

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.00 TO UPDATE CERTAIN)
TERMS AND DEFINITIONS) ORDINANCE NO. 19-1438
) Introduced by Acting Chief Operating Officer
) Andrew Scott in concurrence with Council
) President Lynn Peterson

WHEREAS, the Metro solid waste code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Code Chapter 5.00 contains the definitions for the solid waste code; and

WHEREAS, updating Metro Code Chapter 5.00 with various housekeeping changes will improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, the various amendments to this chapter include revising the definitions of “rate” and “regional system fee” to clarify the terms; and

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.00 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, following the close of the 30-day comment period, a regulated entity noted that the term “available regional tonnage” in Metro Code Section 5.01.195 (tonnage allocation process) was not defined in code and was ambiguous because that term could refer to either the *region’s* total tonnage or to the amount of the region’s tonnage *remaining* after Metro had reserved at least 40 percent for the Metro transfer stations; and

WHEREAS, the various amendments add a definition for “available regional tonnage” to remove any ambiguity and clarify that the term means the amount of the region’s tonnage *remaining* for allocation to privately owned transfer stations after Metro has first reserved at least 40 percent for the Metro transfer stations; and

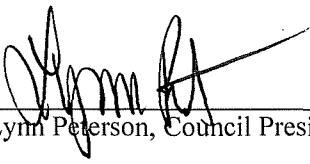
WHEREAS, the Chief Operating Officer recommends that the Metro Council adopt these amendments to Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other updates and improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.00 provide greater clarity for the public and further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:


1. Metro Code Chapter 5.00 is amended as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this 21st day of November 2019.




Lynn Peterson, Council President

Attest:



Sara Farrokhzadian, Recording Secretary

Approved as to Form:



Carrie MacLaren, Metro Attorney

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CHAPTER 5.00

SOLID WASTE DEFINITIONS

5.00.010 Definitions

For the purposes of Title V Solid Waste, unless the context requires otherwise, the following terms have the meaning indicated:

Activity means a primary operation or function that is performed in a solid waste facility or at a disposal site, including but not limited to resource recovery, composting, energy recovery, and other types of processing; recycling; transfer; incineration; and disposal of solid waste. This term does not include operations or functions that serve to support the primary activity, such as segregation.

Agronomic application rate means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case may the application adversely impact the waters of the State. The application must be designed to:

- (1) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
- (2) Condition and improve the soil comparable to that attained by commonly used soil amendments; or
- (3) Adjust soil pH to desired levels.

Alternative Program means a solid waste management service proposed by a local government that differs from the service required under Chapter 5.10.

Authorized official means a person authorized to issue citations under Chapter 5.09.

Available regional tonnage means the amount of putrescible solid waste tonnage that Metro may allocate to privately owned transfer stations after Metro has first reserved the applicable minimum amount of putrescible tonnage for the Metro transfer stations.

Business means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies and excluding businesses whose primary office is located in a residence.

Business recycling service customer means a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

Chief Operating Officer means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

Clean fill means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving that does not contain contaminants that could adversely impact the waters

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of the State or public health. This term does not include putrescible waste, cleanup material, construction and demolition waste, or industrial waste.

Cleanup material means solid waste resulting from the excavation or cleanup of releases of hazardous substances into the environment, including street sweeping waste, non-hazardous contaminated soils that do not qualify as clean fill (such as petroleum contaminated soils) and contaminated debris resulting from the cleanup of chemical spills or releases. This term does not include solid waste generated by manufacturing or industrial processes.

Closure means restoring a solid waste facility or a disposal site to its condition before licensed or franchised solid waste activities began at the site. Closure includes, but is not limited to, the removal of all accumulations of solid waste and recyclable materials from the site.

Code means the Metro Code.

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.

Compost means the stabilized product of composting.

Composting means the controlled biological decomposition of organic material.

Conditionally exempt generator (CEG) means a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

Council means the Metro Council.

DEQ means the Department of Environmental Quality of the State of Oregon.

Department means Metro's Property and Environmental Services Department.

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.

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.

Disposal fee means a fee that pays the direct unit costs of transportation and disposal of general purpose solid waste.

Disposal site means the land, buildings, and equipment used for the disposal of solid waste whether or not open to the public. This term does not include a solid waste facility.

Electronic device means:

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- (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; or
- (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.

