

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 22-1478
CODE CHAPTER 5.05 TO CLARIFY METRO’S)	
LANDFILL CAPACITY POLICY AND MAKE)	Introduced by Chief Operating Officer
HOUSEKEEPING UPDATES)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson

WHEREAS, Metro is the solid waste system planning authority for the region and Metro regulates the solid waste system pursuant to its constitutional, statutory, and charter authority as set forth in Metro Code Title V and in accordance with the Regional Waste Plan; and

WHEREAS, Metro Code Chapter 5.05 contains the requirements for Solid Waste Flow Control; and

WHEREAS, Metro regulates the disposal of solid waste generated within the Metro jurisdictional boundary through the issuance of non-system licenses and designated facility agreements as set forth in Metro Code Chapter 5.05; and

WHEREAS, Metro Council adopted a landfill capacity policy (Ordinance No. 17-1401) that prohibits the disposal of solid waste generated within the Metro region at a new landfill or limited capacity landfill; and

WHEREAS, the landfill capacity policy was intended to ensure that solid waste generated within the region did not cause the expansion or construction of a general-purpose landfill; and

WHEREAS, the policy was not intended to affect certain limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material such as contaminated soil and sediment; and

WHEREAS, over the next several years there will be a number of remediation and environmental cleanup projects occurring along the Willamette River which are expected to generate substantial amounts of contaminated sediment that must be disposed in a landfill; and

WHEREAS, the language codified in Chapter 5.05 with respect to the current landfill capacity policy fails to distinguish between general-purpose and limited-purpose landfill types, which alters the intent of Metro’s landfill capacity policy; and

WHEREAS, Metro Code Chapter 5.05 as currently codified would prohibit the disposal of any contaminated sediment at any new landfill or one that seeks expansion regardless of the landfill type; and

WHEREAS, the Chief Operating Officer recommends that Metro Council adopt amendments to Metro Code Chapter 5.05 to clarify that the landfill capacity policy does not apply to limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material to ensure that there is adequate disposal capacity for environmental cleanup material generated within the region; and

WHEREAS, the Chief Operating Officer also recommends that the Metro Council adopt minor housekeeping amendments to Metro Code Section 5.05.055 and other sections of Chapter 5.05 to update code references, remove outdated information, and improve readability; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.05 is amended as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this 2nd day of June 2022.



Christine Lewis, Deputy Council President

Attest:

Approved as to Form:



Connor Ayers, Recording Secretary



Carrie MacLaren, Metro Attorney

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CHAPTER 5.05

SOLID WASTE FLOW CONTROL

- 5.05.010 Purpose
- 5.05.020 Special Findings for Solid Waste Flow Control
- 5.05.030 Authority, Jurisdiction, and Application
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- 5.05.060 Designated Facilities of the System
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- 5.05.090 Contents of Designated Facility List and Council Adoption Every Five Years
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- 5.05.200 Issuance of Required Use Orders
- 5.05.210 Content of Required Use Orders; Notice
- 5.05.220 Requests for Reconsideration of Required Use Order
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- 5.05.240 Solid Waste Tracking System
- 5.05.250 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
- 5.05.270 Contested Case Proceedings

Repealed

- 5.05.010 Definitions
[Repealed Ord. 14-1331]
- 5.05.260 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms
[Repealed Ord. 19-1441]

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5.05.010 Purpose

- (a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to:
 - (1) Protect and preserve the health, safety and welfare of Metro's residents;
 - (2) Implement the Regional Waste Plan cooperatively with federal, state and local agencies;
 - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro;
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and
 - (5) Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes. [Ord. 16-1389; Ord. 19-1432.]

5.05.020 Special Findings for Solid Waste Flow Control

The Council makes the following findings:

- (a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste, and it is the Council's responsibility to protect and judiciously utilize Metro's limited land and resources.
- (b) Metro has developed the system as a regional waste disposal and recovery system within the framework of a Regional Waste Plan, and it has done so in cooperation with federal, state and local agencies for the benefit of all Metro citizens.
- (c) Pursuant to the authority granted to Metro under ORS 268, Metro may require any person or class of persons who generate solid or liquid waste to make use of:
 - (1) The system's disposal sites or solid waste facilities, or
 - (2) Metro's designated disposal sites or solid waste facilities.
- (d) ORS 268.317 and ORS 268.360 authorize Metro to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of:
 - (1) The system's disposal sites or solid waste facilities, or
 - (2) Metro's designated disposal sites or solid waste facilities.

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- (e) Under the authority granted in ORS 268.317, ORS 268.360 and the Regional Waste Plan, this chapter's provisions authorize Metro to require persons who generate, pickup, collect or transport solid or liquid waste to make use of:
 - (1) The system's disposal sites or solid waste facilities, or
 - (2) Metro's designated disposal sites or solid waste facilities. [Ord. 89-319; Ord. 01-917, Sec. 2; Ord. 02-974; Ord. 16-1389; Ord. 19-1432.]

5.05.030 Authority, Jurisdiction, and Application

- (a) Metro's solid waste flow control authority is derived from ORS Chapter 268 for solid waste and the Metro Charter. It includes the authority to regulate solid waste generated within Metro.
- (b) This chapter governs:
 - (1) The transportation, transfer, disposal and other processing of all solid waste generated within Metro as authorized by state law; and
 - (2) Any person who generates solid waste within Metro; and
 - (3) Any person who transports, transfers, disposes or otherwise deals with or processes solid waste generated within Metro.
- (c) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter abridges or alters the rights of action by the State or by a person that exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter should be liberally construed to accomplish these purposes. [Ord. 89-319; Ord. 01-917, Sec. 3; Ord. 02-974; Ord. 03-1019, Sec. 2; Ord. 16-1389.]

