

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF UPDATING METRO	)	ORDINANCE NO. 19-1439
CODE CHAPTER 5.02 TO IMPROVE CLARITY,	)	
REMOVE OUTDATED SECTIONS AND	)	Introduced by Acting Chief Operating Officer
REMOVE SECTIONS RELATED TO METRO	)	Andrew Scott in concurrence with Council
TRANSFER STATIONS FEES	)	President Lynn Peterson

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

WHEREAS, Metro Code Chapter 5.02 contains the requirements for Metro’s transfer station fees as well as the regional system fee; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 include moving provisions related to Metro transfer station fees to a new, separate chapter to improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 remove the requirement that the regional system fee be set by ordinance to enable greater flexibility for Metro to protect the public’s interest and better respond to changing conditions; and

WHEREAS, as a result of updating and renumbering Metro Code Chapter 5.02, Metro Code Section 5.06.030 must also be updated to correct a cross reference to former Section 5.02.020; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 also remove unnecessary and outdated provisions, clarify terms, and other housekeeping revisions that will also improve its readability and make it easier to understand; and

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.02 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, because all current Chapter 5.02 code sections related to Metro’s transfer station fees will be moved to a new Chapter 5.03 and because several sections of current Chapter 5.02 have been re-ordered to establish a more logical flow, current Chapter 5.02 should be repealed and replaced in its entirety with the attached Exhibit A to avoid confusing tracked changes; and

WHEREAS, the Chief Operating Officer recommends that the Metro Council adopt the proposed updates to Metro Code Chapter 5.02 to improve clarity and consistency and to conform with other updates and improvements proposed under companion Ordinance Nos. 19-1438 and 19-1440; and

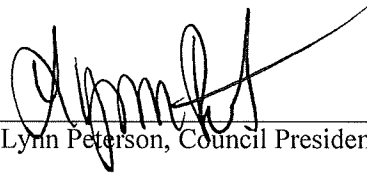
WHEREAS, the Metro Council finds that the updates to Metro Code Chapter 5.02 provide greater clarity for the public and further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.02 is repealed and replaced in its entirety with a new Chapter 5.02 (“Regional System Fee”) as set forth in the attached Exhibit A.

2. The last sentence of Metro Code Section 5.06.030 is replaced with the following sentence:  
“The Metro Council will set the enhancement fee amount for any solid waste facility subject to the fee.”

ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2019.



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Lynn Peterson, Council President

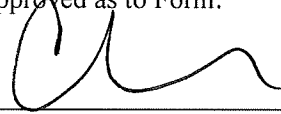
Attest:



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Sara Farrokhzadian, Recording Secretary

Approved as to Form:



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Carrie MacLaren, Metro Attorney

# EXHIBIT A TO ORDINANCE NO. 19-1439

## CHAPTER 5.02

### REGIONAL SYSTEM FEE

- 5.02.010 Purpose
- 5.02.020 Regional System Fee Requirement
- 5.02.030 Exceptions to Regional System Fee
- 5.02.040 Declaration of Origin
- 5.02.050 Regional System Fee Applied to Mixed Waste Loads
- 5.02.060 Regional System Fee on Cleanup Material
- 5.02.070 Special Exemptions and Waivers from Regional System Fee
- 5.02.080 Collection and Payment of Regional System Fee
- 5.02.090 Due Date of Regional System Fees
- 5.02.100 Liability for Worthless or Uncollectible Accounts
- 5.02.110 Use of Regional System Fees
- 5.02.120 Scale Weights Required
- 5.02.130 Administrative Rules to Implement Chapter

## EXHIBIT A TO ORDINANCE NO. 19-1439

### 5.02.010 Purpose

The purpose of this chapter is to establish the method for setting, collecting and administering the regional system fee. Metro uses regional system fee revenue to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

### 5.02.020 Regional System Fee Requirement

- (a) Except as otherwise provided in this chapter, all solid waste generated from inside the Metro jurisdictional boundary is subject to a regional system fee at the time the waste is delivered to a Metro transfer station or otherwise disposed.
- (b) Any person who transports solid waste generated from inside the Metro jurisdictional boundary must pay the regional system fee to Metro at the time the waste is disposed.
- (c) Notwithstanding subsection (b), Metro may authorize a designated facility located outside the Metro jurisdictional boundary to collect and remit the regional system fee on behalf of the person transporting the waste.
- (d) Metro 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.
- (e) The regional system fee owed to Metro by any person pursuant to this chapter is a debt owed to Metro.

