

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CERTAIN)	ORDINANCE NO. 23-1498
METRO CODE CHAPTERS IN TITLE V (SOLID)	
WASTE) FOR HOUSEKEEPING UPDATES AND)	Introduced by Chief Operating Officer
TO INCORPORATE PLAIN LANGUAGE BEST)	Marissa Madrigal in concurrence with
PRACTICES)	Council President Lynn Peterson

WHEREAS, in December 2022 Metro Council adopted Resolution No. 22-5293. This required that Metro Code be written using plain and inclusive language best practices, and acknowledged that Metro’s regulatory code chapters should be updated frequently to ensure consistency with state and federal law and quickly address regulatory clarity concerns; and

WHEREAS, Resolution No. 22-5293 also establishes an expectation that all Metro Code chapters be reviewed on a regular basis. This ensures that the Metro Code remains consistent internally; is updated to reflect changes in law, circumstances or best practices; and is clear; concise; inclusive; and transparent; and

WHEREAS, Metro Code Chapter 5.01 (Solid Waste Facility Regulation) and Metro Code Chapter 5.05 (Solid Waste Flow Control) are two regulatory chapters in Title V that should be reviewed annually to ensure they keep abreast with changes in state or federal law and have ongoing regulatory clarity; and

WHEREAS, pursuant to Resolution No. 22-5293, Metro staff has reviewed Metro Code chapters 5.01 and 5.05 to incorporate plain and inclusive language best practices; and

WHEREAS, for the past several months, solid waste staff have compiled a list of future necessary code changes when they discovered errors in the code, and this code housekeeping update corrects those errors; and

WHEREAS, the changes and updates to these code chapters do not change Metro policy, nor are they intended as substantive changes to current regulations and requirements; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.01 (Solid Waste Facility Regulation) is amended as set forth in Exhibit A, with inserted text underlined and deleted text in strikethrough.
2. Metro Code Chapter 5.05 (Solid Waste Flow Control) is amended as set forth in Exhibit B, with inserted text underlined and deleted text in strikethrough.

ADOPTED by the Metro Council this 19th day of October 2023.



Lynn Peterson, Council President

Attest:

Approved as to Form:



Connor Ayers, Recording Secretary



Carrie MacLaren, Metro Attorney

**Ordinance No. 23-1498
Solid Waste Facility Regulation**

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

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[Repealed Ord. 98-762C Sec. 21]
- 5.01.190 Right to Purchase
[Repealed Ord. 98-762C Sec. 46]
- 5.01.230 Additional Provisions Relating to the Licensing of Yard Debris Processing
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[Repealed Ord. 98-762C Sec. 49]
- 5.01.130 Administrative Procedures for Franchisees
[Repealed Ord. 98-762C Sec. 29]
- 5.01.131 Designation and Review of Service Areas and of Demand
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- 5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards,
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- 5.01.400 Treatment of Existing Licenses and Franchises
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GENERAL PROVISIONS

5.01.010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. 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~~ residents of Metro; and
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter ~~shall~~ will be liberally construed to accomplish these purposes. [Ord. 81-111, Sec. 3; Ord. 95-621A, Sec. 2; Ord. 98-762C, Secs. 2-3; Ord. 02-974; Ord. 16-1387; Ord. 19-1432.]

5.01.020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is derived from the Oregon Constitution, ORS Chapter 268 for solid waste and the Metro Charter. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) 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 is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. [Ord. 98-762C, Secs. 4-5; Ord. 02-974; Ord. 16-1387.]

5.01.030 Prohibited Activities

Except as otherwise provided in this chapter, or in ~~Metro Code~~ Chapter 5.05, it is unlawful for:

- (a) Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) Any person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.
- (c) A licensee or franchisee to receive, process or dispose of any solid waste unless authorized by the license or franchise.

- (d) Any person to transport any solid waste to or to dispose of any solid waste at any place other than a solid waste facility or disposal site that is operated by a licensee or franchisee or is otherwise exempt under Section 5.01.040.
- (e) A licensee or franchisee to violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to ~~Section Chapter 5.01.280.5.08.~~
- (f) Any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.
- (g) Any person to store electronic device waste uncovered and outside of a roofed structure. [Ord. 81-111, Sec. 4; Ord. 87-217, Sec. 1; Ord. 95-621A, Sec. 3; Ord. 98-762C, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 2; Ord. 06-1102, Sec. 1; Ord. 16-1387.]

