



600 NE Grand Ave.  
Portland, OR 97232-2736

## Council meeting agenda

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Thursday, October 5, 2023

10:30 AM

Metro Regional Center, Council chamber,  
<https://www.youtube.com/live/Srbg9FtsDng?si=hfypHewPPpdP7vou>,  
<https://zoom.us/j/615079992> Webinar ID:  
615 079 992 or 888-475-4499 (toll free)

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This meeting will be held electronically and in person at the Metro Regional Center Council Chamber. You can join the meeting on your computer or other device by using this link: <https://www.youtube.com/live/Srbg9FtsDng?si=hfypHewPPpdP7vou>

1. **Call to Order and Roll Call**
2. **Public Communication**

Public comment may be submitted in writing. It will also be heard in person and by electronic communication (video conference or telephone). Written comments should be submitted electronically by emailing [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Written comments received by 4:00 p.m. the day before the meeting will be provided to the council prior to the meeting.

Those wishing to testify orally are encouraged to sign up in advance by either: (a) contacting the legislative coordinator by phone at 503-813-7591 and providing your name and the agenda item on which you wish to testify; or (b) registering by email by sending your name and the agenda item on which you wish to testify to [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Those wishing to testify in person should fill out a blue card found in the back of the Council Chamber.

Those requesting to comment virtually during the meeting can do so by joining the meeting using this link: <https://zoom.us/j/615079992> (Webinar ID: 615079992) or 888-475-4499 (toll free) and using the "Raise Hand" feature in Zoom or emailing the legislative coordinator at [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov). Individuals will have three minutes to testify unless otherwise stated at the meeting.

### 3. **Presentations**

#### 3.1 **Indigenous Peoples Day**

**23-5936**

Presenter(s): Katie McDonald (she/her), Tribal Liaison, Metro

3.2 Auditor's Office Annual Report [23-5940](#)

Presenter(s): Brian Evans (he/him), Metro Auditor

Attachments: [Auditor Annual Report](#)  
[Auditor Annual Report Presentation](#)

**4. Ordinances (First Reading and Public Hearing)**

4.1 Ordinance No. 23-1498, For the Purpose of Amending [ORD 23-1498](#)  
Certain Metro Code Chapters in Title V (Solid Waste) for  
Housekeeping updates and to Incorporate Plain Language  
Best Practices

Presenter(s): Shane Abma (he/him), Senior Attorney, Metro

Attachments: [Ordinance No. 23-1498](#)  
[Exhibit A](#)  
[Exhibit B](#)  
[Staff Report](#)  
[Attachment 1](#)

4.2 Ordinance No. 23-1499, For the Purpose of Repealing [ORD 23-1499](#)  
Metro Code Chapter 2.05 (Procedure for Contested Cases)  
and Replacing it with a New, Updated Metro Code Chapter  
2.05 (Contested Cases Procedures)

Presenter(s): Shane Abma (he/him), Senior Attorney, Metro

Attachments: [Ordinance No. 23-1499](#)  
[Exhibit A](#)  
[Staff Report](#)  
[Attachment 1](#)

- 4.3 Ordinance No. 23-1500, For the Purpose of Repealing Metro Code Chapter 2.03 (Civil Penalties) and Replacing it with a new Metro Code Chapter 2.03 (Civil Penalties), and Amending Certain Metro Code Chapters to Align with the new Chapter 2.03 [ORD 23-1500](#)

Presenter(s): Shane Abma (he/him), Senior Attorney, Metro

Attachments: [Ordinance No. 23-1500](#)

[Exhibit A](#)

[Exhibit B](#)

[Exhibit C](#)

[Staff Report](#)

[Attachment 1](#)

- 4.4 Ordinance No. 23-1501, For the Purpose of Amending Metro Code Chapter 5.09 (Illegal Disposal) to Align it with the new Metro Code Chapter 2.05 (Contested Cases) and Incorporate Plain Language Best Practices [ORD 23-1501](#)

Presenter(s): Shane Abma (he/him), Senior Attorney, Metro

Attachments: [Ordinance No. 23-1501](#)

[Exhibit A](#)

[Exhibit B](#)

[Staff Report](#)

[Attachment 1](#)

5. **Chief Operating Officer Communication**

6. **Councilor Communication**

7. **Adjourn**

# Metro respects civil rights

Metro fully complies with Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and other statutes that ban discrimination. If any person believes they have been discriminated against regarding the receipt of benefits or services because of race, color, national origin, sex, age or disability, they have the right to file a complaint with Metro. For information on Metro's civil rights program, or to obtain a discrimination complaint form, visit [oregonmetro.gov/civilrights](http://oregonmetro.gov/civilrights) or call 503-797-1890. Metro provides services or accommodations upon request to persons with disabilities and people who need an interpreter at public meetings. If you need a sign language interpreter, communication aid or language assistance, call 503-797-1890 or TDD/TTY 503-797-1804 (8 a.m. to 5 p.m. weekdays) 5 business days before the meeting. All Metro meetings are wheelchair accessible. Individuals with service animals are welcome at Metro facilities, even where pets are generally prohibited. For up-to-date public transportation information, visit TriMet's website at [trimet.org](http://trimet.org)

### Thông báo về sự Metro không kỳ thị của

Metro tôn trọng dân quyền. Muốn biết thêm thông tin về chương trình dân quyền của Metro, hoặc muốn lấy đơn khiếu nại về sự kỳ thị, xin xem trong [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Nếu quý vị cần thông dịch viên ra dấu bằng tay, trợ giúp về tiếp xúc hay ngôn ngữ, xin gọi số 503-797-1700 (từ 8 giờ sáng đến 5 giờ chiều vào những ngày thường) trước buổi họp 5 ngày làm việc.