### 5.02.030 Exceptions to Regional System Fee

The regional system fee does not apply to:

- (a) Solid waste accepted at a licensed or franchised solid waste facility located within the Metro jurisdictional boundary;
- (b) Solid waste accepted at a facility that is exempt from regulation under Chapter 5.01;
- (c) Cleanup material accepted at a facility that treats the cleanup material to applicable DEQ standards and provided that the treated waste is not transported to a disposal site;
- (d) Useful material that is accepted at a disposal site that is a Metro designated facility pursuant to Chapter 5.05 or accepted at a disposal site under authority of a Metro non-system license issued pursuant to Chapter 5.05, provided that the useful material is:
  - (1) Used productively in the operation of the disposal site (such as for roadbeds or alternative daily cover); and
  - (2) Accepted at the disposal site at no fee.

## EXHIBIT A TO ORDINANCE NO. 19-1439

- (e) Processing residual produced by any tire processor that is regulated pursuant to Chapter 5.01 and that sorts, classifies or processes used tires into fuel or other products, provided the processing residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent specified in a Metro license or franchise under Chapter 5.01.

### **5.02.040 Declaration of Origin**

- (a) If a person transports solid waste to a designated facility outside of the Metro jurisdictional boundary, then the person must inform the designated facility operator that the solid waste was generated or originated inside the Metro region.
- (b) If a dispute arises regarding whether a person informed the facility operator that the solid waste was generated or originated inside the Metro region, then the person transporting the waste has the burden of proving that the person communicated this to the designated facility operator.

### **5.02.050 Regional System Fee Applied to Mixed Waste Loads**

If a solid waste load in a vehicle or container contains a mixture of waste generated both inside and outside of the Metro jurisdictional boundary, then the entire load is considered to be generated within the Metro region. In such cases, the person transporting the waste must report the waste as generated inside the Metro region and pay the regional system fee on the entire load, unless the person provides documentation to Metro showing the total weight of that waste that was generated only within the Metro jurisdictional boundary.

### **5.02.060 Regional System Fee on Cleanup Material**

Notwithstanding Sections 5.02.020 and 5.02.030, a reduced regional system fee applies to cleanup material that is transported to any disposal site authorized by Metro to accept that material.

### **5.02.070 Special Exemptions and Waivers from Regional System Fee**

- (a) The Chief Operating Officer may issue a special exemption to a public agency, local government, or qualified non-profit entity as specified in Metro Code Subsections 5.07.030(a), (b), (d) and (j) to waive the regional system fee for solid waste generated within the Metro jurisdictional boundary.
- (b) For all special exemptions in subsection (a), the Chief Operating Officer must provide the Council with an annual report indicating:
  - (1) The amount of solid waste recycled and disposed under the special exemption permits granted by the Chief Operating Officer during the fiscal year; and
  - (2) The total regional system fee revenue that was not collected during the fiscal year because of the special exemptions granted.

## EXHIBIT A TO ORDINANCE NO. 19-1439

- (c) The Chief Operating Officer may waive the regional system fee on putrescible solid waste if the waste is:
  - (1) Generated outside of Metro's regional boundary;
  - (2) Collected by a hauler that is regulated by a local government unit; and
  - (3) Accepted at Metro Central Station or Metro South Station.

### **5.02.080 Collection and Payment of Regional System Fees**

A person satisfies payment of the regional system fee as required under Section 5.02.020 if the person pays the fee at a Metro transfer station or pays the fee:

- (a) As required by a non-system license authorized under Chapter 5.05, or
- (b) To a designated facility located outside the Metro jurisdictional boundary if Metro has authorized that designated facility to collect and remit the regional system fee on behalf of the person transporting the waste.

### **5.02.090 Due Date of Regional System Fees**

Regional system fees accumulate on a monthly basis. A person liable for regional system fees must pay the accumulated fees to Metro by the 15<sup>th</sup> day of the month for waste disposed of in the preceding month. If the 15<sup>th</sup> day of the month occurs on a holiday or weekend, amounts are due by the end of the first business day that follows.

### **5.02.100 Liability for Worthless or Uncollectible Accounts**

- (a) Metro may waive liability for regional system fees on charge accounts that are worthless and charged off as uncollectible, provided that the facility operator submits to Metro an affidavit stating the name and amount of each uncollectible charge account and documenting good faith efforts that the operator made to collect the accounts.
- (b) Regional system fees are not considered uncollectible unless the underlying account is also uncollectible. If the operator has paid the regional system fees previously and wishes to deduct the previously paid regional system fees from the next payment due to Metro, the operator must notify Metro in writing that the underlying account is uncollectible. If Metro agrees that the underlying account is uncollectible, Metro may then authorize the operator to deduct from the next payment due to Metro the previously paid amount found worthless and charged off. However, if the operator thereafter collects on any such account, in whole or in part, the operator must include the amount collected in the first return it files after the collection and pay the regional system fees with the return.

