flow model<sup>1</sup> is complete, with current work focused on refinements and developing the user interface.

That summarizes brief updates on all seven elements included under the Solid Waste Roadmap Program banner. For more information, go to [oregonmetro.gov/solidwasteroadmap](https://oregonmetro.gov/solidwasteroadmap) or contact Tom Chaimov at [tom.chaimov@oregonmetro.gov](mailto:tom.chaimov@oregonmetro.gov).

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<sup>1</sup> At its most basic level, the foundational model—sometimes referred to as a “flow model”—generates waste on the ground based on generator type (residential vs. business, type/size of business, etc.); waste is loaded into into appropriate vehicles; and those vehicles travel over the road network to tip at appropriate regional facilities for reload and ultimate delivery to landfill. With knowledge of travel costs, tip fees and emissions, the model characterizes the cost and environmental impacts of different user-specified scenarios.

MAKING A  
GREAT  
PLACE



# Metro Solid Waste Code (Title V) Improvements & Housekeeping Changes

July 13, 2016

**Metro**

**Solid Waste Alternatives  
Advisory Committee**

**Warren Johnson, Compliance Manager**

## TITLE V SOLID WASTE

Chapter	Title
5.00	Solid Waste Definitions
5.01	Solid Waste Facility Regulation
5.02	Disposal Charges and User Fees
5.04	Recycling Business Assistance Program
5.05	Solid Waste Flow Control
5.06	Community Enhancement Programs
5.07	Recycling Credits
5.09	Illegal Disposal
5.10	Regional Solid Waste Management Plan

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# Purpose

- Review the proposed improvements and housekeeping changes to Metro Code Title V.
- Review the comments that Metro received from the public and Metro's responses to those comments.
- Seek input from SWAAC on the general scope and content of the revised changes.
- Seek endorsement by SWAAC to bring the proposed solid waste code changes to Metro Council for consideration.

# Metro Code Title V (Solid Waste)

## Track 1 Code Changes

- Response to comments
- Revised changes

- Warren Johnson

## Track 2 MRF/CT

- Subcommittee in progress

- Dan Blue
- Roy Brower

## Track 3 Fees & Taxes

- Study in August
- Subcommittee in Dec/Jan

- Warren Johnson
- Tim Collier



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# Goals and Objectives

The proposed improvements and housekeeping changes are intended to make the Code more:

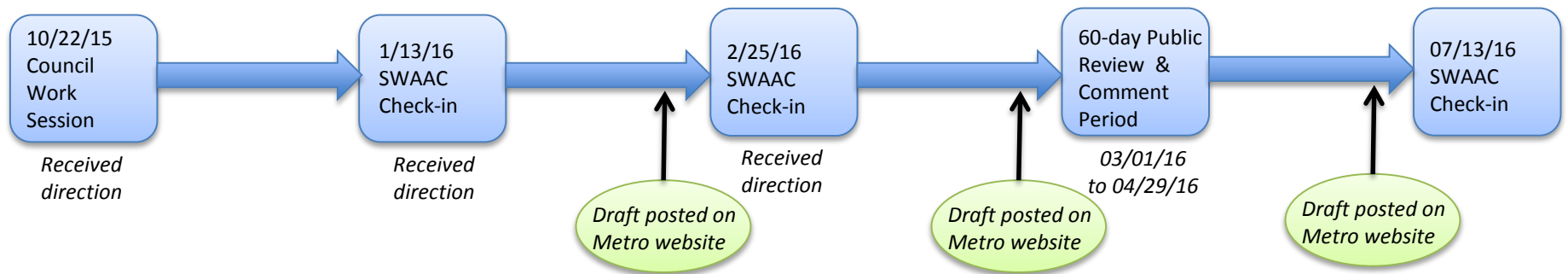
- Consistent and easier to understand
- Resilient and adaptive to change
- Transparent with implementation details in administrative rule

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# Summary of Initial Proposal

- **Overview** – Changes to four chapters:
  - Substantive and non-substantive
  - General formatting and reorganization
  - Consistency and clarity
  - Administrative rule process
- **Chapter 5.00** – Add, remove, and modify certain terms and definitions
- **Chapter 5.01** – Add, remove, and modify certain facility requirements
- **Chapter 5.02** – Require scale weights for measuring Metro-area waste
- **Chapter 5.05** – Delegate certain licensing to Chief Operating Officer

# Overview of Process to Date



- **October 2015** – Council direction on proposed changes and process
- **January 2016** – SWAAC direction on general proposal
- **February** – SWAAC draft review and direction on proposed changes
- **March and April** – 60-day public review period
- **July** – SWAAC review and direction on revised changes

# Guide to the Revised Changes

- Initial proposal posted for 60-day public review period
- Comments received from six members of the public
- Comments and Metro’s responses posted on website
- Summary of revisions made in response to comments posted on website (Exhibit A)

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

# Guide to the Revised Changes (continued)

- Newly revised chapters posted on website
- Proposed changes shown in red with:
  - ~~Strikethrough~~ text showing deletions
  - Underlined text showing additions
- Revisions made in response to comments highlighted in blue

~~(r)~~—"Department" means ~~the Metro Finance and Regulatory Services Metro's Property and Environmental Services~~ Department. in Chapter 5.09.