5.01.040 Exemptions to Prohibited Activities

- (a) The provisions of this chapter do not apply to a:
 - (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
 - (2) Disposal sites, transfer stations, or solid waste ~~facilities~~ facility owned or operated by Metro, except that Metro must pay regional system fees per Section 5.01.300.
 - (3) Conversion technology ~~facilities~~ facility that exclusively receives non-putrescible waste for use as feedstock that has been:
 - (A) Extracted from other solid waste: and
 - (B) Processed to meet prescribed specifications for direct introduction into a conversion technology process.
 - (4) Specific material recyclers that receives and processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper or similar commodities.
 - (5) Facilities that exclusively receives, processes, transfers or disposes of inert waste.
 - (6) Persons who generates and maintains residential compost piles for residential garden or landscaping purposes.
 - (7) Residences, parks, community gardens and homeowner associations.
 - (8) Universities University, schools, hospitals, golf courses, industrial parks, and other similar ~~facilities~~ facility, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
 - (9) An operation or facility that processes wood wastes, unless:
 - (A) The wood wastes are processed for composting; or

- (B) The operation or facility is other-wise regulated under this chapter.
 - (10) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process solid waste, provided that Metro finds an emergency situation exists.
 - (11) Persons who own or operate a mobile facility that processes petroleum contaminated soil at the site of origin and retains any treated petroleum contaminated soil on the site of origin.
- (b) Notwithstanding Section 5.01.040(a), all persons must comply with Sections 5.01.030(a), (b), (d) and (f).
 - (c) The provisions of Section 5.01.290 apply to the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(11). [Ord. 81-111, Sec. 5; Ord. 82-136, Sec. 1; Ord. 91-422B, Sec. 2; Ord. 95-621A, Sec. 4; Ord. 98-762C, Sec. 7; Ord. 00-866, Sec. 2; Ord. 02-933, Sec. 1; Ord. 02-974; Ord. 03-1018A, Sec. 3; Ord. 06-1102, Sec. 2; Ord. 07-1147B, Sec. 2; Ord. 16-1387; Ord. 17-1411.]

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees

- (a) A Metro solid waste license is required of any person owning or controlling a facility at which the person performs any of the following activities:
 - (1) Processing non-putrescible waste.
 - (2) Processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.
 - (3) Processing of yard debris or yard debris mixed with residential food waste.
 - (4) Reloading solid waste.
 - (5) Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under this chapter.
- (b) The annual fee for a solid waste license may not exceed \$300.~~00~~.
- (c) The application fee for a new or renewal license is \$300.~~00~~. The application fee is due at the time of filing.
- (d) The annual solid waste license fee is in addition to any other fee, tax or charge imposed upon a licensee.
- (e) The licensee must pay the license fee in the manner and at the time required by the Chief Operating Officer. [Ord. 81-111, Sec. 15; Ord. 98-762C, Secs. 8-9; Ord. 98-762C, Sec. 40; Ord. 98-767, Sec. 5; Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 02-974; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.060 Pre-Application Conference for Licenses

- (a) An applicant for a new license must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing another application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.070 Applications for Licenses

- (a) An applicant for a new or renewal license must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) A license application must also include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning ~~director~~ department of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (6) Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.080 License Issuance

- (a) The Chief Operating Officer may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer considers appropriate.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officers considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Before approving or denying a license application, the Chief Operating Officer must provide public notice and an opportunity for public comment on the license application.
- (d) The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:
 - (1) Submitted application,
 - (2) Chief Operating Officer's investigation regarding the application information, and
 - (3) Public comments.
- (e) If the Chief Operating Officer does not approve or deny a new license application within 180 days after the applicant files a complete application, the license is deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then the license will contain the standard terms and conditions included in other comparable licenses issued by Metro.
- (f) At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:
 - (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or
 - (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (g) An applicant may withdraw its application at any time before the Chief Operating Officer's decision and may submit a new application at any time thereafter.

- (h) If the Chief Operating Officer denies a license request, the applicant may not file a new application for the same or substantially similar license for at least six months from the denial date. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.090 License Contents

- (a) A license will specify authorized activities, the types and amounts of wastes the solid waste facility may accept, and any other conditions the Chief Operating Officer imposes.
- (b) In addition to this section's requirements, if a license authorizes the licensee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading, the license is subject to the [requirements of Section 5.01.260 and any corresponding](#) rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to [Section 5.01.260 Chapter 5.08](#).
- (c) The license must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
 - (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) Record-keeping. A licensee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes.
- (d) A license term may not exceed five years, except that the Chief Operating Officer may extend the license term for up to one year. [Ord. 98-762C, Secs. 16-17; Ord. 02-974;

Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.100 Record-keeping and Reporting for Licenses

- (a) A licensee must maintain accurate records of the information that the Chief Operating Officer requires. A licensee must report the required information on the forms, in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. The licensee or its authorized representative must sign the report and certify it as accurate.
- (b) A licensee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A licensee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the licensee received the complaint, and any response by the licensee to the complaint.
- (d) A licensee must retain all records required by this chapter for three years (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.
- (e) Any information the licensee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the licensee requests exception from disclosure consistent with Oregon Law. [Ord. 98-762C, Secs. 38-39; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.110 License Renewal

- (a) The Chief Operating Officer is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.
- (b) A licensee seeking renewal of a license must submit a request as required by this section not less than 120 days before the license's expiration date. The licensee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$300.~~00~~ application fee; and
 - (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.
- (c) The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed renewal is not in

the public interest. The Chief Operating Officer may attach conditions to any renewed license.