## **EXHIBIT A TO ORDINANCE NO. 19-1439**

### **5.02.110 Use of Regional System Fees**

Metro may only use regional system fee funds to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

### **5.02.120 Scale Weights Required**

A facility or disposal site that receives solid waste generated or originated within the Metro jurisdictional boundary must use certified scale weights to calculate, on a tonnage basis, all regional system fees that the facility or disposal site submits to Metro.

### **5.02.130 Administrative Rules to Implement Chapter**

The Chief Operating Officer may adopt administrative rules under the provisions set forth in Chapter 5.08 to govern the obligations under this chapter and implement all provisions of this chapter.

IN CONSIDERATION OF ORDINANCE NO. 19-1439 FOR THE PURPOSE OF UPDATING METRO CODE CHAPTER 5.02 TO IMPROVE CLARITY, REMOVE OUTDATED SECTIONS AND REMOVE SECTIONS RELATED TO METRO TRANSFER STATIONS FEES

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Date: October 24, 2019

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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

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### **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. 19-1439 to update Metro Code Chapter 5.02 (Disposal Charges and User Fees) to move all provisions related to Metro transfer station fees into a new, separate chapter to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency and to conform to other proposed code amendments. This ordinance is a companion to Ordinance Nos. 19-1438 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)**

1. Should the current Chapter 5.02 (Disposal Charges and User Fees) be split into two separate chapters to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations?
2. If yes, should the regional system fee and Metro's transfer station fees be set by resolution versus ordinance?



3. Should Metro's account policies be moved from code to administrative rules?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to update Metro Code Chapter 5.02 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 5.02 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 extent of the alternate proposal. In addition, such revisions may require similar changes to the code chapters proposed in Ordinance Nos. 19-1438 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. If the Council does not approve this ordinance, then it is not necessary for the Council to establish a new code chapter to govern Metro's transfer station rates as proposed in companion Ordinance No. 19-1440. There are no known financial implications associated with the option.

### **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1439 to update Metro Code Chapter 5.02. Since all of the current Chapter 5.02 code sections related to Metro's transfer station fees would be moved to a new chapter and because several sections of current Chapter 5.02 would be re-ordered to establish a more logical flow, staff recommends that the current Chapter 5.02 be repealed and replaced in its entirety with the attached Exhibit A to avoid confusing tracked changes.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of this ordinance would result in updating current Chapter 5.02 and moving Metro transfer station fees to a new separate chapter (Chapter 5.03) while Chapter 5.02 continues to govern the regional system fee. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency as described below and provided in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1438 and 19-1440.

Staff recommends updating Metro Code Chapter 5.02 as described below:

1. Move all provisions related to Metro transfer station fees into new Metro Code Chapter 5.03.
2. Update language throughout the chapter to remove legalese, passive voice, nominalizations and lengthy sentences.

3. Break up lengthy code sections into shorter, separate sections for ease of reading. For example, rather than have one lengthy code section with the general heading “Regional System Fees,” that section has been split into several discrete parts with more descriptive headings.
4. Remove the vague term “user fee” and replace it with “regional system fee” to more accurately reflect the nature of the fee. Although the current Chapter 5.02 is entitled *Disposal Charges and User Fees*, the term “user fee” is used only once in the chapter and that term has been replaced with the term “regional system fee” for many years. Thus, the “user fee” terminology is confusing.
5. Remove the requirement that the regional system fee be set by ordinance. If approved, the Council could establish the regional system fee by resolution and it could take effect 30 days after adoption. This avoids the need to wait 90 days for fees to take effect and allows the Metro Council to be more responsive to changing conditions.
6. Remove code sections that are no longer applicable. For example, the “Direct Haul Disposal Charge” was designed to reimburse Metro when someone delivered waste directly to Columbia Ridge Landfill, because that delivery charge was initially placed on Metro’s disposal contract account. Metro would then seek repayment from the hauler. This code section is no longer necessary with Metro’s new disposal contract because that contract does not mandate the use of Columbia Ridge Landfill by private parties.
7. Move the “Account Policies at Metro Transfer Stations” code section into administrative rule to better reflect that *internal* account policies for Metro’s transfer stations should not be housed in the Metro Code.
8. General housekeeping to update Metro Code Section 5.06.030 to correct a cross reference to former Section 5.02.020.