Energy recovery means a type of resource recovery that is limited to methods in which all or a part of solid waste materials are processed to use the heat content or another form of energy.

Facility means the land, buildings, and equipment used for an activity.

Franchise means the grant of authority or privilege given by the Council to operate a disposal site, transfer station, energy recovery facility, or to conduct any other activity that requires authorization under Chapter 5.01.

Franchisee means the holder of a current, validly issued franchise granted by the Council under Chapter 5.01.

Franchise fee means the fee Metro charges the franchisee for the administration of the franchise.

Hazardous substance means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601 et seq., oil, as defined in ORS 465.200, and any substance designated by DEQ under ORS 465.400.

Hazardous waste has the meaning provided in ORS 466.005.

Hearings officer means a person that Metro designates to hear and decide cases under this title.

Household hazardous waste means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. Household hazardous waste may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.

Inert means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the State or public health.

License means the permission given by the Council or Chief Operating Officer to operate a solid waste facility not otherwise exempted or requiring a franchise under Chapter 5.01.

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Licensee means the holder of a current, validly issued license granted by the Council or Chief Operating Officer under Chapter 5.01.

Limited capacity landfill means a landfill that has sought a site development plan amendment for expansion of the landfill capacity from the Oregon Department of Environmental Quality, and has not received approval from the Department by May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

Local government means any city or county that is within Metro's jurisdiction, including the unincorporated areas of Clackamas, Multnomah, and Washington Counties.

Local government action means adoption of any ordinance, order, regulation, contract, or program affecting solid waste management.

Material recovery means a type of resource recovery that is limited to manual or mechanical methods of obtaining material from solid waste that still has useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material recovery includes obtaining material from solid waste that is used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

Medical waste means solid waste that is generated as a result of patient diagnosis, treatment or immunization of human beings or animals.

Metro Central Station is the Metro solid waste transfer and recycling station located at 6161 NW 61st Avenue, Portland, Oregon 97210.

Metro South Station is the Metro solid waste transfer and recycling station located at 2001 Washington Street, Oregon City, Oregon 97045.

New landfill means a landfill that receives its initial permission from DEQ to receive solid waste on or after May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

Non-commercial customer means a person who is not primarily engaged in the business of collection or transportation of solid waste and who is not authorized by any federal, state or local government to perform such collection or transportation.

Non-putrescible waste means any waste that contains no more than trivial amounts of putrescible materials or minor amounts of putrescible materials contained in such a way that they can be easily separated from the remainder of the load without causing contamination of the load. This term includes construction and demolition waste. This term does not include cleanup material, source-separated recyclable materials, special waste, land clearing debris or yard debris.

Non-system facility means any solid waste facility, disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste if the facility is not part of the system.

Non-system license means the permission given by the Council or Chief Operating Officer to transport solid waste generated within the Metro boundary to a non-system facility.

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Person has the same meaning as in Metro Code Section 1.01.040. For any person other than an individual, the acts of the person's employees, contractors, and authorized agents are considered the acts of the person.

Petroleum contaminated soil means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. This term does not include soil that is contaminated with petroleum products but also contaminated with hazardous waste or radioactive waste.

Process, processing, or processed means a method or system of altering the form, condition or content of wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping. This term does not include incineration or mechanical volume reduction techniques such as baling and compaction.

Processing facility means a facility where or by which solid wastes are processed. This term does not include commercial and home garbage disposal units which are used to process food wastes and are part of the sewage system, hospital incinerators, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

Processing residual means the solid waste that remains after resource recovery has occurred and which is intended for disposal.

Putrescible means rapidly decomposable by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

Putrescible waste means waste containing putrescible material.

Radioactive waste means the same as defined in ORS 469.300.

Rate means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste.

Recoverable solid waste means source-separated or homogeneous material accepted in a single transaction at Metro Central Station or at Metro South Station in a form that is usable by existing technologies (notwithstanding the presence of incidental amounts or types of contaminants) for reuse, recycling, controlled biological decomposition of organic material including composting and digestion, and the preparation of fuels that meet an engineering, industrial, or market specification. This term does not include mass burning, incineration in refuse derived fuel facilities, and similar methods of extracting energy from mixed solid wastes.

Recyclable material means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

Recycle or recycling means any process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

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Recycling drop center means a facility that receives and temporarily stores multiple source-separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale. This term does not include a facility that processes source-separated recyclable materials.