5.05.040 Prohibited Activities

- (a) Unless a person has a valid, Metro-issued non-system license, no person may transport, or cause to be transported, solid waste generated within Metro to any solid waste facility or disposal site.
- (b) No person may falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of Metro if the waste was actually generated inside of Metro.
- (c) No person may direct another person to falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of Metro if the waste was actually generated inside of Metro. A person is deemed to have directed another person to make false statements under this subsection if the person doing the directing knew or reasonably should have known that the person transporting the solid waste to the system facility would falsely state the origin of

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the solid waste being delivered. [Ord. 01-917, Secs. 4-5; Ord. 02-974; Ord. 06-1104; Ord. 16-1389.]

5.05.050 Exemptions to Prohibited Activities

- (a) This chapter does not apply to transportation, transfer or processing of, or other dealing with, non-putrescible source-separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.
- (b) If a designated facility is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility, then a non-system license is not required of any person to:
 - (1) Transport solid waste generated within Metro to that designated facility, or
 - (2) Utilize the designated facility for disposing or processing solid waste that was generated within Metro.
- (c) A non-system license is not required for a government agency to transport solid waste to the Covanta Waste-to-Energy facility located in Brooks, Oregon, for the primary purpose of destroying the waste in order to assure public safety or for the public good. Solid waste exempt under this subsection includes, but is not limited to, contraband, postage stamps, expired pharmaceuticals, and lottery tickets. [Ord. 01-917, Secs. 6-7; Ord. 02-974; Ord. 06-1106; Ord. 16-1389.]

5.05.055 Limited Capacity Landfills and New Landfills

- (a) No person may dispose of solid waste generated within the Metro jurisdictional boundary at a limited capacity landfill or new landfill. **Prohibited Use.** After January 1, 2020, disposal of waste generated in the Metro region in a limited capacity landfill or new landfill, as those terms are defined in Metro Code Chapter 5.00, is prohibited.
- (b) Metro will not accept any application for a designated facility or non-system license that seeks to dispose of solid waste generated within the Metro jurisdictional boundary at a limited capacity landfill or new landfill. **Implementation.** Effective January 1, 2020, the Metro Chief Operating Officer must implement the prohibition. Implementation of this section includes, without limitation, the authority to deny an application for designated facility status, terminate a designated facility agreement, deny an application for a non-system license, and terminate a non-system license, for putrescible or non-putrescible waste, where disposal is sought at a limited capacity or new landfill.
- (c) If a solid waste system facility becomes a limited capacity landfill, then within 30 days of becoming a limited capacity landfill Metro will terminate any existing

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designated facility agreement and non-system license in effect for that facility.
~~**Final decision and appeal.** Notwithstanding any other provision of the Metro Code, the Metro Chief Operating Officer's decision under this section is final and is appealable only as provided by Oregon law. The Chief Operating Officer's decision under this section is not subject to a contested case proceeding. [Ord. 17-1401, sec. 3.]~~

(d) This section does not apply to a disposal site that holds an applicable permit issued by the appropriate state or federal authority to:

(1) Accept hazardous waste for disposal under Subtitle C of the Resource Conservation Recovery Act; or

(2) Accept only cleanup material such as contaminated soil and sediment.

5.05.060 Designated Facilities of the System

- (a) Designated Facilities. The following described facilities are designated facilities of the system, and the Metro Council finds that these facilities meet the criteria set forth in Metro Code Chapter 5.05:
- (1) Metro owned or operated disposal sites or solid waste facilities.
 - (2) Disposal sites or solid waste facilities within Metro's boundary that are subject to Metro regulatory authority under Chapter 5.01.
 - (3) Disposal sites or solid waste facilities located outside Metro's boundary that the Council designates as part of the system, and which Council authorizes to accept waste generated from inside the Metro boundary under:
 - (A) An agreement between Metro and the disposal site or solid waste facility owner; or
 - (B) A non-system license that Metro issues to the waste generator or the person transporting the waste to the disposal site or solid waste facility.
- (b) The Council will consider a list of designated facilities for adoption by resolution:
- (1) At least every five years as set forth in Metro Code Section 5.05.090; or
 - (2) Any time there is a proposed change to the list under Metro Code Sections 5.05.070 or 5.05.080 pursuant to administrative procedures.
- (c) A disposal site or solid waste facility located outside the Metro boundary may:
- (1) Apply to Metro to become a designated facility of the system; or
 - (2) Request that Metro remove it from the list of designated facilities.

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- (d) The Chief Operating Officer will provide an application form and will consider the factors set forth in Metro Code Section 5.05.070 when determining whether to recommend to the Council any addition to the designated facility list. [Ord. 14-1333; Ord. 14-1334; Ord. 14-1335; Ord. 14-1337; Ord. 16-1389.]