## **KNOWN OPPOSITION**

There is no known opposition to the proposed revisions to Metro Code Chapter 5.02. However, Metro received several comments expressing concern about changing the timing of Metro’s transfer station fee-setting process. Staff understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. 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.

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 those comments 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 5.02 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 update Metro Code Chapter 5.02 as provided in Exhibit A to improve clarity and consistency and to conform to other proposed code amendments.

## **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 continue these efforts by updating Chapter 5.02 to make it easier to read and understand.

The current Metro Code 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 typically 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).

To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposes to split the existing Chapter 5.02 into the following two chapters:

1. Chapter 5.02 (Regional System Fee) will continue to govern the regional system fee.
2. Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) will govern Metro's own transfer station fees.

In addition to the proposed revisions and new chapter described above, some current code sections would be transferred into administrative rules to allow Metro to more quickly address changing market conditions when those conditions may affect the circumstances applicable to those fees. In particular, the proposed administrative rules would authorize Metro's Chief Operating Officer to temporarily establish an interim fee for a waste material (such as wood, polystyrene, and plastics) if necessary to address a significant change in market conditions or an emergency circumstance.

The proposed administrative rules would be posted for public comment and an oral hearing if the Metro Council were to adopt the proposed changes to Chapter 5.02 and establish a new Chapter 5.03.

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1439

## 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 29<sup>th</sup> 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.

**TERRELL GARRETT  
GREENWAY RECYCLING, LLC  
15204 SE RIVER FOREST DR.  
MILWAUKIE, OR 97267  
(503) 793-9238  
12 August 2019**

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

Remarkably, GreenWay Recycling has only a few comments on the proposed changes to Chapter 5. Conceptually and mostly in practice, this is a piece of legislation that we support.

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 decisionmakers 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 decisionmaker(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.

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.

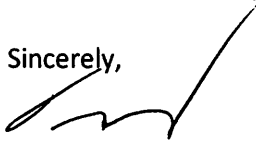
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from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

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.

The third and 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 proportionate share.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terrell Garrett', with a long, sweeping flourish extending upwards and to the right.

Terrell Garrett

## Warren Johnson

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**From:** Walker, Bruce [Bruce.Walker@portlandoregon.gov]  
**Sent:** Wednesday, September 11, 2019 9:47 AM  
**To:** Warren Johnson  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren –  
I'm resubmitting my comments with a clarification that Metro include in their administrative rules a commitment to sending fee info to local govts. by March 31.  
Thanks!  
Bruce

Warren –  
Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.  
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 1<sup>st</sup>. 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.

Thank you and please let me know if you have any questions.

Bruce

---

**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Friday, August 23, 2019 3:56 PM  
**To:** Walker, Bruce <Bruce.Walker@portlandoregon.gov>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment Bruce. I'll include it in the record.



Warren Johnson  
Metro  
(503) 797-1836

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**From:** Walker, Bruce [<mailto:Bruce.Walker@portlandoregon.gov>]  
**Sent:** Friday, August 23, 2019 12:46 PM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

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 1<sup>st</sup>. 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 but requests that notice of the new fee schedule be provided in March of each year.

Thank you and please let me know if you have any questions.

Bruce

*Include The Food - Be Cart Smart*

**Bruce Walker**

City of Portland Bureau of Planning & Sustainability  
Solid Waste & Recycling Program Manager  
1900 SW 4th Avenue, Room 7100  
Portland, OR 97201  
503.823.7772  
(he/him)  
[www.portlandoregon.gov/bps](http://www.portlandoregon.gov/bps)

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact 503-823-7700 or use City TTY 503-823-6868.

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**From:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste 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. Our efforts have sought to 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.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

## Warren Johnson

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**From:** Shannon Martin [shannon.martin@greshamoregon.gov]  
**Sent:** Wednesday, September 11, 2019 10:07 AM  
**To:** Warren Johnson  
**Cc:** Steve Fancher  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hello Warren,

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 fee change information no later than March 31<sup>st</sup> 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 1<sup>st</sup> adjustment.

Thank you,

Shannon Martin  
Program Manager | Recycling & Solid Waste  
City of Gresham | 503-618-2624

CITY OF  
GRESHAM

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**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

**CAUTION:** External Email

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste 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. Our efforts have sought to 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.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director  
Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)  
600 NE Grand Ave.  
Portland, OR 97232-2736  
503-797-1836

## Warren Johnson

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**From:** Theresa Koppang [Theresa\_Koppang@co.washington.or.us]  
**Sent:** Wednesday, September 11, 2019 10:08 AM  
**To:** Warren Johnson  
**Subject:** [External sender]Metro Code Changes/Admin Rules

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hi Warren,

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.