~~(s)~~—"Designated facility" means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.~~means one of the facilities constituting aa facility that Metro designates as part of the system designated from time to time pursuant to Chapter 5.05.~~

**Comment [A2]:** Revision made in response to comments. Refer to Exhibit A.

~~(t)~~—"Direct haul" means the delivery of putrescible waste from a solid waste facility directly to Metro's contract operator for disposal of putrescible waste. Direct haul is an activity under Chapter 5.01.

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# Summary of Revised Changes

## Chapter 5.00

- Add term *electronic device* using the definition for *covered electronic device* as defined in ORS 459A.305(4)
- No change to current term *standard recyclable materials*
- Revise the following definitions (non-substantive):
  - *Community enhancement fee*
  - *Designated facility*
  - *Regional system fee*
- Delete unnecessary terms (non-substantive):
  - *Metro designated facility*
  - *Regional transfer charge*

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# Summary of Revised Changes

## Chapter 5.01

- No change to current “purpose” section provisions
- No change to current exemption for wood waste processors
- No change to current exemption for electronic waste processors
  - Add prohibition on outdoor storage of electronic device waste
- No change to automatic granting of authorizations if Metro fails to act
  - No change to 120-day decision-making timeframe for renewals
  - Extend decision-making timeframe to 180 days for new authorizations
- Clarify and expand administrative rule process and timeframes
- Other non-substantive revisions to improve clarity and consistency

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# Summary of Revised Changes

## Chapter 5.02

- Clarify what qualifies for disposal charge credits at Metro's facilities
- Clarify and expand administrative rule process and timeframes
- Other non-substantive revisions to improve clarity and consistency

## Chapter 5.05

- Retain current "purpose" section provisions
- Clarify and expand administrative rule process and timeframes
- Other non-substantive revisions to improve clarity and consistency



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# Next Steps

- **September** – Presentation at Council work session
- **October** – Council consideration of proposed changes
  - 1<sup>st</sup> reading of ordinance with public hearing
  - 2<sup>nd</sup> reading of ordinance and decision
- **January 2017** – If adopted, proposed changes take effect in 90 days

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# Key Questions for SWAAC

1. Does SWAAC have comments on the general scope or content of the revised Code changes?
2. Does SWAAC generally support bringing the proposed Code changes to Metro Council for consideration later this year?

More information at [oregonmetro.gov/solidwasteupdates](https://oregonmetro.gov/solidwasteupdates)

# Request for Proposals to Evaluate Metro’s Solid Waste Fee and Tax Policies

July 6, 2016

In October 2015, Metro Council directed staff to further review and seek additional stakeholder input on potential changes to Metro’s solid waste fee and tax exemption policies. The last review of these policies was conducted in 2006 and merits another look at how Metro can apply its regional system fee and excise tax more fairly and equitably to cover the costs of managing the region’s solid waste system while encouraging the continued reuse and recycling of materials.

Metro intends to initiate a request for proposals in August seeking a contractor to evaluate and recommend improvements to Metro’s solid waste fee and tax policies. The contractor will also study similar policies in other west coast jurisdictions and interview representatives of potentially affected facilities in our region to better understand their views and concerns relating to potential changes in Metro’s solid waste fees and taxes. The report from the study will provide a foundation for further consideration of potential code changes by SWAAC and Metro. The background information and draft scope of work for the request for proposal is provided below.

## BACKGROUND/HISTORY OF PROJECT

Metro is the regional government that provides a variety of services for the urbanized portions of Clackamas, Multnomah and Washington counties of Oregon. Solid waste planning and the management and disposal of solid waste generated within its jurisdictional boundary are two of Metro’s principal responsibilities. As part of these responsibilities Metro owns and operates two full-service transfer stations, and authorizes and regulates four other privately-owned transfer stations.

To support its solid waste responsibilities, Metro recovers its direct service costs through a point of service tonnage charge assessed at its two transfer stations. In addition, Metro assesses a regional system fee and excise tax on each ton of waste disposed from the Metro region, regardless of which facility—public or private—disposed the waste. The regional system fee recovers the cost of waste reduction programs and planning, hazardous waste disposal, and staffing and overhead associated with those regional programs. The excise tax helps support Metro’s general government activities. Together, the tonnage charge, regional system fee, excise tax, and other pass-through fees comprise Metro’s total tip fee, as follows:

<u>FY16-17 Metro Tip Fee</u>	
Tonnage Charge	\$63.19
Regional System Fee	\$18.48
Host fee	\$1.00
DEQ fees	\$1.82
Excise Tax	\$11.76
Total per-ton tip fee	\$96.25

Metro also charges a fee of \$2 per automated transaction and \$10 per cash transaction to recover the cost of money handling and staffing of the scalehouse at Metro-owned stations.

Under certain circumstances, Metro discounts the regional system fee and excise tax. For example, waste generated as a result of an environmental cleanup may qualify for a reduced fee and tax rate. Metro also exempts certain waste that is used productively in a landfill. These discounts and exemptions are described in Metro Code Title V (Solid Waste), specifically Chapter 5.02 for regional system fees, and Title VII (Finance), specifically Chapter 7.01 for excise tax.