5.05.070 Adding Facilities to the Designated Facilities List

- (a) The Council may add a facility to the list of designated facilities either:
 - (1) On its own motion;
 - (2) Upon the Chief Operating Officer's recommendation; or
 - (3) Upon a facility application under Metro Code Section 5.05.060(c).
- (b) The Council will consider the following factors when deciding whether to add a facility to the designated facilities list:
 - (1) The degree to which Metro had knowledge of prior facility users and waste types accepted at the facility and the degree to which those wastes pose a future risk of environmental contamination;
 - (2) The facility owner's and operator's record of regulatory compliance with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;
 - (3) The adequacy of the facility's operational practices and management controls;
 - (4) The expected impact on the region's recycling and waste reduction efforts;
 - (5) The facility designation's compatibility with Metro's existing contractual arrangements;
 - (6) The facility's record of compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
 - (7) Other benefits or detriments accruing to regional residents if Council designates the facility. [Ord. 14-1337; Ord. 16-1389.]

5.05.080 Removing From and Amending the Designated Facilities List

- (a) The Council may remove a facility from the designated facilities list:
 - (1) On its own motion;
 - (2) Upon the Chief Operating Officer's recommendation; or
 - (3) Upon a facility's request under Metro Code Section 5.05.060(c).
- (b) In deciding whether to remove a facility from the designated facilities list, the Council will consider:

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- (1) Changes in facility operations, including without limitation whether the facility is not operating, whether the facility has changed the type of waste it accepts, or whether the facility has changed the method for accepting the waste;
 - (2) Changes in legal requirements that apply to the facility;
 - (3) The facility's record of regulatory compliance. This includes but is not limited to public health and safety regulations and environmental regulations;
 - (4) Changes in ownership of the facility;
 - (5) Other benefits or detriments accruing to regional residents if Council removes the facility from the list of designated facilities; and
 - (6) Any other factor the Council considers appropriate to accomplish the purposes of this chapter.
- (c) Council may remove a facility from the designated facilities list upon the facility's request under Metro Code Section 5.05.060(c) without considering the factors set forth in subsection (b).
- (d) The Chief Operating Officer may change a facility name or address on the designated facilities list without Council action if no substantive change has occurred as set forth in subsection (b). [Ord. 14-1337; Ord. 16-1389.]

5.05.090 Contents of Designated Facilities List and Council Adoption Every Five Years

- (a) The designated facilities list will include the name and address of:
- (1) The designated facilities located outside the Metro region; and
 - (2) Metro-owned facilities.
- (b) Disposal sites and solid waste facilities within Metro's boundary that are subject to Metro regulatory authority are designated facilities of the system but will not be included on the list described in subsection (a).
- (c) In addition to any resolution adopted under Metro Code Sections 5.05.070 and 5.05.080, the Council will adopt by resolution a list of designated facilities at least every five years. [Ord. 14-1337; Ord. 16-1389.]

5.05.100 Agreements with Designated Facilities

- (a) The Chief Operating Officer may execute an agreement between Metro and a designated facility located outside the region for any solid waste that Council approves pursuant to Section 5.05.070. This authority includes any later amendments to the agreement.

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- (b) An agreement between Metro and a designated facility must specify the types of waste that the facility can accept from within Metro boundaries.
- (c) An agreement between Metro and a designated facility may not authorize the acceptance of non-putrescible waste originating or generated within Metro boundaries if the waste has not yet undergone material recovery, unless:
 - (1) The designated facility receives non-putrescible waste from a facility that Metro has issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
 - (2) The designated facility receives non-putrescible waste from a designated facility that has an agreement with Metro authorizing it to perform material recovery on non-putrescible waste; or
 - (3) The designated facility and Metro have an agreement authorizing the facility to perform material recovery on non-putrescible waste pursuant to subsection (d).
- (d) Any agreement between Metro and a designated facility that authorizes the facility to accept non-putrescible waste that (i) has not yet undergone material recovery, (ii) is not comprised of processing residual, and (iii) originated or generated within Metro boundaries, must:
 - (1) Require the designated facility to perform material recovery on the waste; and
 - (2) Demonstrate, in a manner that can be verified and audited, that the processing achieves material recovery substantially comparable to that required of an in-region material recovery facility under Metro Code Section 5.01.260 by either:
 - (A) Meeting the material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
 - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
 - (3) Demonstrate, in a manner that can be verified and audited, that the facility substantially complies with:
 - (A) The performance goals described in Metro Code Sections 5.01.090(c) and 5.01.190(c); and
 - (B) The rules, performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery

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facilities operating within the Metro region and adopted by Metro as administrative rules pursuant to Metro Code [Chapter 5.08, Section 5.01.280](#). [Ord. 89-319; Ord. 91-388, Sec. 2; Ord. 92-471C, Sec. 1; Ord. 93-483A, Sec. 1; Ord. 01-917, Sec. 8; Ord. 02-979; Ord. 02-974; Ord. 03-1019, Sec. 3; Ord. 03-999; Ord. 05-1081, Sec. 1; Ord. 05-1083, Sec. 1; Ord. 07-1138, Sec. 4; Ord. 07-1147B, Sec. 10; Ord. 08-1195; Ord. 08-1197A; Ord. 14-1337; Ord. 16-1389.]

5.05.110 Non-System License to Use Non-System Facility

- (a) A non-system license is required for any person to transport, or cause to be transported, any solid waste generated within Metro to any non-system facility for subsequent processing or disposal.
- (b) The Chief Operating Officer may approve or deny applications for non-system licenses to transport residential yard debris containing food waste, residential food waste, non-putrescible waste, special waste and cleanup material.
- (c) The Metro Council may approve or deny an application for a non-system license to transport putrescible waste after the Chief Operating Officer reviews the application. [Ord. 14-1337; Ord. 16-1389.]