- (d) The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.120 Transfer of Ownership or Control of Licenses

- (a) A licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfers control of the license to another person, whether whole or in part. The transferee of a license must meet the requirements of this chapter.
- (b) The term for any transferred license is for the remainder of the original term unless the Chief Operating Officer establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.130 Change of Authorizations for Licenses

- (a) A licensee must submit an application pursuant to Section 5.01.070 when the licensee requests authority to:
 - (1) Accept wastes other than those the license authorizes, or
 - (2) Perform activities other than those the license authorizes, or
 - (3) Modify other limiting conditions of the applicant's license.
- (b) The licensee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations or limits to the applicant's license does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (d) A licensee must notify Metro in writing when the licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.140 Variances for Licenses

- (a) The Chief Operating Officer may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees to protect public health, safety and welfare.
- (b) In order to grant a variance, the Chief Operating Officer must find that the licensee or applicant can achieve the purpose and intent of the particular license

requirement without compliance and that compliance with the particular requirement:

- (1) Is inappropriate because of conditions beyond the applicant's or licensee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A licensee or applicant must request a variance in writing and must concisely state why the Chief Operating Officer should grant the variance. The Chief Operating Officer may investigate the request as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must approve or deny the variance request within 60 days.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (f) If the Chief Operating Officer denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to ~~Code~~ Chapter 2.05.
- (g) If the Chief Operating Officer denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the date of denial. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.150 Franchise Requirements and Fees

- (a) A Metro solid waste franchise is required of any person owning or controlling a facility at which the person performs any of the following activities:
- (1) Processing putrescible waste other than yard debris and yard debris mixed with residential food waste.
 - (2) Operating a transfer station.
 - (3) Operating a disposal site or an energy recovery facility.
 - (4) Any process using chemical or biological methods whose primary purpose is reduction of solid waste weight or volumes.
 - (5) Any other activity not listed in this section or exempted by Metro Code Section 5.01.040.
- (b) The annual fee for a solid waste franchise is \$500.~~00~~.
- (c) The franchise fee is in addition to any other fee, tax or charge imposed upon a franchisee.

- (d) The franchisee must pay the franchise fee in the manner and at the time required by the Chief Operating Officer.
- (e) The application fee for a new or renewal franchise is \$500.~~00~~. The application fee is due at the time of filing. [Ord. 98-762C, Secs. 8-9. Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.160 Pre-Application Conference for Franchises

- (a) An applicant for a new franchise must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing any application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.170 Applications for Franchises

- (a) An applicant for a new or renewal franchise must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) An application for a franchise must include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the franchise term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the franchise or refuses any franchise renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations,

expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (6) Any current permit and a list of anticipated permits that any other governmental agency may require. If the applicant has previously applied for other permits, the applicant must provide a copy of the permit application and any permit that another governmental agency granted as a result.
- (d) An analysis of the factors described in Section 5.01.180(f) must accompany an application for a franchise. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.180 Franchise Issuance

- (a) The Chief Operating Officer will review franchise applications filed under Section 5.01.170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officer considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer will make a recommendation regarding whether the:
 - (1) Applicant is qualified;
 - (2) Proposed franchise complies with the Regional Waste Plan;
 - (3) Proposed franchise meets the requirements of Section 5.01.170; and
 - (4) Applicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer will provide the recommendations required by subsection (c) to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application. If the Chief Operating Officer recommends that Council grant the application, the Chief Operating Officer may also recommend specific conditions of the franchise.
- (e) After Council receives the Chief Operating Officer's recommendation, the Council will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, the order is effective immediately.
- (f) The Council will consider the following factors when determining whether to issue a franchise:

- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Waste Plan;
 - (2) The effect that granting a franchise will have on the cost of solid waste disposal and recycling services for the citizens-residents of the region;
 - (3) Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
 - (4) Whether granting a franchise is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
 - (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.280-Chapter 5.08 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.
- (g) If the Council does not approve or deny a new franchise application within 180 days after the applicant files a complete application the franchise is deemed granted for the solid waste facility or disposal site requested in the application. The deadline for the Council to approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro.
- (h) At any time after an applicant files a complete franchise application, the deadline for the Council to approve or deny the application is extended if:
- (1) The Council extends the deadline for up to an additional 60 days, which the Council may do only once for any single application;
 - (2) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Council to act is restarted as of the date Metro receives the applicant's modifications; or
 - (3) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (i) An applicant may withdraw its application at any time before the Council's decision and may submit a new application at any time thereafter.
- (j) If the Council denies a franchise request, the applicant may not file a new application for the same or substantially similar franchise for at least six months from the denial date.
- (k) A franchise term may not exceed five years, except that the Chief Operating Officer may extend the term of a franchise for up to one year. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387; Ord. 19-1432.]

5.01.190 Franchise Contents

- (a) The franchise is the Council's grant of authority to accept the waste and perform the activity or activities described in the franchise, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority.
- (b) Franchises must be in writing and include:
 - (1) The term of the franchise;
 - (2) The specific activities the franchisee may perform and the types and amounts of waste the franchisee may accept at the solid waste facility;
 - (3) Any other conditions the Council considers necessary to ensure the franchisee complies with the intent and purpose of this chapter; and
 - (4) Indemnification of Metro in a form acceptable to the Metro Attorney.
- (c) A franchise that authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to ~~Section 5.01.280~~Chapter 5.08. The franchise must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
 - (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) Record-keeping. A franchisee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives,

recycles, reloads or disposes. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.195 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 franchised under this chapter or a transfer station that is designated under Chapter 5.05.
- (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:
 - (1) The public benefits to the regional solid waste system;
 - (2) How the allocation will affect the 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; 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.
- (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. [Ord. 18-1426.]