Over the years, certain solid wastes have been subject to Metro's reduced fee and tax rate or otherwise exempted based on various factors such as the generator intent, type of contaminant, or whether the waste is ultimately "used" at a disposal site. This has created different rules for similar types of wastes and prevents Metro from fulfilling its responsibilities to ensure consistent and transparent application of its fee and tax determinations and ensure equity and fairness for participants in the solid waste system. In August 2015, Metro staff published proposed changes to Metro Code Title V and Metro Code Chapter 7.01 that were revenue neutral and intended to clarify current disposal practices with the intent of Metro policy. Metro then held a public workshop to review the proposed changes with interested parties.

Potentially affected parties raised a number of concerns regarding the proposed changes to Metro's fee and tax assessment policies and the process used to develop these changes. Staff reported these concerns to the Metro Council and recommended a more rigorous process for Metro's consideration of these code changes. The Metro Council concurred with staff's revised process before formal consideration of the changes.

As a first step in this revised process, Metro wishes to review the existing fee and tax assessment policies, procedures and disposal trends of the types of materials described above. This work will be similar to work completed for a study conducted in 2006 entitled, "Evaluation of Disposal Trends for Environmental Clean-up and Beneficial Use Materials." The purpose of the request for proposals is to obtain consulting services to conduct this review which will establish a foundation for the subsequent consideration of code changes.

#### **PROPOSED SCOPE OF WORK/SCHEDULE**

- Review the previous report, existing Metro Code, current practice for assessing fees and taxes and staff's previously proposed changes to the Metro Code.
- Develop an understanding of the Oregon Department of Environmental Quality's rationale, policies and procedures related to alternative daily cover, whole tires, and other materials that receive special consideration, such as materials that find beneficial uses at a landfill.
- Develop a structured interview instrument and interview the parties that currently receive fee and tax exemptions concerning their opinions regarding Metro's existing and proposed fee and tax policies regarding the materials under discussion.
- Contact the appropriate state agencies in Washington, California and Idaho regarding how they and local jurisdictions within their states assess fees and taxes and handle exemptions on waste; and contact a sample of the appropriate jurisdictions as to their policies and the rationale for exempting waste from fees and taxes.

- Develop a report, within 120 days of contract execution, summarizing findings similar to the 2006 report with updated findings and alternatives including but not limited to the following considerations:
  - How Metro fee and tax policy compares to other jurisdictions;
  - Is there a public benefit/policy rationale for the current exemption system;
  - Are there improvements/clarifications that should be made and what is the rationale; including but not limited to:
    - the current relevant code and the proposed changes; and
    - decoupling fee and taxes when applying discounts and exemptions.
  - Address how the current system or proposed alternatives (including changes proposed by Metro staff) achieve the:
    - public benefits of: 1) protecting people’s health; 2) protecting the environment; 3) getting good value for the public’s money; 4) keeping a commitment to the highest and best use of materials; 5) being adaptive and responsive to changing needs and circumstances; and 6) ensuring adequate and reliable services are available to all types of customers;
    - goal of increasing the region’s waste reduction and recycling efforts; and
    - objectives of making the Code more relevant and simpler to use so that all users of the solid waste system are subject to the same rules.
- Present draft findings to internal staff.
- Present final report to one external group.

#### **ADDITIONAL INFORMATION/APPENDICES**

In addition to the above information, the following background documents will also be included as part of the final RFP as reference material:

- List of companies that currently receive fee and tax exemptions (names and annual tonnage amounts);
- The proposed changes to Metro Code Title V and Metro Code Chapter 7.01 that were previously published in 2015
- Council Work Session Worksheet from October 2015
- The previous beneficial use/cleanup material study (2006) entitled, “Evaluation of Disposal Trends for Environmental Clean-up and Beneficial Use Materials;”
- A current designated facility agreement; and
- Regulatory Guidance Bulletin No. 7 entitled, “Determining Fees and Taxes Due on Solid Waste.”

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# **Solid Waste Fee and Tax Policy Evaluation**

Metro Solid Waste Alternatives Advisory Committee  
Warren Johnson, Compliance Manager

July 13, 2016

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# Purpose

- Review Metro's existing solid waste fee and tax policies
- Review the purpose of an upcoming fee and tax study
- Review the scope of work for a request for proposals
- Seek input from SWAAC on the proposed scope of work