5.05.120 Application for Non-System License

- (a) Any person requesting a non-system license must apply to the Chief Operating Officer on forms or in the format that the Chief Operating Officer requires. Applicants may apply for a limited-duration non-system license that has a term of not more than 120 days and is not renewable.
- (b) An application for a non-system license must set forth the following information:
 - (1) The applicant's name and address;
 - (2) The proposed waste generation site location;
 - (3) The nature of the solid waste;
 - (4) The expected tonnage of the solid waste, including:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
 - (5) The facts and circumstances that the applicant believes justifies Metro to issue the proposed non-system license;
 - (6) The non-system facility at which the solid waste would be transported, disposed of or otherwise processed; and

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- (7) The beginning date of the non-system license (or for limited duration non-system licenses, the non-system license term, not to exceed 120 days).
- (c) The Chief Operating Officer may also require the applicant to provide additional written information as the Chief Operating Officer considers necessary to determine whether to issue the proposed non-system license.
- (d) An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries must provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.260. [Ord. 14-1337; Ord. 16-1389.]

5.05.130 Non-System License Application Fees

An applicant must pay an application fee along with the application in an amount as specified in the following table:

Type of Non-System License Application	Application Fee for a New Non-System License	Application Fee for the Renewal of a Non-System License	Application Fee for Change in Authorization to an Existing Non-System License
Non-system licenses that authorize a limited-duration term of 120 days or less.	\$250	Not applicable. Limited-duration non-system licenses are not subject to renewal.	\$250
Non-system licenses that authorize the transport of 500 tons or less of solid waste per year.	\$500	\$100	<ul style="list-style-type: none"> • \$250 for change resulting in authorization of 500 tons or less per year. • \$500 for change resulting in authorization of more than 500 tons per year.

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Non-system licenses that authorize the transport of more than 500 tons of solid waste per year.	\$1,000	\$1,000	\$250
Type of Non-System License Application	Application Fee for a New Non-System License	Application Fee for the Renewal of a Non-System License	Application Fee for Change in Authorization to an Existing Non-System License
Non-system licenses that authorize the transport of waste that is exempt from the payment of Metro's regional system fee.	\$100	\$50	\$50

[Ord. 14-1337; Ord. 16-1389.]

5.05.140 Factors to Consider Regarding Non-System License Issuance

The Chief Operating Officer or Council, as applicable, will consider the following factors to the extent relevant to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;
- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;
- (3) The adequacy of the non-system facility's operational practices and management controls;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The proposed non-system license's effect with Metro's existing contractual arrangements;
- (6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental regulations; and

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- (7) Any other factor the Chief Operating Officer considers appropriate. [Ord. 14-1337; Ord. 16-1389.]

5.05.150 Non-System License Issuance Timetable for Non-Putrescible Waste

- (a) The Chief Operating Officer will issue a non-system license for non-putrescible waste, special waste, cleanup material, yard debris mixed with residential food waste, residential food waste or any other solid waste other than putrescible waste according to the following timelines and circumstances:
- (1) New non-system licenses. Within 60 days after the Chief Operating Officer receives a completed application along with any additional information the Chief Operating Officer may require, the Chief Operating Officer will determine whether to issue the non-system license and will inform the applicant in writing of that determination.
 - (2) Non-system license renewals.
 - (A) A non-system license renewal application must be substantially similar to the existing non-system license with regard to waste type, quantity and destination.
 - (B) A non-system licensee must submit a completed non-system license renewal application at least 60 days before the existing non-system license expires, along with any additional information the Chief Operating Officer may require.
 - (C) The Chief Operating Officer will determine whether to renew the non-system license and will inform the applicant in writing of that determination before the existing non-system license expires.
 - (D) The Chief Operating Officer is not obligated to make a determination earlier than the non-system license's expiration date, even if the licensee files the renewal request more than 60 days before the existing non-system license expires.
- (b) The Chief Operating Officer may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances to accomplish the purposes of this chapter. [Ord. 14-1337; Ord. 16-1389.]

5.05.160 Non-System License Issuance Timetable for Putrescible Waste

- (a) The Chief Operating Officer will make recommendations to the Council regarding whether to issue or renew a non-system license for putrescible waste. If the Chief Operating Officer recommends that Council issue or renew the non-system license for putrescible waste, the Chief Operating Officer will recommend to the Council specific conditions of the non-system license.

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- (b) New non-system licenses. The Council will determine whether to issue the non-system license and will direct the Chief Operating Officer to inform the applicant in writing of that determination within 120 days after Metro receives a completed application for a non-system license for putrescible waste, including receipt of any additional information the Chief Operating Officer may require.
- (c) Non-system license renewals.
 - (1) An application for renewal of an existing non-system license must be substantially similar to the existing non-system license with regard to waste type, quantity and destination.
 - (2) A non-system licensee must submit a completed application to renew the non-system license at least 120 days before the existing non-system license expires, along with any additional information the Chief Operating Officer requires.
 - (3) The Council will determine whether to renew the non-system license. The Council will inform the applicant in writing of that determination before the existing non-system license expires.
 - (4) The Council is not obligated to make a determination earlier than the expiration date of the existing non-system license, even if the licensee files its renewal request more than 120 days before the existing non-system license expires.
- (d) The Chief Operating Officer or Council, as applicable, may impose conditions on the issuance of a new or renewed non-system license for putrescible waste as they consider necessary under the circumstances. [Ord. 14-1337; Ord. 16-1389.]