5.01.200 Record-keeping and Reporting for Franchises

- (a) A franchisee must maintain accurate records of the information the Chief Operating Officer requires and report that information on the forms or in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. A franchisee's authorized representative must sign the report and certify it as accurate.
- (b) A franchisee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.

- (c) A franchisee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the franchisee received the complaint, and any response by the franchisee to the complaint.
- (d) A franchisee must retain all records required by this chapter (except for the complaint records in subsection (c)) for three years and allow the Chief Operating Officer to inspect them.
- (e) All information that the franchisee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the franchisee requests exception from disclosure consistent with Oregon Law. [Ord. 14-1332; Ord. 16-1387.]

5.01.210 Franchise Renewal

- (a) The Council approves or denies a solid waste facility franchise renewal. A franchisee seeking renewal of a franchise must submit a request as required by this section not less than 120 days before the franchise's expiration date. The franchisee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$500-~~00~~ application fee; and
 - (3) Provide a statement of proposed material changes from the previous franchise application along with any other information the Chief Operating Officer or the Council requires.
- (b) The Chief Operating Officer will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.180. The Council must approve renewal of a solid waste facility franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria outlined in Section 5.01.180. The Council may attach conditions or limitations to the renewed franchise.
- (c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.220 Transfer of Ownership or Control of Franchises

- (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise transfers control of the franchise to another person, whether whole or in part. The transferee of a franchise must meet the requirements of this chapter.
- (b) The term for any transferred franchise is for the remainder of the original term unless the Council establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.230 Change of Authorizations for Franchises

- (a) A franchisee must submit an application pursuant to Section 5.01.170 when the franchisee requests authority to:
 - (1) Accept wastes other than those the franchise authorizes, or
 - (2) Perform activities other than those the franchise authorizes, or
 - (3) Modify other limiting conditions of the applicant's franchise.
- (b) The franchisee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorization or limits to the applicant's franchise does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (d) A franchisee must notify Metro in writing when the franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.~~00~~. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.240 Variances for Franchises

- (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon conditions the Council considers necessary to protect public health, safety and welfare.
- (b) In order to grant a variance, the Council must find that the franchisee can achieve the purpose and intent of the particular franchise requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or franchisee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A franchisee or applicant must request a variance in writing and must concisely state why Council should grant the variance. The Chief Operating Officer may make an investigation as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must recommend to the Council whether to approve or deny the variance within 120 days after Metro receives the variance request.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.150.

- (f) If the Council denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to ~~Code~~ Chapter 2.05.
- (g) If the Council denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the denial date. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.250 General Obligations of All Regulated Parties

All persons regulated by this chapter must:

- (a) Allow the Chief Operating Officer reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the license or franchise, and the performance standards and administrative rules adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08.
- (b) Ensure that solid waste transferred from the facility goes to the appropriate destination under this chapter, ~~Metro Code~~ Chapter 5.05, and other applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- (c) Maintain insurance during the license or franchise term in the amounts specified in the license or franchise or any other amounts as state law may require for public contracts, and to give 30 days' written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (d) Indemnify and save harmless Metro, the Council, the Chief Operating Officer, Metro employees and Metro agents from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the licensee's or franchisee's performance of or failure to perform any of its obligations under the license or franchise or this chapter.
- (e) Agree to no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:
 - (1) Any provision or requirement of the license or franchise;
 - (2) Metro's enforcement of the license or franchise; or
 - (3) Any determination that a license or franchise or any part thereof is invalid. [Ord. 81-111, Sec. 13; Ord. 98-762C, Sec. 28; Ord. 02-974; Ord. 03-1018A, Sec. 15; Ord. 16-1387; Ord. 17-1411.]

5.01.260 Obligations and Limits for Selected Types of Activities

- (a) A solid waste facility that receives ~~s~~ non-putrescible waste and is subject to licensing or franchising under this chapter must:

- (1) Perform material recovery from non-putrescible waste that it receives at the facility as specified in this section or as otherwise specified in its license or franchise, or
 - (2) Transport the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (b) Notwithstanding subsection (a) above, a facility that exclusively receives non-putrescible source-separated recyclable material is not subject to the requirements of this section.
- (c) A licensee or franchisee subject to subsection (a) must:
- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. The processing residual may not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension.
 - (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of the sampling to Metro in the monthly report due the month following the end of that quarter.
- (d) Based on observation, audits, inspections and reports, Metro inspectors will conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.290(c). Failure to maintain the recovery level specified in Section 5.01.260(c)(1) is a violation enforceable under Metro Code. Metro will not impose a civil penalty on the first two violations of this subsection by a single licensee or franchisee.
- (e) Failure to meet the reporting requirements in subsection (c)(2) is a violation enforceable under Metro Code.
- (f) A transfer station franchisee:
- (1) Must accept putrescible waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
 - (2) Must not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.
 - (3) Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the Council in approving the transfer station franchise application.
 - (4) Must provide an area for collecting source-separated recyclable materials without charge at the franchised solid waste facility, or at another location more convenient to the population being served by the franchised solid waste facility.