Regional Solid Waste Management Plan or RSWMP means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

Regional system fee means a fee that recovers the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

Reload means the activity of receiving solid waste for the purpose of consolidating and transferring it to a solid waste facility.

Required use order means a written order issued pursuant to Chapter 5.05 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

Residence means the place where a person lives.

Resource recovery means a process by which useful material or energy resources are obtained from solid waste.

Reuse means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

RSWMP requirement means the portions of the Regional Solid Waste Management Plan that are binding on local governments as set forth in Chapter 5.10.

Segregation means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the transfer of solid waste. Segregation does not include resource recovery or other processing of solid waste. The sole intent of segregation is not to separate useful material from the solid waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

Solid waste means all putrescible and non-putrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste; and other such wastes, including without limitation cleanup materials, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris. This term does not include:

- (1) Hazardous wastes;
- (2) Radioactive wastes;

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- (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.

Solid waste facility means a facility at which solid waste is received for transfer, resource recovery, and/or processing. The term does not include disposal sites.

Solid waste system facility means a facility that Metro designates as part of Metro's system for the management and disposal of solid and liquid waste. This term includes, but is not limited to, all designated facilities set forth in Chapter 5.05 and any non-system facility that receives solid waste from within the Metro area, whether pursuant to an authorized non-system license or otherwise.

Source separate or **source separated** or **source separation** means that the person who last uses recyclable material separates the recyclable material from solid waste.

Source-separated recyclable material or **Source-separated recyclables** means solid waste that has been source separated by the waste generator for the purpose of reuse, recycling, or composting. This term includes (1) all homogenous loads of recyclable materials that have been source separated by material type for the purpose of recycling (i.e., source-sorted) and (2) residential and commercial commingled recyclable materials, which include only those recyclable material types that the local jurisdiction, where the materials were collected, permits to be mixed together in a single container as part of its residential curbside recyclable material collection program. This term does not include any other commingled recyclable materials.

Special waste means any waste (even though it may be part of a delivered load of waste) that falls within one or more of the following categories:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 or 11 of this definition below.
- (2) Waste transported in a bulk tanker.
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) that once held commercial products or chemicals, unless the containers (or drums) are empty as provided in 40 CFR 261.7(b)(1).

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- (5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, laundromats or car washes.
- (6) Waste from an industrial process.
- (7) Waste from a pollution control process.
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.
- (10) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical-containing equipment).
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.
- (12) Any waste that requires extraordinary management or special handling. Examples of such special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.
- (13) Medical waste.

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. **State** means the State of Oregon.

Substantial compliance means local government actions, on the whole, conform to the purposes of the performance standards in Chapter 5.10 and any failure to meet individual performance standard requirements is technical or minor in nature.

System means all facilities that Metro designates as part of its system for the management and disposal of solid and liquid waste. This includes, but is not limited to, the following:

- (1) Recycling and other volume reduction facilities;
- (2) Landfills, or other disposal means;
- (3) Resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel);

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- (4) Recycling and transfer stations;
- (5) Roads, water lines, wastewater lines and treatment facilities to the extent used to carry out the provisions of ORS chapter 268 and other applicable laws of the state of Oregon;
- (6) All buildings, fixtures, equipment, real property and personal property that Metro owns, leases, operates or uses to dispose of solid and liquid waste;
- (7) Designated facilities as provided in Chapter 5.05.

Transaction means a customer's use of a Metro transfer station disposal facility, hazardous waste facility, or household hazardous waste collection event, for the purpose of delivering for disposal a single load of solid or hazardous waste during a single visit from a single vehicle (whether or not accompanied by, or transporting, one or more trailers). A solid waste disposal transaction occurs when a customer enters a Metro transfer station facility, hazardous waste facility, or household hazardous waste collection event.

Transaction fee means the fee that Metro imposes for each transaction at a Metro transfer station to pay for related scalehouse costs.

Transfer means the activity of receiving solid waste for purposes of transferring it from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of solid waste from more than one vehicle, and compaction. This term does not include resource recovery or other processing of solid waste.

Transfer station means a solid waste facility whose primary activity includes, but is not limited to, the transfer of solid waste to a disposal site.

Unacceptable waste means waste that is either:

- (1) Prohibited from disposal at a disposal site by state or federal law, regulation, rule, code, permit or permit condition; or
- (2) Special waste without an approved special waste permit.