5.05.170 Issuance of Non-System License; Contents

Each non-system license must be in writing and must set forth the following:

- (1) The name and address of the waste hauler or other person to whom Metro issues the non-system license;
- (2) The nature of the solid waste allowed by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste allowed by the non-system license;
- (4) The non-system facility where the licensee will transport the solid waste allowed by the non-system license, or the facilities at which the licensee will otherwise process the solid waste;
- (5) The expiration date of the non-system license. The expiration date may not be more than:
 - (A) 120 days from the issue date for a limited-duration non-system license;

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- (B) Three years from the issue date for a new full-term non-system license; and
 - (C) Two years from the issue date of a renewed full-term non-system license.
 - (D) Notwithstanding the provisions of this subsection, the Chief Operating Officer may extend the term of any non-system license for up to an additional six months beyond the original expiration date.
- (6) Any conditions the Chief Operating Officer imposes as provided above and which the licensee must comply with during the non-system license term, including but not limited to conditions that address the factors in Section 5.05.140. [Ord. 14-1337; Ord. 16-1389.]

5.05.180 Non-System Licensee Requirements

Each non-system licensee is required to:

- (1) Maintain complete and accurate records of, including but not limited to, the information required by the Chief Operating Officer regarding all solid waste transported, disposed or otherwise processed pursuant to the non-system license, and make those records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report to Metro the number of tons of solid waste transported, disposed or otherwise processed each month pursuant to the non-system license by no later than the 15th day following the end of each month;
- (3) Pay to Metro a fee equal to the Regional System Fee and Excise Tax multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed each month ~~pursuant to in accordance with the non-system license and Chapters 5.02 and 7.01; by no later than the 15th day following the end of each month;~~
- (4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the licensee must report to Metro that the load in its entirety was generated within the Metro boundary. The licensee must pay the Regional System Fee and Excise Tax on the entire load unless the non-system licensee provides Metro with records demonstrating the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary; and
- (5) Comply with all conditions and requirements found in the non-system license. [Ord. 14-1337; Ord. 16-1389.]

EXHIBIT A TO ORDINANCE NO. 22-1478**5.05.190 Failure to Comply with Non-System License**

- (a) If a non-system licensee fails to comply with the requirements set forth in Section 5.05.180 or with any non-system license condition imposed pursuant to Section 5.05.170, the Chief Operating Officer may:
 - (1) Impose penalties, or
 - (2) Modify, suspend, or terminate the non-system license pursuant to Section 5.05.250.
- (b) If the Chief Operating Officer finds a violation, the Chief Operating Officer will provide written notice to the licensee describing the violation and requiring the licensee to correct the violation within the time specified in the notice. [Ord. 89-319; Ord. 91-388; Ord. 01-917, Sec. 9; Ord. 02-979; Ord. 02-974; Ord. 03-992B, Sec. 1; Ord. 03-1019, Sec. 4; Ord. 06-1098B, Sec. 3; Ord. 06-1105; Ord. 07-1138, Sec. 5; Ord. 07-1139, Sec. 3; Ord. 07-1161, Sec. 2; Ord. 07-1147B, Sec. 11; Ord. 14-1337; Ord. 16-1389.]

5.05.195 Putrescible Waste Tonnage Allocation Framework

- (a) The Chief Operating Officer will allocate putrescible waste tonnage amounts to a transfer station in accordance with the allocation methodology under applicable administrative rule and this chapter's requirements.
- (b) The Chief Operating Officer may allocate tonnage to either a transfer station that is designated under this chapter or franchised under Chapter 5.01.
- (c) In addition to the allocation methodology factors adopted by administrative rule, the Chief Operating Officer may also consider the following factors when allocating tonnage amounts annually to a transfer station located outside the regional boundary:
 - (1) The public benefits to the regional solid waste system;
 - (2) How the allocation will affect regional solid waste system;
 - (3) How the allocation will affect the proportional amount of regional tonnage reserved for Metro's transfer stations (a minimum of 40 percent of the regional tonnage is to be reserved for Metro transfer stations);
 - (4) The proportional amount of regional tonnage allocated to companies;
 - (5) The rate that the transfer station charges for accepting putrescible waste from the Metro region; and
 - (6) Any other factor the Chief Operating Officer considers relevant to achieve the purposes and intent of this section.
- (d) The Chief Operating Officer may further adjust a transfer station's tonnage allocation at other times if it is in the public interest and necessary to address a significant disruption as defined in Chapter 5.00. An adjustment under this subsection does not require Council approval.

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- (e) The Chief Operating Officer may not allocate more than 40 percent of the available regional tonnage to any combination of transfer stations owned by the same company. [18-1426.]

5.05.196 Obligations and Limits for Selected Types of Activities

- (a) To be eligible to receive a tonnage allocation from Metro when a transfer station is located outside the Metro regional boundary, the transfer station must:
- (1) Be a designated facility in accordance with 5.05.070; and
 - (2) Enter into an agreement with Metro in accordance with 5.05.100.
- (b) A designated transfer station that received putrescible waste from the Metro region must:
- (1) Demonstrate it has the authorization from the applicable local or state solid waste authority to accept solid waste from the Metro region;
 - (2) Allow Metro to inspect, monitor, review and audit as if it were a facility located inside the regional boundary in accordance with Chapters ~~5.01;~~ ~~250,~~ ~~5.01.260,~~ ~~5.01.270~~ and ~~5.01.290;~~
 - (3) Report information monthly to Metro on all solid waste accepted or rejected that was generated from within the Metro regional boundary;
 - (4) Collect and remit regional system fees to Metro monthly in accordance with Chapter 5.02 on all solid waste accepted from the Metro regional boundary; and
 - (5) Collect and remit excise taxes to Metro monthly in accordance with Chapter 7.01 on all solid waste accepted from the Metro regional boundary.