# Metro Code Title V (Solid Waste)

## Track 1 Code Changes

- Response to comments
- Revised changes

- Warren Johnson

## Track 2 MRF/CT

- Subcommittee in progress

- Dan Blue
- Roy Brower

## Track 3 Fees & Taxes

- Study in August
- Subcommittee in Dec/Jan

- Warren Johnson
- Tim Collier

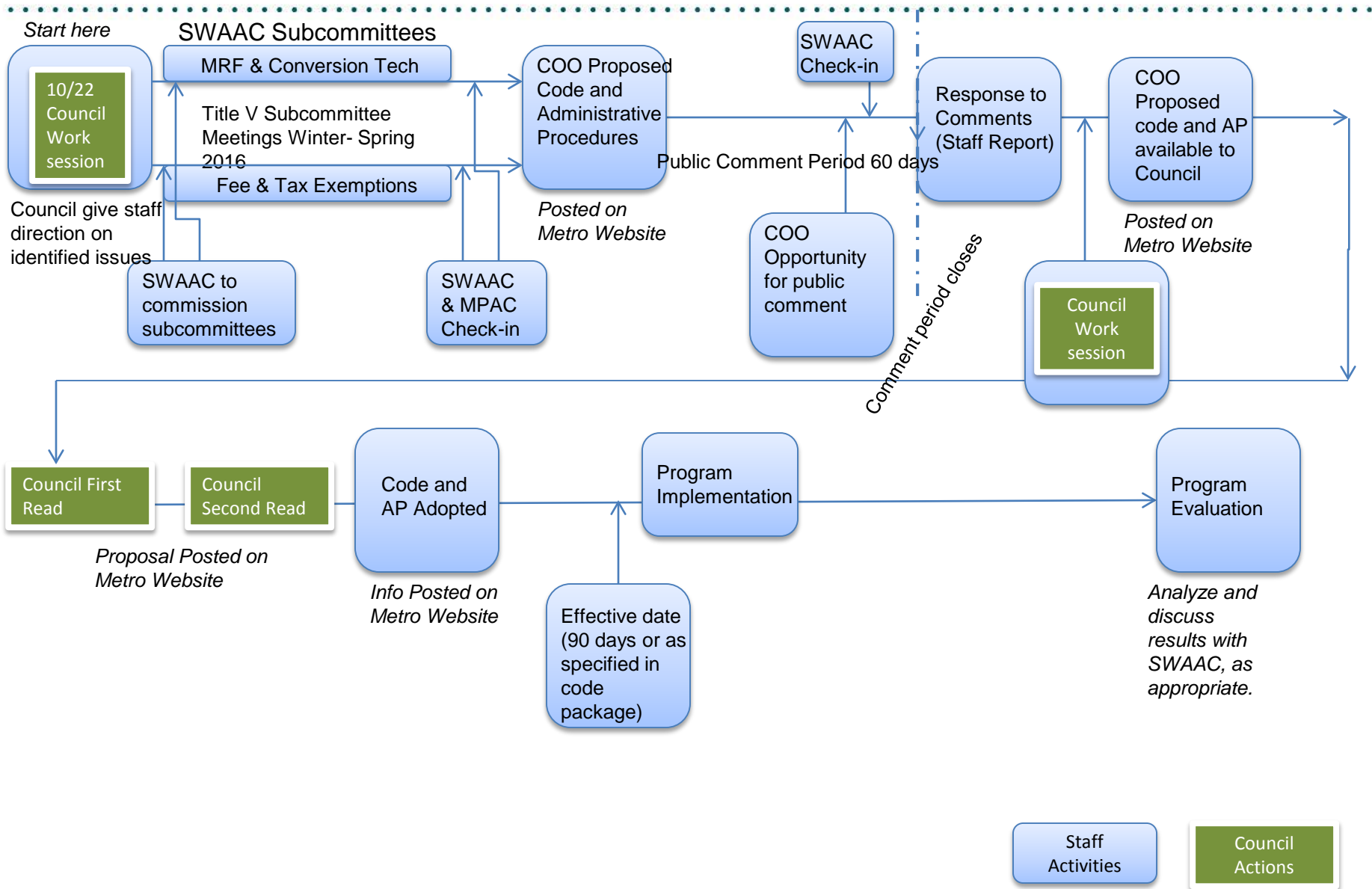


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# Goals and Objectives

The proposed evaluation of Metro's solid waste fee and tax policies is intended to identify ways to make the Code more:

- Consistent and easier to understand
- Resilient and adaptive to change
- Transparent with implementation details in administrative rule
- Fair and equitable in its application



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# Regional System Fee and Excise Tax

- Regional system fee (currently \$18.48 per ton)
  - Regional solid waste programs and services
  - Chapter 5.02
- Excise tax (currently \$11.76 per ton)
  - Metro's general fund expenditures
  - Chapter 7.01
- Fee and tax assessed at time of disposal
- Rates set annually
- Rates determined by spreading the revenue needs equally across the solid waste tonnage for the year

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# Regional System Fee and Excise Tax

- Full fee and tax rate - (\$30.24 per ton)
  - General solid waste such as household garbage, construction and demolition debris, industrial process waste, special waste, etc.
- Reduced fee and tax rate - (\$3.50 per ton)
  - Environmental “cleanup material” such as petroleum-contaminated soil and spill debris.
- Fee and tax exemption – (no charge)
  - “Useful material” that is used productively in the operation of a disposal site and accepted at no disposal charge such as waste used for roadbeds or alternative daily cover.
  - Processing residual produced by a Metro-licensed tire processor.

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# Study of Disposal Trends – October 2006

- *Evaluation of Disposal Trends for Environmental Clean-up and Beneficial Use Materials* by URS Corporation in October 2006
- Purpose of the study was to evaluate issues related to the management of reduced-rate and exempt waste
- Recommended options from the study:
  - Keep status quo
  - Clarify Code and reporting to improve tracking (no policy change)
  - Establish only reduced-rate category with no exemptions
  - Eliminate the reduced-rate and exemption policy
- Metro implemented pre-approval process and reporting changes

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# Scope of Work for Evaluation

- Update information from 2006 study
- Review Metro's current policies
- Study and report on DEQ's policies
- Study and report on policies at other west coast jurisdictions
- Interview and solicit input from parties that receive exemptions
- Report findings and alternatives for consideration

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# Scope of Work for Evaluation (continued)

Considerations for the study include:

- How do Metro's policies compare with other jurisdictions?
- Is there a public benefit or rationale for the current exemption policy?
- Are there any improvements or clarifications that should be made?
- How does the current system or any proposed alternatives:
  - Meet the public benefits of the region's solid waste system?
  - Achieve the region's waste reduction and recycling goals?
  - Make Metro's solid waste code more equitable and simpler to use?