Useful material means material that still has useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from solid waste, is suitable for use in the same or other purpose(s). For purposes of this Code, cleanup materials are not useful materials. Types of useful materials include, but are not limited to:

- (1) Material that can be reused;
- (2) Recyclable material;
- (3) Organic material(s) suitable for controlled biological decomposition (such as for making compost);
- (4) Material used in the preparation of fuel;

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- (5) Material intended to be used, and which is in fact used, for construction or land reclamation (such as inert material for fill);
- (6) Material intended to be used, and which is in fact used, productively in landfill operations (such as roadbeds or alternative daily cover).

Vermiprocessing means a controlled method or system of biological processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

Waste means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose. For the purpose of Chapter 5.09, the term “waste” also includes any such material even if it is broken, recoverable, or recyclable.

Waste hauler means any person who is (1) franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul solid waste; or (2) engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated by such person or others within the Metro boundary.

Waste hierarchy means first, reduce the amount of solid waste generated; second, reuse material for its originally intended purpose; third, recycle or compost material that cannot be reduced or reused; fourth, recover energy from material that cannot be reduced, reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and fifth, landfill solid waste that cannot be reduced, reused, recycled, composted or from which energy cannot be recovered.

Waste Reduction Program means the Waste Reduction Program required by ORS 459.055(2)(a), adopted by the Metro Council as part of the RSWMP, and accepted and approved by the DEQ as part of the RSWMP.

Yard debris means vegetative and woody material generated from residential or commercial landscaping activities. Yard debris includes landscape waste, grass clippings, leaves, hedge trimmings, branches, sod, scrapings, stumps and other vegetative waste having similar properties. This term does not include other solid waste such as soil, demolition debris, painted or treated wood waste. [Ord. 81 111, Sec. 2; Ord. 82-146, Sec. 2; Ord. 86-210, Sec. 1; Ord. 88-257, Sec. 2; Ord. 88-278, Sec. 1; Ord. 89-269, Sec. 2; Ord. 89-295, Sec. 1; Ord. 89-319; Ord. 90-337, Sec. 2; Ord. 90-372, Sec. 1; Ord. 91-386C, Sec. 2; Ord. 91-388, Secs. 1 and 8; Ord. 91 422B, Sec. 1; Ord. 92-455B, Sec. 1; Ord. 92-473A, Sec. 1; Ord. 93-482, Sec. 1; Ord. 94-531, Sec. 2; Ord. 94-557; Ord. 95-597, Sec. 1; Ord. 95-621A, Sec. 2; Ord. 97-681B, Sec. 1; Ord. 98-720A, Sec. 2; Ord. 98 762C, Secs. 1 and 54; Ord. 00 866, Sec. 1; Ord. 00-867, Secs. 1-2; Ord. 00-873, Sec. 1; Ord. 00-876A, Sec. 1; Ord. 01-907A, Sec. 1; Ord. 01 914, Sec. 1; Ord. 01 916C, Sec. 1; Ord. 01-917, Sec. 1; Ord. 02-937A, Sec. 3; Ord. 02-951B, Sec. 1; Ord. 02 974, Sec. 1; Ord. 03 1018A, Sec. 1; Ord. 03-1019, Sec. 1; Ord. 06 1101; Ord. 06-1103, Sec. 1; Ord. 06-1107; Ord. 07-1147B, Secs. 1, 5 and 9; Ord. 08-1183A; Ord. 08-1200; Ord. 12-1272, Secs. 1-2; Ord. 12-1277, Sec. 4; Ord. 13-1306, Sec. 1; Ord. 13-1311; Ord. 14-1323, Sec. 6; Ord. 14-1331; Ord. 16-1386.]

IN CONSIDERATION OF ORDINANCE NO. 19-1438 FOR THE PURPOSE OF AMENDING
METRO CODE CHAPTER 5.00 TO UPDATE CERTAIN TERMS AND DEFINITIONS

Date: October 30, 2019

Prepared by: Warren Johnson
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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

ISSUE STATEMENT

Metro staff seeks to update and improve Metro's solid waste code (Metro Code Title V) and administrative rules to provide greater clarity and predictability for the public and those that are directly involved in the region's solid waste system.