Any person may request or the Chief Operating Officer may initiate an investigation of a designated facility to ensure that it complies with this section. [18-1426.]

5.05.200 Issuance of Required Use Orders

- (a) The Chief Operating Officer may issue a “required use order” to any person within Metro. This order requires the recipient to deliver waste to a specific designated facility. The Chief Operating Officer must comply with the provisions of this section and Section 5.05.210 if the Chief Operating Officer issues a required use order.
- (b) The following priorities apply when determining whether to issue a required use order:
- (1) Metro will allow persons to use the designated facility of their choice to the extent doing so is consistent with state, Metro and local regulations, facility obligations and facility limitations; and
 - (2) It may be necessary for the Chief Operating Officer to override the facility choice of a person if the Chief Operating Officer finds that allowing specific persons to exercise their choice appears likely to:

EXHIBIT A TO ORDINANCE NO. 22-1478

- (A) Overload or underutilize a specific designated facility or facilities; or
 - (B) Create system inefficiencies or negative impacts on the public health, safety or welfare as specified by the Chief Operating Officer.
- (c) When determining whether it is necessary to issue or amend a required use order, the Chief Operating Officer will consider the following factors:
- (1) The location of the person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;
 - (2) The equipment being utilized by the person at the time of the order's issuance in relation to the equipment handling capabilities of designated facilities;
 - (3) The types of waste being disposed of by the person, in relation to the capabilities of designated facilities to most appropriately process those wastes; and
 - (4) Other considerations that the Chief Operating Officer finds relevant, including but not limited to other health, safety and welfare considerations. [Ord. 89-319; Ord. 91-388, Sec. 3; Ord. 01-917, Sec. 11; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.210 Content of Required Use Orders; Notice

- (a) Required use orders will contain the following:
- (1) The names of the persons subject to the required use order, together with the person's address or place of business and telephone number;
 - (2) The type and quantity of solid waste subject to the required use order;
 - (3) The name and location of the designated facility that the recipient is required to use;
 - (4) The effective date of the required use order. Absent an emergency, the effective date may not be less than 10 days from the date of the order;
 - (5) A brief description of the procedure for how a recipient may request that the Chief Operating Officer reconsider either issuance or specific details of the order; and
 - (6) Any other information the Chief Operating Officer considers necessary.
- (b) Within two days after the date of any required use order, the Chief Operating Officer will give notice of the required use order as follows:
- (1) By United States mail, postage prepaid, to each person subject to the required use order at the person's last known address; and
 - (2) By any other method that the Chief Operating Officer considers necessary, and most likely, to ensure actual notice to the person subject to the order.

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- (c) The failure of any person subject to a required use order to receive notice of the order does not affect the order's validity and it does not excuse any person from complying with the order's terms. [Ord. 89-319; Ord. 91-388, Sec. 4; Ord. 14-1337; Ord. 16-1389.]

5.05.220 Requests for Reconsideration of Required Use Order

- (a) Any person receiving a required use order may request that the Chief Operating Officer reconsider issuance of the order or specific details of the order. The requesting person may premise the request on any matter that was relevant to the order's issuance, as specified in Metro Code Section 5.05.200.
- (b) A request for reconsideration must be in writing and on a form provided by Metro. To be timely, the Chief Operating Officer must receive a request for reconsideration within 30 days of the required use order's issuance date, as specified in the order.
- (c) The Chief Operating Officer will review a request for reconsideration and, within 15 days of receipt, either affirm or modify the order.
 - (1) The affirmance or modification will be considered timely if Metro deposits it in the mail within the 15-day period, with regular first class postage and addressed to the person requesting review.
 - (2) The affirmance or modification must include a brief statement of the decision's basis, and a brief statement on how the requesting party may request that the Chief Operating Officer review the decision.
- (d) The reconsideration process is intended to be informal. It may include personal, written, or telephone contact between the requesting party and the Chief Operating Officer or Finance and Regulatory Services staff.
- (e) If the Chief Operating Officer fails to issue a timely decision, the person receiving the order may appeal the decision to a hearings officer as specified in Metro Code Section 5.05.230.
- (f) A request for reconsideration does not stay the order issued. A required use order is effective on the date issued, and will remain in effect until Metro modifies or revokes the order. [Ord. 91-388, Sec. 5; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.230 Appeals to the Hearings Officer

- (a) Any person receiving a required use order may appeal the order to a hearings officer. The hearings officer may review any matter that was relevant to the order's issuance, as set forth in Metro Code Section 5.05.200.
- (b) An appeal to the hearings officer must be in writing and on a form provided by Metro. The hearings officer must receive the appeal within 30 days of the order's issuance date or affirmance date.