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# Next Steps

- **August** – Initiate request for proposals (30-day period)
- **September** – Review proposals and select contractor
- **October** – Initiate scope of work
- **December** – SWAAC check-in for approval of subcommittee and nominations
- **January** – SWAAC check-in for input on subcommittee membership
- **February/March** – Evaluation report complete and subcommittee kick-off



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## Key Question for SWAAC

Does SWAAC have any comments on the proposed scope of work for Metro's solid waste fee and tax policy evaluation?



Date: July 6, 2016

To: Solid Waste Alternatives Advisory Committee Members

From: Warren Johnson, Solid Waste Compliance Manager

Subject: Response to Public Comments Received on Proposed Changes to Metro Code Title V

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On February 25, 2016, the Solid Waste Alternatives Advisory Committee discussed a variety of proposed changes to Metro Code Title V (Solid Waste) that aim to bring greater consistency in how Metro reviews and authorizes solid waste facilities and greater transparency in how Metro implements its requirements to protect the environment and the public's health. SWAAC endorsed the initiation of a 60-day public review and comment period to solicit further input on the proposed changes. The formal public comment period opened on March 1 and ended on April 29, 2016.

The public comments that Metro received, Metro's responses to those comments, and any resulting revisions to the proposed Metro Code Chapters 5.00, 5.01, 5.02, 5.05 are described in the following attachments:

- Summary of the written comments received from the public and Metro's responses to those comments entitled, *Metro's Response to Comments on Proposed Changes to Metro Code Title V*;
- Copies of the public comment received; and
- Comparison table showing all of the proposed revisions made in response to the comments entitled, *Exhibit A*.

SWAAC members have an opportunity to provide input on the above-mentioned revisions before the proposed Code changes are presented to Metro Council for consideration later this year.

## Exhibit A

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

July 6, 2016

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

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
3	The initial draft did not include a definition for the term "electronic device."	<p><b>Chapter 5.00 - Solid Waste Definitions</b></p> <p><u>"Electronic device" means:</u></p> <ol style="list-style-type: none"> <li><u>(1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;</u></li> <li><u>(2) A desktop computer or portable computer;</u></li> <li><u>(3) A television of any type having a viewable area greater than four inches measured diagonally;</u></li> <li><u>(4) A computer peripheral; or</u></li> <li><u>(5) A printer.</u></li> </ol> <p><u>The term electronic device does not include:</u></p> <ol style="list-style-type: none"> <li><u>(1) Any part of a motor vehicle;</u></li> <li><u>(2) Any part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, such as diagnostic, monitoring or control equipment;</u></li> <li><u>(3) Telephones or personal digital assistants of any type unless the telephone or personal digital assistant contains a viewable area greater than four inches measured diagonally; or</u></li> <li><u>(4) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.</u></li> </ol>
4	<p><b>Chapter 5.00 - Solid Waste Definitions</b></p> <ul style="list-style-type: none"> <li>• "Regional system fee" means <del>those fees which pay the cost of the a fee that pays</del> Metro waste management system <u>costs</u>.</li> <li>• "<u>Regional transfer charge</u>" means <del>those fees which pay a fee that pays</del> the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities.</li> </ul>	<p><b>Chapter 5.00 - Solid Waste Definitions</b></p> <ul style="list-style-type: none"> <li>• "Regional system fee" means <del>those fees which pay the cost of the a fee that pays the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system. Metro waste management system.</del></li> <li>• "<u>Regional transfer charge</u>" means <del>those fees which pay the direct unit operating costs of the Metro transfer stations. This fee is imposed upon all solid waste delivered to Metro disposal system facilities.</del></li> </ul>

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
5	<p><b>Chapter 5.00 – Solid Waste Definitions</b></p> <p><del>"Standard recyclable materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.</del></p>	<p><b>Chapter 5.00 – Solid Waste Definitions</b></p> <p>"Standard recyclable materials" means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.</p>
6	<p><b>Section 5.01.010 - Purpose</b></p> <p><u>(a)</u> This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to <del>protect:</del></p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; <del>to implement</del></p> <p><u>(2) Protect and preserve the environment and livability of the region;</u></p> <p><u>(3) Implement programs</u> cooperatively with federal, state and local agencies <u>consistent with</u> the Regional Solid Waste Management Plan; <del>to provide a</del></p> <p><u>(4) Provide</u> coordinated regional disposal, <u>management</u> and resource recovery <del>program and a solid waste management plan programs</del> to benefit all citizens of Metro; <del>and to reduce</del></p> <p><u>(5) Adapt and respond to changes in the solid waste system; and</u></p> <p><u>(6) Reduce</u> the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.</p> <p><u>(b)</u> The provisions of this chapter shall be liberally construed to accomplish these purposes.</p>	<p><b>Section 5.01.010 - Purpose</b></p> <p><u>(a)</u> This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to <del>protect:</del></p> <p><u>(1) Protect</u> and preserve the health, safety and welfare of Metro's residents; <del>to</del></p> <p><u>(2) Implement the Regional Solid Waste Management Plan</u> cooperatively with federal, state and local agencies; <del>the Regional Solid Waste Management Plan; to</del></p> <p><u>(3) Provide</u> a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and <del>to</del></p> <p><u>(4) Reduce</u> the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.</p> <p><u>(b)</u> The provisions of this chapter shall be liberally construed to accomplish these purposes.</p>
7	<p><b>Section 5.01.030 – Prohibited Activities</b></p> <p><i>The initial draft did not include a prohibition on the outdoor storage of "electronic devices."</i></p>	<p><b>Section 5.01.030 – Prohibited Activities</b></p> <p><u>(g) Any person to store electronic device waste uncovered and outside of a roofed structure.</u></p>