Thank you and please let me know if you have any questions.

**Theresa Koppang | Manager**

Washington County Department of Health and Human Services | Solid Waste & Recycling | Code Enforcement  
155 N. First Ave. MS 5A, Hillsboro OR 97124

[Theresa\\_koppang@co.washington.or.us](mailto:Theresa_koppang@co.washington.or.us)

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direct: 503-846-3663 main: 503-846-3605

## Warren Johnson

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**From:** Winterhalter, Rick [rickw@clackamas.us]  
**Sent:** Friday, September 13, 2019 9:12 AM  
**To:** Warren Johnson  
**Cc:** Polk, Eben  
**Subject:** [External sender]comments on rule changes

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> 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.

Regards,  
Rick

Rick Winterhalter  
Sustainability & Solid Waste Program  
Clackamas County  
150 Beaver Creek Rd.  
Oregon City, OR 97045  
503.742.4466

**I have one share in corporate Earth, and I am nervous about the management.**

-E.B. White, writer (1899-1985)

***Oregon's 2050 Vision:***

*Oregonians in 2050 produce and use materials responsibly  
conserving resources •protecting the environment •living well*

## Warren Johnson

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**From:** Peter Brandom [Peter.Brandom@hillsboro-oregon.gov]  
**Sent:** Friday, September 13, 2019 8:55 AM  
**To:** Warren Johnson  
**Cc:** Theresa Koppang (theresa\_koppang@co.washington.or.us); Walker, Bruce; Eben Polk; Winterhalter, Rick; Kathy Folsom; Martin, Shannon (Shannon.Martin@greshamoregon.gov)  
**Subject:** [External sender]RE: Requesting your comments on proposed changes to Metro's solid waste code  
**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren,

Below are our comments on the proposed regulatory changes, not in order of importance. Thank you for the opportunity to comment, and for the time and effort to provide clarification at the meeting this week.

- 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.
- 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.
- 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.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

Peter Brandom | *Senior Project Manager*  
City of Hillsboro, Oregon  
phone 503-681-6191  
email [peter.brandom@hillsboro-oregon.gov](mailto:peter.brandom@hillsboro-oregon.gov)  
web [www.hillsboro-oregon.gov](http://www.hillsboro-oregon.gov) | Twitter [@cityofhillsboro](https://twitter.com/cityofhillsboro)

---

**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Thursday, August 22, 2019 11:27 AM  
**To:** Peter Brandom <[Peter.Brandom@hillsboro-oregon.gov](mailto:Peter.Brandom@hillsboro-oregon.gov)>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment. I'll include this in the record.

Please let me know if you have any other comments or questions about the proposed changes. Thanks again.

Warren Johnson  
Metro  
(503) 797-1836

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**From:** Peter Brandom [<mailto:Peter.Brandom@hillsboro-oregon.gov>]  
**Sent:** Thursday, August 22, 2019 10:51 AM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

We would like to see a chapter that regulates rate setting and rates at private transfer stations in the same way that rates are set at the Metro stations.

---

**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste 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. Our efforts have sought to 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.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.



- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro’s own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro’s administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director  
Solid Waste Information, Compliance, and Cleanup

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September 13, 2019

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232- 2736

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

This letter represents the Clackamas County Refuse and Recycling Association (CCRRA), Portland Haulers' Association (PHA), and Washington County Haulers' Association (WCHA) comments regarding Metro's proposed solid waste code changes. As you know, CCRRA, PHA, and WCHA members provide services across the solid waste system including hauling, resource recovery & transfer, processing and landfilling for all areas of the Metro region. Members are committed to working cooperatively with their regulatory local governments to provide safe, modern, and efficient waste collection services that include garbage, recycling, and organics collection at reasonable rates.

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. 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 a part of the local government rate setting process.

As a result, CCRRA, PHA and WCHA ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.

Members are committed to working with Metro, local governments, as well as the community at large, and share our expertise in the industry. Our coordinated efforts among state, regional, local, industry and community members contribute to Oregon's position as a national leader in recycling and waste management. We look forward to the opportunity to continue serving as a resource, imparting experience from our own challenges as large and many small, family and

women-owned companies, in navigating the business of waste management while promoting our common values advancing equity in waste management. Please don't hesitate to contact Beth Vargas Duncan at 971-707-1683 or [bethvd@orra.net](mailto:bethvd@orra.net) with any questions.

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association