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- (c) Within 15 days of receiving the appeal, the hearings officer must issue a written order either affirming or modifying the Chief Operating Officer's decision.
 - (1) The hearings officer's order is timely if it is deposited in the mail within the 15-day period, with regular first class postage and addressed to the appellant.
 - (2) The hearings officer's order must include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the Council.
- (d) If the appellant is not satisfied with the hearings officer's order, or if the hearings officer fails to issue a timely order, the person receiving the Order may appeal the order to the Council as a contested case proceeding. The contested case hearing will be limited to the following whether:
 - (1) Exceptional circumstances of the person justify Council to revoke or modify the order; or
 - (2) The order is likely to cause extreme financial hardship to the person subject to the order.
- (e) An appeal does not stay the order issued. A required use order is effective on the date issued and remains in effect until modified or revoked. [Ord. 91-388, Sec. 5; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.240 Solid Waste Tracking System

The Chief Operating Officer will maintain a system for tracking solid waste that is generated, collected, transported or disposed within or outside Metro for the purpose of ensuring compliance with the requirements of this chapter. [Ord. 89-319; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.250 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

- (a) Any person who violates any provision of this chapter, any non-system license condition, or a required use order is subject to the fines and penalties set forth in this section.
- (b) The Chief Operating Officer may assess the following fines and penalties:
 - (1) A fine not to exceed \$500 for each violation; and
 - (2) A revocation of credit by Metro for the use of any system facility until the violator pays in full all fines owing under this chapter as a result of any violation.
- (c) In addition to the fines and penalties in subsection (b):

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- (1) Any person who fails to comply with any non-system license condition must pay to Metro a fine in an amount equal to (i) the regional system fee multiplied by (ii) the number of tons (or fractions thereof) of solid waste generated within Metro transported, disposed of or otherwise processed in violation of the non-system license conditions;
 - (2) Any person who, without having a non-system license then in effect, transports solid waste generated within Metro to, or utilizes or causes to be utilized for the processing or disposal of any solid waste generated within Metro, any non-system facility must pay to Metro a fine in an amount equal to the non-system license application fee that would have otherwise been required to authorize the waste disposed, plus an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, recycled, disposed of or otherwise processed to or at any non-system facility; and
 - (3) Any person who violates Metro Code Section 5.05.040(b) by falsely stating the origin of waste transported to a system facility must pay to Metro a fine in an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the Metro regional boundary transported to the system facility.
- (d) Metro may commence an appropriate legal action to collect the fines and penalties provided for above. Metro may also seek to enjoin any violation of this chapter or any failure to comply with any condition of a non-system license or required use order.
- (e) An authorized gatehouse employee may enforce a required use order at any Metro facility by denying facility access to any person if the person is:
- (1) Subject to a required use order, and
 - (2) Attempting to deliver waste to a facility not specified in the required use order.

This enforcement is in addition to the fines and penalties that Metro may levy pursuant to this section. [Ord. 89-319; Ord. 91-388, Sec. 6; Ord. 01-917, Sec. 12; Ord. 02-974; Ord. 03-992B, Sec. 2; Ord. 06-1104; Ord. 14-1337; Ord. 16-1389.]

5.05.260 [Repealed Ord. 19-1441; Effective February 19, 2020]

5.05.270 Contested Case Proceedings

Any person wishing to contest any decision made by the Chief Operating Officer under this chapter may commence a contested case proceeding pursuant to Chapter 2.05 of the Metro Code. [Ord. 89-319; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

IN CONSIDERATION OF ORDINANCE NO. 22-1478 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 TO CLARIFY METRO'S LANDFILL CAPACITY POLICY AND MAKE HOUSEKEEPING UPDATES

Date: April 29, 2022

Prepared by: Warren Johnson
(503) 797-1836

warren.johnson@oregonmetro.gov

Department: Waste Prevention and
Environmental Services

Presenter: Warren Johnson

Meeting date: May 19, 2022

Length: 15 minutes

ISSUE STATEMENT

Metro staff seek to amend Metro Code Chapter 5.05 to clarify that Metro's landfill capacity policy does not apply to certain limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material such as contaminated soil and sediment.

As currently codified, Metro Code Section 5.05.055 does not distinguish between general-purpose and limited-purpose landfill types, which alters the intent of Metro's landfill capacity policy.

ACTION REQUESTED

Adopt Ordinance No. 22-1478 to amend Metro Code Chapter 5.05 to clarify that the landfill capacity policy does not apply to limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material such as contaminated soil or sediment.

In addition, adoption of the proposed ordinance would make minor housekeeping amendments to Metro Code Section 5.05.055 and other sections of Chapter 5.05 to update code references, remove outdated information, and improve readability.

IDENTIFIED POLICY OUTCOMES

The proposed amendments would clarify that the landfill capacity policy does not apply to certain types of limited-purpose landfills to ensure that there is adequate disposal capacity for environmental cleanup material generated within the region.

POLICY QUESTION(S)

1. Should Metro clarify its landfill capacity policy to ensure that there is adequate disposal capacity for environmental cleanup material that is generated within the region?
2. Should Metro Council amend Metro Code Chapter 5.05 to clarify that Metro's landfill capacity policy does not apply to certain limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material such as contaminated soil or sediment?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Adopt the proposed amendments to Metro Code Chapter 5.05 to clarify Metro's landfill capacity policy as described in this staff report. This option will ensure that there is adequate disposal capacity for environmental cleanup material that is generated within the region.
2. Adopt alternate amendments to Metro Code Chapter 5.05 that are different than those described in this staff report. The potential implications of this option are unknown at this time because they would be dependent on the extent of the alternate proposal.
3. Do not adopt the proposed amendments. This option would result in maintaining the landfill capacity policy as codified and prohibit the region's waste from being disposed of at any new landfill or one that seeks expansion. This option may affect the proper disposal of environmental cleanup material such as contaminated soil and sediment.