- (5) Must serve the public interest of the region by serving all haulers collecting solid waste inside the region; and
- (6) Must serve the public interest of the region by serving all haulers collecting solid waste inside the transfer station's waste shed.

Any person may request or the Chief Operating Officer may initiate an investigation of a franchisee to ensure that it complies with this section.

- (g) A reload facility licensee must transport all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (h) A solid waste facility licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste unless the:
 - (1) Size reduction is a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations; and
 - (2) Licensee or franchisee described the size reduction in a Metro-approved operating plan. [Ord. 98-762C, Secs. 30-31; Ord. 00-866, Sec. 5; Ord. 01-916C, Sec. 4; Ord. 02-952A, Sec. 1; Ord. 03-1018A, Sec. 16; Ord. 07-1147B, Sec. 3; Ord. 12-1272, Sec. 3; Ord. 13-1306, Sec. 3; Ord. 16-1387; Ord. 17-1411; Ord. 18-1426.]

5.01.270 Direct Haul of Putrescible Waste

A franchisee authorized by Metro to deliver putrescible waste directly to a disposal site must:

- (a) Transport the putrescible waste to Metro's contract operator for disposal of putrescible waste;
- (b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to ~~Section 5.01.280~~Chapter 5.08; and
- (c) Provide transportation or arrange for transportation by a transportation service provider that complies with the following performance standards for long-haul transportation by highway:
 - (1) All solid waste transported through the city limits of Arlington, Oregon, is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
 - (2) All equipment satisfies all federal, state, and local regulations. In addition, the use of exhaust brakes is prohibited.
 - (3) All solid waste is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and is capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.

- (4) The average weight of solid waste payloads transported during each calendar month is not less than 25 tons.
- (5) Any staging areas used is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- (7) Use of rest areas, turnouts, scenic vista points, and state parks is limited to cases of emergency.
- (8) Transportation is prohibited in the Columbia River Gorge NSA during the following times:
 - (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - (B) Daylight hours on Saturdays in June, July, August, and September.
 - (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste is transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste is transported by use of vehicles and equipment that is suitably painted and presents an acceptable appearance.
- (11) A franchisee representative and its transportation carrier must annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The franchisee must report to Metro any accidents, citations, and vehicle inspections involving vehicles of the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A franchisee representative and its transportation carrier must meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee must immediately report any violations of this subsection to Metro. [Ord. 98-762C, Secs. 32-33; Ord. 02-974; Ord. 16-1387; Ord. 17-1411.]

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

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

5.01.290 Inspections, Audits, and other Investigations of Solid Waste Facilities

- (a) The Chief Operating Officer is authorized to make such inspection, audit, or other investigation as the Chief Operating Officer considers appropriate to ensure compliance with this chapter, the Code, the franchise or license, and administrative

rules and performance standards adopted pursuant to [Section 5.01.280-Chapter 5.08](#). Licensed or franchised facilities must allow access to the facility premises, and all other solid waste facilities, at all reasonable times during business hours with or without notice, and during non-business hours with 24 hours notice.

- (b) Inspections, audits, or other investigations authorized under subsection (a) will occur regularly and as the Chief Operating Officer determines necessary. The Chief Operating Officer will report the results of each inspection, audit, or other investigation in the format approved by the Chief Operating Officer.
- (c) The Chief Operating Officer may access and examine any records during the inspections, audits, or other investigations if the Chief Operating Officer considers the records pertinent to the license or franchise, or to the provisions of this chapter. These records include but are not limited to the licensee's, franchisee's or solid waste facility operator's books, papers, records, equipment, blueprints, operation and maintenance records, logs and operating rules and procedures. As part of the inspections, audits, or other investigations, the Chief Operating Officer may take samples and conduct analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer will coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to avoid redundant requirements on operations.
- (d) Any violation discovered by an inspection, audit, or other investigation is subject to the penalties provided in Section 5.01.330. [Ord. 98-762C, Secs. 36-37; Ord. 02-974; Ord. 03-1018A, Sec. 18; Ord. 07-1147B, Sec. 4; Ord. 16-1387.]

5.01.300 Regional System Fees

- (a) Pursuant to Chapter 5.02, regional system fees apply to solid waste facilities and disposal sites that Metro owns, operates, licenses or franchises, or which are liable for payment of the fees pursuant to a special agreement with Metro.
- (b) Regional system fees are in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.
- (c) Regional system fees must be separately stated upon records of the solid waste facility or disposal site.
- (d) Regional system fees and finance charges on those fees must be paid as specified in ~~Metro Code~~ Chapter 5.02. [Ord. 81-111, Sec. 16; Ord. 86-214, Sec. 1; Ord. 91-422B, Sec. 4; Ord. 93-509, Sec. 2; Ord. 95-621A, Sec. 7; Ord. 98-762C, Sec. 41; Ord. 00-866, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 19; Ord. 14-1332; Ord. 16-1387.]