<b><u>Revision</u></b>	<b><u>Initial Draft 02/05/2016</u></b>	<b><u>Revised Draft 07/06/2016</u></b>
8	<p><b>5.01.040 – Exemptions to Prohibited Activities</b></p> <p><del>(D) Operations or facilities that chip or grind wood wastes, unless:</del></p> <p><del>(i) such chipped or ground wood wastes are processed for composting;</del></p> <p><del>or</del></p> <p><del>(ii) such operations or facilities are other wise regulated under Metro Code Section 5.01.045.</del></p>	<p><b>5.01.040 – Exemptions to Prohibited Activities</b></p> <p><del>(D) An</del> <del>Operations</del> or facility<del>ies</del> that <del>chip or grind</del><del>processes</del> wood wastes, unless:</p> <p>(i) <del>The</del><del>such chipped or ground</del> wood wastes are processed for composting; or</p> <p>(ii) <del>The</del><del>such</del> operations or facility<del>ies</del> <del>is</del><del>are</del> other-wise regulated under <del>Metro Code Section 5.01.050</del><del>45</del><del>this chapter.</del></p>
9	<p><b>5.01.050 – License Requirements and Fees</b></p> <p>(5) <del>Chipping or grinding</del><del>Processing</del> wood waste <del>for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.</del></p>	<p><b>5.01.050 – License Requirements and Fees</b></p> <p>(5) <del>Chipping or grinding</del><del>Processing</del> wood waste for use as an industrial fuel if such facility is otherwise regulated under <del>this Section 5.01.045 of this chapter.</del></p>
10	<p><b>Section 5.01.050 - License Requirements and Fees</b></p> <p><del>(6) Shredding, milling, pulverizing, or storing outdoors any electronic waste.</del></p>	<p><b>Section 5.01.050 - License Requirements and Fees</b></p> <p><i>The revised draft does not include the initially proposed licensing requirement for shredding, milling, pulverizing, or storing electronic waste outdoors</i></p>

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

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
13	<p><b><u>Section 5.01.180 – Franchise Issuance</u></b></p> <p>(g) The Council <del>shall act to</del><u>must</u> grant or deny a franchise application within 120 days after the <del>filing of applicant files</del> a complete application. <del>The, unless the</del> deadline <del>for the Council to act to grant or deny an application may be</del> extended as provided in this section. <del>If the Council does not act to grant or deny an application by the deadline for such action, the franchise shall be deemed granted for the solid waste facility or disposal site requested in the application, and the Chief Operating Officer shall issue a franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.</del></p> <p>(h) At any time after <del>the filing of an applicant files</del> a complete franchise application, the deadline for the Council to <del>act to</del> grant or deny the application <del>shall be</del> extended if:</p> <ol style="list-style-type: none"> <li>(1) The Council <del>acts to extend</del><u>extends</u> the deadline for up to an additional 60 days, which the Council may do <del>one time only once</del> for any single application;</li> <li>(2) The applicant substantially modifies the application during the <del>course of the</del> review <u>period</u>, in which case the 120 days review period for the Council to act <del>shall be</del> restarted as of the date Metro receives the applicant's modifications; or</li> <li>(3) The applicant and <del>the</del> Chief Operating Officer <u>mutually</u> agree to extend the deadline for <del>the Council to act for</del> a specified <u>time</u> period <del>of time</del>.</li> </ol>	<p><b><u>Section 5.01.180 – Franchise Issuance</u></b></p> <p>(g) <del>If</del> <del>the</del> Council <del>shall act to</del><u>does not grant approve</u> or deny a <u>new</u> franchise application within <del>120</del><u>180</u> days after the <u>applicant files filing of</u> a complete application <u>the franchise is be deemed granted for the solid waste facility or disposal site requested in the application.</u> <del>The</del> deadline for the Council to <del>act to grant approve</del> or deny an application may be extended as provided in this section. <u>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.</u> <del>If the Council does not act to grant or deny an application by the deadline for such action, the franchise shall be deemed granted for the solid waste facility or disposal site requested in the application, and the Chief Operating Officer shall issue a franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.</del></p> <p>(h) At any time after <del>the filing of an applicant files</del> a complete franchise application, the deadline for the Council to <del>act to grant</del><u>approve</u> or deny the application <del>shall be</del> extended if:</p> <ol style="list-style-type: none"> <li>(1) The Council <del>acts to extend</del><u>extends</u> the deadline for up to an additional 60 days, which the Council may do <del>one time only once</del> for any single application;</li> <li>(2) The applicant substantially modifies the application during the <del>course of the</del> review <u>period</u>, in which case the <u>120-180</u> days review period for the Council to act <del>shall be</del> restarted as of the date Metro receives the applicant's modifications; or</li> <li>(3) The applicant and <del>the</del> Chief Operating Officer <u>mutually</u> agree to extend the deadline for <del>the Council to act for</del> a specified <u>time</u> period <del>of time</del>.</li> </ol>