ACTION REQUESTED

Adopt Ordinance No. 19-1438 to amend Metro Code Chapter 5.00 (Solid Waste Definitions) to add and update certain terms and definitions to improve clarity and consistency and to conform with other proposed updates and improvements to Metro Code Chapter 5.02. This ordinance is a companion to Ordinance Nos. 19-1439 and 19-1440 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

IDENTIFIED POLICY OUTCOMES

The proposed updates to Metro's solid waste code remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

POLICY QUESTION(S)

Should the Metro Council approve of the proposed updates and improvements to Metro Code Chapter 5.00 to make the code easier to understand and more adaptive to changing conditions?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the ordinance as proposed to amend Metro Code Chapter 5.00 as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.

2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.00 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the scope of the alternate proposal. In addition, such revisions may require similar changes to the other code chapters proposed in Ordinance Nos. 19-1439 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. There are no known financial implications associated with the option.

STAFF RECOMMENDATIONS

Staff recommends approval of Ordinance No. 19-1438 to amend Metro Code Chapter 5.00.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Approval of this ordinance would result in updates and housekeeping improvements to certain terms and definitions in Metro Code Chapter 5.00 as detailed in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440.

Staff recommends revising the following terms and definitions in Metro Code Chapter 5.00 as described below:

- 1) Rate – Revise the definition to clarify that the term means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste.
- 2) Regional system fee - Revise the definition to clarify that the term means the fee that Metro assess to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.
- 3) Solid Waste Disposal Transaction - Shorten the term to *transaction*.
- 4) Transaction Charge – Change the term to *transaction fee* for clarification and consistency.

In addition to the revisions described above, staff recommends adding a definition for “available regional tonnage” to Chapter 5.00 to clarify the tonnage allocation framework provisions in Chapter 5.01. After the public comment period closed for the proposed code revisions, Metro received a comment from a regulated entity noting that the above-referenced term was not defined and was ambiguous as it relates to the allocation methodology. Staff recommends adding the following definition to Chapter 5.00 to clarify the meaning of the term as it is used in Chapter 5.01:

- Available regional tonnage means the amount of putrescible solid waste tonnage that Metro may allocate to privately owned transfer stations after Metro has first

reserved the applicable minimum amount of putrescible tonnage for the Metro transfer stations.

KNOWN OPPOSITION

There is no known opposition to the proposed revisions to Metro Code Chapter 5.00. However, Metro received comments requesting that Metro add a new term and amend other definitions in Metro Code Chapter 5.00 as part of these proposed revisions.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted a general comment about Metro's authority to use the regional system fee to recover system costs. A fuller description of the comments that Metro received during the comment period and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.00 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

PUBLIC OUTREACH

Metro staff notified interested parties via email of the proposed updates and housekeeping improvements to Metro Code Title V. The proposed code chapters, draft administrative rules, and a summary of the proposed changes were also posted on Metro's website.

Metro provided an opportunity for the public to review and submit comments on the proposed updates and housekeeping improvements. The public comment period was open from August 12 through September 13, 2019. Metro staff also held an informational meeting for the public on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The meeting was attended by four industry representatives and four representatives of government organizations.

As previously mentioned, during the comment period Metro received several comments about various aspects of the proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

LEGAL ANTECEDENTS

Metro Charter, Title V of the Metro Code and ORS Chapters 268 and 459.

ANTICIPATED EFFECTS

Approval of this ordinance would amend Metro Code Chapter 5.00 as provided in Exhibit A to add, update and clarify certain solid waste definitions.

BUDGET IMPACTS

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

BACKGROUND

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

Metro staff seeks to revise Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other proposed housekeeping changes to Chapters 5.02 and 5.03. The collective changes proposed under Ordinance Nos. 19-1438, 19-1439, and 19-1440 are intended to update and improve current Metro Code Chapter 5.02.

The current Chapter 5.02 (*Disposal Charges and User Fees*) sets forth Metro's transfer station fees as well as the regional system fee. The chapter is confusing because it blends the regional system fee (which is for the use of the region's waste system and is assessed at the time of disposal) with Metro's own transfer station fees (which are only applicable to garbage transferred at Metro's transfer stations).

ATTACHMENTS

- Exhibit A
- Attachment 1

ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1438

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

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

2) Bruce Walker - City of Portland (email dated September 11, 2019):

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

3) Shannon Martin - City of Gresham (email dated September 11, 2019):

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

4) Theresa Koppang - Washington County (email dated September 11, 2019):

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29th meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
 - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
 - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.