5.01.310 Determination of Rates

- (a) The Council may establish facility rates if it finds that setting facility rates is in the public interest as a matter of metropolitan concern.
- (b) Notwithstanding any other provision of this section:
 - (1) Licensees are exempt from all rate setting; and

- (2) Franchisees are exempt from rate setting unless Metro requires rate setting as a franchise condition. [Ord. 81-111, Sec. 19; Ord. 82-136, Sec. 4; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 43-44; Ord. 03-1018A, Sec. 20; Ord. 16-1387.]

ENFORCEMENT AND APPEALS

5.01.320 Enforcement Provisions

- (a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.
- (b) The Chief Operating Officer may investigate whether there is sufficient cause to suspend, modify or revoke a franchise or license. If there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Chief Operating Officer will notify the franchisee or licensee in writing of the alleged violation, and the necessary steps the violator must take to correct the violation. If the franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after Metro sends notice, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.330 or that Metro will suspend, modify or revoke the franchise or license.
- (c) The Chief Operating Officer will send the notice upon finding that the franchisee or licensee has:
- (1) Violated the franchise or license, the administrative rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated there under or any other applicable law or regulation;
 - (2) Misrepresented material facts or information in the franchise or license application, or other information that Metro requires the licensee or franchisee to submit;
 - (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides written notification and reasonable opportunity to do so;
 - (4) Misrepresented the gross receipts from the operation of the licensed or franchised site, facility or station;
 - (5) Failed to pay when due the fees required under this chapter; or
 - (6) Violated a city or county ordinance if the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.
- (d) Except as provided in subsection (e), if the Chief Operating Officer revokes, modifies or suspends a license or franchise, it does not become effective until Metro gives the licensee or franchisee an opportunity to request a contested case hearing under ~~Metro Code~~Chapter 2.05.

- (e) If Metro finds a serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee, the Chief Operating Officer may in accordance with ~~Code~~ Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the Chief Operating Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If Metro immediately suspends a franchise, the franchisee has 30 days from the suspension date to request a contested case hearing under ~~Code~~ Chapter 2.05.
- (f) If Metro revokes a franchise or license, all franchisee or licensee rights in the franchise or license become void. [Ord. 81-111, Sec. 20; Ord. 82-136, Sec. 5; Ord. 95-621A, Sec. 8; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 45; Ord. 02-974; Ord. 03-1018A, Sec. 21; Ord. 14-1332; Ord. 16-1387.]

5.01.330 Penalties

- (a) Each violation of this chapter is punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. Metro may join separate offenses in one Notice of Violation in several counts.
- (b) If the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise, or the administrative rules or performance standards adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08, the Chief Operating Officer will provide written notice to the violator describing the violation and requiring the violator to correct the violation within the time specified in the notice.
- (c) If a licensee or franchisee fails to correct the violation within the specified time period, the Chief Operating Officer will issue a Notice of Violation, indicating the continuing violation, the date of re-inspection and the fine imposed as specified in subsection (a).
- (d) If after re-inspection, the Chief Operating Officer finds the licensee or franchisee has failed to correct the violation, the violation is punishable by a fine as specified in subsection (a). Metro will give notice of a final deadline for correcting the violation at the time of re-inspection.
- (e) If the licensee or franchisee fails to correct the violation after the final deadline, the licensee or franchisee must cease the activity resulting in the violation.
- (f) Metro will conduct further inspections to ensure that the licensee or franchisee suspends the offending activity. If the licensee or franchisee fails to suspend the offending activity, the Chief Operating Officer may:
 - (1) Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
 - (2) Suspend all solid waste activities on site;

- (3) Impose a lien on the property for the amount of the fines; or
 - (4) Suspend, modify or revoke the license or franchise pursuant to Section 5.01.320.
- (g) In addition to subsection (a), Metro may enjoin any violation of this chapter upon suit in a court of competent jurisdiction, and the violator may also be subject to a civil penalty not to exceed \$500.00 per day for each day of violation. [Ord. 81-111, Sec. 22; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 47; Ord. 98-767, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 22; Ord. 14-1332; Ord. 16-1387.]

5.01.340 Appeals

- (a) Any applicant, franchisee or licensee may request a contested case hearing pursuant to ~~Code~~ Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance.
- (b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.
- (c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.
- (d) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing. [Ord. 81-111, Sec. 11; Ord. 95-621A, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 14; Ord. 16-1387.]

MISCELLANEOUS PROVISIONS

5.01.350 Miscellaneous Provisions

- (a) The Chief Operating Officer is responsible for the administration and enforcement of this chapter.
- (b) Metro's granting of a license or franchise does not vest any right or privilege in the licensee or franchisee to receive specific quantities of solid waste during the license or franchise term.
- (c) Metro has the power to regulate, in the public interest, the exercise of the privileges it grants by a license or franchise. Metro may establish or amend rules, regulations or standards regarding matters within Metro's authority and enforce those requirements against licensees or franchisees.