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

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

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

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

<u>Revision</u>	<u>Initial Draft 02/05/2016</u>	<u>Revised Draft 07/06/2016</u>
21	Intentionally left blank. Continued from previous page.	<p><b>Chapters 5.01, 5.02, and 5.05 - Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms (CONTINUED)</b></p> <p>(g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, <del>or</del> 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.</p> <p>(h) <u>If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.</u></p> <p>(i) <u>Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is in effect on the date of this ordinance’s adoption remains in effect unless otherwise repealed or amended.</u></p> <p>(j) <u>For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.</u></p>

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## Metro's Response to Comments on Proposed Changes to Metro Code Title V

July 6, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Metro Response to Garrett Comment #5: Refer to Metro’s response to Garrett Comment #4 above.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*or “disposal system,” it is unclear on which solid waste deliveries Metro would impose the regional transfer charge.*

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

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

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

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

Metro Response to Cusma Comment #5: Staff agrees and recommends retaining the current term “standard recyclable materials.” Refer to Revision No. 5 in Exhibit A

- Cusma Comment #6: Metro Code Chapter 5.01.010 - Metro proposes to revise and expand the purposes of Chapter 5.01. Metro suggests that the changes are meant to incorporate the “six public benefits” from Metro’s Solid Waste Roadmap. Metro also proposes to revise and expand the purposes of Chapter 5.05 to incorporate the six public benefits (see Paragraph IV.A below). Metro frequently refers to the six public benefits during meetings related to the proposed changes to the solid waste code. Metro does not, however, consistently define or describe the six public benefits. As one example, the proposed description of the six public benefits in Section 5.01.010 is different than the proposed description of the six public benefits in Section 5.05.010. As another example, in a PowerPoint created by Metro for a September 2015 workshop, Metro explained that one of the six public benefits is to “[p]rovide good value.” However, “good value” does not appear in the Section 5.01.010 or Section 5.05.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Metro Response to Cusma Comment #8: Refer to Metro’s response to Cusma Comment #3 above. Staff does not recommend adding the suggested reference to “incidental quantity” as part of the proposed revision.

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

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

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

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

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

- Cusma Comment #11: *Metro Code Section 5.01.180(g) - Similar to the proposed changes to Subsection 5.01.080(e) (discussed above), under the current solid waste code, if the Metro Council fails to grant or deny a franchise application within 120 days, the franchise is deemed granted. Metro proposes to eliminate the automatic grant of a franchise.*



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Cusma Comment #21: *Metro Code Section 5.02.060(a) and 5.0.080(f)(4) - References in these subsections to “enhancement fee” should be replaced with “community enhancement fee” to align these subsections with Metro’s proposed changes to definitions in Section 5.00.010.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## Warren Johnson

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**From:** Chris Bell [Chris@Bellassociatesinc.com]  
**Sent:** Saturday, February 20, 2016 10:28 AM  
**To:** Warren Johnson  
**Subject:** RE: Proposed Changes to Metro Code Title V (Solid Waste)

**Categories:** CODE COMMENTS

Warren,

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

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

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

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

Chris

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

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**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Friday, February 19, 2016 2:44 PM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Proposed Changes to Metro Code Title V (Solid Waste)

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

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

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

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

Please contact me if you have questions. Thank you.

Warren Johnson  
Solid Waste Compliance Supervisor  
Property and Environmental Services

Metro  
600 NE Grand Av  
Portland, OR 97232-2736  
503-797-1836  
[warren.johnson@oregonmetro.gov](mailto:warren.johnson@oregonmetro.gov)

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

**Terrell Garrett  
GreenWay Recycling, LLC  
PO Box 4483  
Portland, OR 97208-4483  
(503) 793-9238  
14 March 2016**

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

Re: Metro Solid Waste Code Updates

Dear Council Members and Mr. Johnson:

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

**Metro Code Chapter 5.00 (Solid Waste Definitions)**

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

**Metro Code Chapter 5.01 (Solid Waste Facility Regulation)**

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

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

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

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

#### **Metro Code Chapter 5.02 (Disposal Charges and User Fees)**

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

#### **Metro Code Chapter 5.05 (Solid Waste Flow Control)**

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

#### **Summary**

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

Sincerely,

Terrell Garrett  
Managing Member

B L A C K

H E L T E R L I N E LLP

A T T O R N E Y S   A N D   C O U N S E L O R S   A T   L A W

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

April 27, 2016

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

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

Reference: Proposed changes to Metro Code Title V, Chapter 5.01.040 to  
remove exemption for certain wood waste processing  
operations/facilities

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Dear Mr. Warren:

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

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

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

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



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

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

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

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





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

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

Very truly yours,



Philip J. Wuest

Jim Smith Excavating:

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Jim Smith

Wood Waste Management, In.