STAFF RECOMMENDATION

Staff recommends adoption of Ordinance No. 22-1478 to amend Metro Code Chapter 5.05 to clarify Metro's landfill capacity policy as described in this staff report.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Adoption of Ordinance No. 22-1478 would result in amending Metro Code Chapter 5.05 to clarify that the landfill capacity policy does not apply to limited-purpose landfills that are permitted to receive hazardous waste or only cleanup material such as contaminated soil or sediment. The proposed ordinance also includes minor housekeeping revisions to update code references, remove outdated information, and improve readability as described below and provided in Exhibit A.

Staff recommends updating Metro Code Chapter 5.05 as described below:

1. Add Section 5.05.055(d) to clarify that the landfill capacity policy does not apply to landfills that are permitted to accept hazardous waste or landfills that accept only cleanup material such as contaminated soil or sediment.

2. Update language in Section 5.05.055 to remove passive voice and revise sentence structure for ease of reading. Update table of contents to align with section title.
3. Update Metro Code Section 5.05.100(d)(3)(B) with cross reference to Chapter 5.08.
4. Remove outdated reference to regional system fee and excise tax payments in Section 5.05.180(3) and update section with cross reference to Chapters 5.02 and 7.01.
5. Update Metro Code Section 5.05.196(b)(2) with cross reference to Chapter 5.01.

KNOWN OPPOSITION

Staff understands that there may be general opposition to expanding or constructing limited-purpose landfills; however, at this time there is no known opposition to the proposed revisions to Metro Code Chapter 5.05. The proposed ordinance does not authorize or direct the expansion or construction of any new landfills, but rather seeks to ensure that there is adequate disposal options for hazardous waste and cleanup material generated within the region. The Oregon Department of Environmental Quality (DEQ) is responsible for permitting and monitoring landfills within the state.

PUBLIC OUTREACH

DEQ staff informed Metro staff that there is a need to maintain adequate capacity to properly manage and dispose of any contaminated sediments generated within the region. There are a number of upcoming remediation and cleanup projects along the Willamette River that are expected to generate millions of tons of contaminated sediment that will require disposal over a period of many years. DEQ staff support Metro's clarification of the landfill capacity policy so that it does not impede any efforts to cleanup Willamette River or restrict the proper disposal of any contaminated sediment that is removed from the environment.

LEGAL ANTECEDENTS

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

ANTICIPATED EFFECTS

Adoption of Ordinance No. 22-1478 would result in amending Metro Code Chapter 5.05 to clarify Metro's landfill capacity policy as provided in Exhibit A.

BUDGET IMPACTS

There are no expected budget impacts associated with the adoption of this ordinance. Metro will continue to collect the regional system fee and excise tax on Metro area waste at the time of disposal. In general, Metro assesses a reduced regional system fee and excise tax rate of \$3.50 per ton on cleanup material including contaminated sediments.

BACKGROUND

In 2017, Council adopted a landfill capacity policy that prohibits the disposal of the region's waste at any new landfill or any landfill that seeks expansion after May 2017. This policy was adopted around the time that Riverbend Landfill (located in Yamhill County) was going through an extended process to expand its disposal capacity. The policy was intended to ensure that the region's residential and business waste didn't cause the expansion or construction of a general-purpose landfill. As currently codified, the policy applies to all landfills, regardless of the type of landfill or the waste they accept.

There are a number of upcoming remediation and cleanup projects along the Willamette River that are expected to generate millions of tons of contaminated sediment that will require disposal over a period of many years. The United States Environmental Protection Agency estimates that the removal of contaminated sediments will begin in about five to eight years and take about 13 years to complete. For perspective, the Metro tri-county area generates about 1.5 million tons of solid waste per year.

In particular, DEQ estimates that the Portland Harbor Superfund site alone will generate about three million tons of contaminated sediment that will need to be disposed of in a landfill. DEQ anticipates that some of the contaminated sediment from these cleanup projects will be eligible for disposal in a RCRA Subtitle D landfill ("general-purpose landfill"), of which the region has over a hundred years of disposal capacity at current waste generation rates. However, it may be necessary to dispose of some of the contaminated sediments in a RCRA Subtitle C landfill ("hazardous waste landfill") or a specialized sediment disposal site. The region may need additional disposal capacity with these types of limited-purpose landfills due to the nature, quantity, and location of the waste from these upcoming environmental cleanup projects. For example, Chemical Waste Management Landfill (a hazardous waste landfill located in Gilliam County) will soon seek expansion, in part, to accommodate contaminated material generated from environmental cleanup efforts along the Willamette River.

As currently codified, Metro's landfill capacity policy would prohibit the disposal of contaminated sediment at any new landfill or one that seeks expansion. DEQ staff have expressed concern to Metro about that current prohibition on disposal and its potential impact on cleanup efforts because all of the contaminated sediment removed from the Portland Harbor Superfund Site must be disposed of in a landfill.

The landfill capacity policy was initially adopted in the context of household garbage being disposed of at a general-purpose landfill (such as Riverbend Landfill), but it was not intended to affect certain limited-purpose landfills that are permitted to receive hazardous waste (such as Chemical Waste Management). The language codified in Chapter 5.05 with respect to the current landfill capacity policy fails to distinguish between general-purpose and limited-purpose landfill types, which alters the intent of Metro's landfill capacity policy.

Metro staff recommends that Metro Council adopt Ordinance No. 22-1478 which amends Metro Code Chapter 5.05 to clarify that the landfill capacity policy does not apply to limited-purpose landfills permitted to receive hazardous waste or only cleanup material to ensure that there is adequate disposal capacity for environmental cleanup material generated within the region.

ATTACHMENTS

None