- (d) No waiver of any license or franchise condition is effective unless it is in writing and signed by the Chief Operating Officer. If Metro waives a license or franchise condition, that waiver does not waive or prejudice Metro's right to require performance of the same condition or any other condition.
- (e) Metro will construe, apply and enforce a license or franchise in accordance with the laws of the State of Oregon.
- (f) If a court of competent jurisdiction determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect the validity of the remaining provisions in the license or franchise.
- (g) Nothing in this chapter limits the power of a federal, state, or local agency to enforce any provision of law relating to any solid waste facility or disposal site that it is authorized or required to enforce or administer.
- (h) Nothing in this chapter should be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities. [Ord. 98-762C, Secs. 52-53; Ord. 02-974; Ord. 03-1018A, Sec. 24; Ord. 14-1332; Ord. 16-1387.]

XHIBIT B
Ordinance No. 23-1498
Solid Waste Flow Control

CHAPTER 5.05

SOLID WASTE FLOW CONTROL

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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]

5.05.010 Purpose

- (a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro ~~regional jurisdictional~~ 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~~ residents of Metro;
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and
 - (5) Protect the ~~citizens~~ residents of the region from liability arising from the use of a disposal site subject to federal law.
- (b) The provisions of this chapter ~~shall~~ will 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~~ residents.
- (c) Pursuant to the authority granted to Metro under ORS Chapter 268, Metro may require any person or class of persons who generate solid or liquid waste to make use of a designated facility of the system.
- ~~(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 and the Regional Waste Plan authorize Metro to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of a designated facility of the system.
- ~~(1) The system's disposal sites or solid waste facilities, or~~
- ~~(2) Metro's designated disposal sites or solid waste facilities.~~

~~(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)(1) 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 the Metro jurisdictional boundary.
- (b) This chapter governs:
 - (1) The transportation, transfer, disposal and other processing of all solid waste generated within the Metro jurisdictional boundary as authorized by state law; and
 - (2) Any person who generates solid waste within the Metro jurisdictional boundary; and
 - (3) Any person who transports, transfers, disposes or otherwise deals with or processes solid waste generated within the Metro jurisdictional boundary.
- (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, N~~no person may transport, or cause to be transported, solid waste generated within the Metro jurisdictional boundary to ~~any non-system solid waste facility or disposal site without a valid, Metro-issued non-system license.~~
- (b) No person may falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of the Metro jurisdictional boundary if the waste was actually generated inside of the Metro jurisdictional boundary.
- (c) No person may direct another person to falsely state to a solid waste system facility operator that solid waste delivered to that facility for disposal was generated

outside of the Metro jurisdictional boundary if the waste was actually generated inside of ~~Metro~~the boundary. 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 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 the Metro jurisdictional boundary to that designated facility, or
 - (2) Utilize the designated facility for disposing or processing solid waste that was generated within the Metro jurisdictional boundary.
- (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.
- (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.
- (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 designated facility agreement and non-system license in effect for that facility.
- (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 and Recovery Act; or
- (2) Accept only cleanup material such as contaminated soil and sediment. [Ord. 17-1401; Ord. 22-1478.]

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 the Metro's jurisdictional boundary that are subject to Metro regulatory authority under Chapter 5.01.
 - (3) Disposal sites or solid waste facilities located outside the Metro's jurisdictional 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~~rules.
- (c) A disposal site or solid waste facility located outside the Metro jurisdictional boundary may:
 - (1) Apply to Metro to become a designated facility of the system unless otherwise prohibited under this chapter; or
 - (2) Request that Metro remove it from the list of designated facilities.
- (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:
 - (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~~jurisdictional boundary; and
 - (2) Metro-owned facilities.
- (b) Disposal sites and solid waste facilities within the Metro's jurisdictional 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~~jurisdictional boundary for any solid waste that Council approves pursuant to Section 5.05.070. This authority includes any later amendments to the agreement.
- (b) An agreement between Metro and a designated facility must specify the types of waste that the facility can accept from within the Metro jurisdictional boundaries~~boundary~~.

- (c) An agreement between Metro and a designated facility may not authorize the acceptance of non-putrescible waste originating or generated within the Metro jurisdictional boundaryies 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 the Metro jurisdictional boundaryies, 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 the Metro jurisdictional boundaryies; or
 - (B) Keeping all non-putrescible waste received from within the Metro jurisdictional boundaryies 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 facilities operating within the Metro region-jurisdictional boundary and adopted by Metro as administrative rules pursuant to Metro Code

Chapter 5.08. [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; Ord. 22-1478.]

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 the Metro jurisdictional boundary 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
 - (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 the Metro jurisdictional boundaryies 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.

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

- (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.

- (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;

- (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 ~~r~~Regional ~~s~~System ~~f~~Fee and ~~e~~Excise ~~t~~Tax multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed each month in accordance with the non-system license and Chapters 5.02 and 7.01;
- (4) When solid waste generated from within the Metro jurisdictional 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 ~~r~~Regional ~~s~~System ~~f~~Fee and ~~e~~Excise ~~t~~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 jurisdictional boundary; and
- (5) Comply with all conditions and requirements found in the non-system license. [Ord. 14-1337; Ord. 16-1389; Ord. 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-Metro jurisdictional 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 regionjurisdictional boundary; 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.