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Rick Franklin

McFarlane’s Bark, Inc.:

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Dan McFarlane

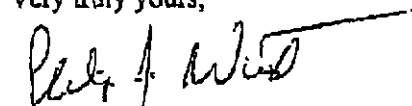
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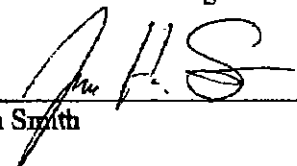
Mr. Warren Johnson -Metro's Solid Waste Code Update  
April 27, 2016 - Page 3

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Philip J. Wuest

Jim Smith Excavating:

  
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Jim Smith

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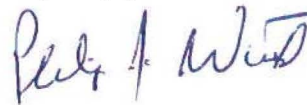
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Mr. Warren Johnson –Metro’s Solid Waste Code Update  
April 27, 2016 – Page 3

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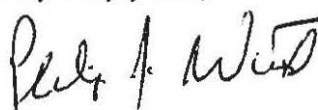
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Mr. Warren Johnson –Metro’s Solid Waste Code Update  
April 27, 2016 – Page 3

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Very truly yours,



Philip J. Wuest

Jim Smith Excavating:

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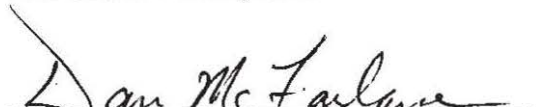
Jim Smith

Wood Waste Management, In.

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Rick Franklin

McFarlane’s Bark, Inc.:



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Dan McFarlane

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April 28, 2016

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

**SUBJECT: Metro Solid Waste Code Updates**

Dear Mr. Johnson,

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

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

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

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

<sup>2</sup> *Id.*

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

## I. CHAPTER 5.00 (SOLID WASTE DEFINITIONS)

### A. Clean Fill

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

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

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

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

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

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

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

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

- “‘Metro designated facility’ means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.”

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

### **C. Electronic Waste**

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

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

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

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

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

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

#### **D. “Metro Disposal System” and “Metro Waste Management System”**

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

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

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

#### **E. Standard Recyclable Materials**

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

## **II. CHAPTER 5.01 (SOLID WASTE FACILITY REGULATION)**

### **A. Section 5.01.010**

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



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

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

## **B. Subsection 5.01.040(a)**

### **1. Single-Stream Recyclers**

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

[A]ll *useless* or *discarded* putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386.<sup>6</sup>

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

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

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

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

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

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

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

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

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

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

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

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

## **2. Incidental Quantity Exemption for Electronic Waste**

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

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

### **C. Subsection 5.01.080(e)**

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

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

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

**D. Section 5.01.110**

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

**E. Subsection 5.01.180(g)**

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

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

**F. Section 5.01.280**

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

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

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

### **1. Applicability of Rules to Exempt Facilities**

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

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

### **2. Public Notice and Comment**

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

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

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

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

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

### **3. Public Hearings**

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

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

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

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

#### **4. Effective Date**

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

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

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

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

#### **5. Interim Rules and Performance Standards**

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

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

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

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

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

**G. Subsection 5.01.290(a)**

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

**H. Subsection 5.01.320(f)**

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

**III. CHAPTER 5.02 (DISPOSAL CHARGES AND USER FEES)**

**A. Subsection 5.02.050(a)**

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



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

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

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

**C. Section 5.02.170**

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

**IV. CHAPTER 5.05 (SOLID WASTE FLOW CONTROL)**

**A. Section 5.05.010**

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

**B. Subsection 5.05.020(c)**

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

**C. Subsection 5.05.050(a)**

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

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

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

**D. Subsection 5.05.080(b)(6)**

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

**E. Subsection 5.05.150(b)**

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

**F. Section 5.05.260**

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

Mr. Warren Johnson

April 28, 2016

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## V. CONCLUSION

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

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

Respectfully,

SCHNITZER STEEL INDUSTRIES, INC.

A handwritten signature in blue ink, appearing to read 'Mathew J. Cusma', with a stylized flourish at the end.

MATHEW J. CUSMA

Senior Environmental Manager

cc: Mr. Tom Hughes, Metro Council President

# Oregon Refuse and Recycling Association

David White, Regional Representative

1739 NW 156<sup>th</sup> Avenue      Beaverton, Oregon 97006  
(503) 690-3143 (Tel)      (503) 536-6708 (Fax)      [davidw@orra.net](mailto:davidw@orra.net)

April 29, 2016

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

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

Dear Mr. Johnson:

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

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

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

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

(a) Hazardous waste as defined in ORS 466.005 (Definitions for ORS 453.635 and 466.005 to 466.385).

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(c) Woody biomass that is combusted as a fuel by a facility that has obtained a permit described in ORS 468A.040 (Permits).

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

“Solid waste” means all putrescible and non-putrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings

Letter to Mr. Warren Johnson

April 29, 2016

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or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste as defined in ORS 459.386; and other such wastes, including without limitation cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

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

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

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

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

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

Sincerely,



David White, ORRA Regional Representative

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



10295 SW Ridder Road, Wilsonville, OR 97070  
O: 503.570.0626 F: 503.982.9307 republicservices.com

April 29, 2016

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

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

Dear Mr. Johnson:

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason Jordan".

Jason Jordan  
General Manager

cc: Brian May, Republic Services, Inc.  
David White, ORRA