

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METRO CODE CHAPTER 5.02 TO IMPROVE CLARITY, REMOVE OUTDATED SECTIONS AND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

Date: October 24, 2019

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Department: PES

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Meeting date: November 7, 2019

Length: 5 minutes

ISSUE STATEMENT

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

ACTION REQUESTED

Adopt Ordinance No. 19-1439 to update Metro Code Chapter 5.02 (Disposal Charges and User Fees) to move all provisions related to Metro transfer station fees into a new, separate chapter to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency and to conform to other proposed code amendments. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1440 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

IDENTIFIED POLICY OUTCOMES

The proposed updates to Metro's solid waste code remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types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

POLICY QUESTION(S)

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

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

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the ordinance as proposed to update Metro Code Chapter 5.02 as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.
2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.02 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the extent of the alternate proposal. In addition, such revisions may require similar changes to the code chapters proposed in Ordinance Nos. 19-1438 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. If the Council does not approve this ordinance, then it is not necessary for the Council to establish a new code chapter to govern Metro's transfer station rates as proposed in companion Ordinance No. 19-1440. There are no known financial implications associated with the option.

STAFF RECOMMENDATIONS

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

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

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

Staff recommends updating Metro Code Chapter 5.02 as described below:

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

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

KNOWN OPPOSITION

There is no known opposition to the proposed revisions to Metro Code Chapter 5.02. However, Metro received several comments expressing concern about changing the timing of Metro’s transfer station fee-setting process. Staff understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

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

Staff does not recommend any additional changes to Chapter 5.02 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

PUBLIC OUTREACH

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

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

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

LEGAL ANTECEDENTS

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

ANTICIPATED EFFECTS

Approval of this ordinance would update Metro Code Chapter 5.02 as provided in Exhibit A to improve clarity and consistency and to conform to other proposed code amendments.

BUDGET IMPACTS

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

BACKGROUND

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials. Metro staff seeks to continue these efforts by updating Chapter 5.02 to make it easier to read and understand.

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

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

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

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

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

ATTACHMENTS

- Exhibit A
- Attachment 1