- (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. [Ord. 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-jurisdictional~~ 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-receives~~ putrescible waste from the Metro ~~region-jurisdictional boundary~~ must:
 - (1) Demonstrate it has the authorization from the applicable local or state solid waste authority to accept solid waste from the Metro ~~region-jurisdictional boundary~~;
 - (2) Allow Metro to inspect, monitor, review and audit as if it were a facility located inside the ~~Metro jurisdictional-regional~~ boundary in accordance with Chapter 5.01;
 - (3) Report information monthly to Metro on all solid waste accepted or rejected that was generated from within the Metro ~~jurisdictional-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 ~~jurisdictional-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 ~~jurisdictional-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. [Ord. 18-1426; Ord. 22-1478.]

5.05.200 Issuance of Required Use Orders

- (a) The Chief Operating Officer may issue a “required use order” to any person within ~~the~~ Metro ~~jurisdictional boundary~~. 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:
 - (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.
- (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~~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.
- (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~~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 the Metro jurisdictional boundary 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):
- (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 the Metro jurisdictional boundary 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 the Metro jurisdictional boundary to, or utilizes or causes to be utilized for the processing or disposal of any solid waste generated within ~~Metro~~the boundary, 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 the Metro jurisdictional boundary 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 ~~jurisdictional~~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-owned 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. 23-1498, FOR THE PURPOSE OF AMENDING CERTAIN METRO CODE CHAPTERS IN TITLE V (SOLID WASTE) FOR HOUSEKEEPING UPDATES AND TO INCORPORATE PLAIN LANGUAGE BEST PRACTICES

Date: September 22, 2023
Department: Office of Metro Attorney
Meeting Date: October 5, 2023

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 10 minutes

ISSUE STATEMENT

In December 2022, Metro Council adopted Resolution No. 22-5293, which requires staff to use inclusive and plain language best practices when drafting Metro Code language. The Resolution further recognizes that certain regulatory code chapters—primarily solid waste and income taxes—require “frequent housekeeping updates to reflect changes in state law and ongoing regulatory clarity,” with annual updates. Staff seeks to update two solid waste chapters (Flow Control and Facility Regulation) to incorporate plain language and correct errors in the code.

ACTION REQUESTED

The Office of Metro Attorney requests that Metro Council adopt Ordinance No. 23-1498.

IDENTIFIED POLICY OUTCOMES

- 1) Update Metro Code Chapters 5.01 (Facility Regulation) and 5.05 (Flow Control) to incorporate plain and inclusive language best practices;
- 2) Remove redundant and unnecessary words that do not otherwise change the meaning of the sentence or code section;
- 3) Correct code errors related to incorrect cross-references;
- 4) Update terms to be more precise regarding Metro’s jurisdictional boundary.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

This ordinance does not affect current Council policies. This ordinance merely updates two solid waste code chapters to incorporate plain and inclusive language best practices as required by Council and corrects certain code errors.

STAFF RECOMMENDATIONS

OMA recommend that Metro Council adopt Ordinance No. 23-1498 to amend Metro Code Chapters 5.01 (Facility Regulation) and 5.05 (Flow Control) in Title V.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This housekeeping code update has no applicable strategic context other than ensuring that Metro’s regulatory code chapters are “clear, accessible, and inclusive” for all

communities, businesses, and local government partners within the region as required by Metro Council Resolution No. 22-5293.

BACKGROUND

In December 2022 Metro Council adopted Resolution No. 22-5293, the “Plain Language” resolution. This required, among other things, that staff draft Metro Code language using plain and inclusive language best practices. Second, it required a scheduled review of Metro Code chapters over time. Finally, it recognized that the solid waste regulatory code chapters in Title V “require frequent housekeeping updates to reflect changes in state law and ongoing regulatory clarity.”

For the past several months, solid waste staff have compiled a list of future necessary code changes when they discovered errors in the code or examples of language that did not comply with Metro’s plain and inclusive language standards. This code housekeeping update corrects those errors, while also slightly modifying some sections to incorporate plain and inclusive language best practices. It does not change current policy, practice, or intent.

Attachment 1 summarizes the updates to both chapters.

Attachment 1
Staff Report for Ordinance No. 23-1498
Summary of Chapter Updates

I. Chapter 5.01 (Solid Waste Facility Regulation)

- Corrected certain cross-reference errors;
- Changed the term “citizens” to “residents;”
- Changed plural terms to singular to improve regulatory clarity;
- Removed the final zeros on dollar amounts for easier reading (e.g. \$300.00 to \$300);
- Changed the term “planning director” to “planning department” when local land use compatibility statements are required for new Metro-authorized facilities. (This codifies current practice in which Metro receives notification from cities and counties rather than individual planning directors);
- Removed redundant or unnecessary words without changing the underlying meaning.

II. Chapter 5.05 (Solid Waste Flow Control)

- Changed the term “citizens” to “residents;”
- Changed “regional” boundary to “jurisdictional” boundary to be more precise;
- Removed redundant or unnecessary words without changing the underlying meaning;
- Changed the phrase “generated within Metro” to “generated within the Metro jurisdictional boundary” to be more precise;
- Capitalized the terms “Regional System Fee” and “Excise Tax;”
- Changed the term “Administrative Procedure” to “Administrative Rule.”