### Повідомлення Metro про заборону дискримінації

Metro з повагою ставиться до громадянських прав. Для отримання інформації про програму Metro із захисту громадянських прав або форми скарги про дискримінацію відвідайте сайт [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). або Якщо до вас потрібен перекладач на зборах, для задоволення вашого запиту зателефонуйте за номером 503-797-1700 з 8.00 до 17.00 у робочі дні за п'ять робочих днів до зборів.

### Metro 的不歧视公告

尊重民權。欲瞭解Metro民權計畫的詳情，或獲取歧視投訴表，請瀏覽網站 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)。如果您需要口譯方可參加公共會議，請在會議召開前5個營業日撥打503-797-1700（工作日上午8點至下午5點），以便我們滿足您的要求。

### Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullan dadweyne, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqa ka hor kullanka si loo tixgaliyo codsashadaada.

### Metro의 차별 금지 관련 통지서

Metro의 시민권 프로그램에 대한 정보 또는 차별 항의서 양식을 얻으려면, 또는 차별에 대한 불만을 신고 할 수 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). 당신의 언어 지원이 필요한 경우, 회의에 앞서 5 영업일 (오후 5시 주중에 오전 8시) 503-797-1700를 호출합니다.

### Metroの差別禁止通知

Metroでは公民権を尊重しています。Metroの公民権プログラムに関する情報について、または差別苦情フォームを入手するには、[www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)。までお電話ください。公開会議で言語通訳を必要とされる方は、Metroがご要望に対応できるよう、公開会議の5営業日前までに503-797-1700（平日午前8時～午後5時）までお電話ください。

### សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ១ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានការប្តឹងរើសអើងសូមចូលទស្សនាគេហទំព័រ [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេបកប្រែភាសាសំរាប់លោកអ្នក ។

### إشعار بعدم التمييز من Metro

تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يُرجى زيارة الموقع الإلكتروني [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

### Paunawa ng Metro sa kawalan ng diskriminasyon

Iginagalang ng Metro ang mga karapatang sibil. Para sa impormasyon tungkol sa programa ng Metro sa mga karapatang sibil, o upang makakuha ng porma ng reklamo sa diskriminasyon, bisitahin ang [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Kung kailangan ninyo ng interpreter ng wika sa isang pampublikong pulong, tumawag sa 503-797-1700 (8 a.m. hanggang 5 p.m. Lunes hanggang Biyernes) lima araw ng trabaho bago ang pulong upang mapagbigyan ang inyong kahilingan.

### Notificación de no discriminación de Metro

Metro respeta los derechos civiles. Para obtener información sobre el programa de derechos civiles de Metro o para obtener un formulario de reclamo por discriminación, ingrese a [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Si necesita asistencia con el idioma, llame al 503-797-1700 (de 8:00 a. m. a 5:00 p. m. los días de semana) 5 días laborales antes de la asamblea.

### Уведомление о недопущении дискриминации от Metro

Metro уважает гражданские права. Узнать о программе Metro по соблюдению гражданских прав и получить форму жалобы о дискриминации можно на веб-сайте [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Если вам нужен переводчик на общественном собрании, оставьте свой запрос, позвонив по номеру 503-797-1700 в рабочие дни с 8:00 до 17:00 и за пять рабочих дней до даты собрания.

### Avizul Metro privind nediscriminare

Metro respectă drepturile civile. Pentru informații cu privire la programul Metro pentru drepturi civile sau pentru a obține un formular de reclamație împotriva discriminării, vizitați [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Dacă aveți nevoie de un interpret de limbă la o ședință publică, sunați la 503-797-1700 (între orele 8 și 5, în timpul zilelor lucrătoare) cu cinci zile lucrătoare înainte de ședință, pentru a putea să vă răspunde în mod favorabil la cerere.

### Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev sawv ntxov txog 5 teev tsaus ntuj weekdays) 5 hnuv ua hauj lwv ua ntej ntawm lub rooj sib tham.

**Indigenous Peoples Day**  
*Presentations*

Metro Council Meeting  
Thursday, October 5th, 2023

**Auditor's Office Annual Report**  
*Presentations*

Metro Council Meeting  
Thursday, October 5th, 2023



Metro

Office of the Auditor  
**Annual Report**

**FY 2022-2023**

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**Brian Evans**  
*Metro Auditor*  
September 2023

## Message from the Metro Auditor

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Residents of the Metro region:

The Metro Auditor's Office continues to provide objective and independent analysis to keep you informed about your regional government. Continuous improvement is a common theme in the recommendations we make in audit reports. The annual report is a chance to apply the same approach to our own efforts. It includes five-year trends for each of the performance measures I use to assess the efficiency and effectiveness of our work. I use the information to manage resources and make adjustments when needed. I hope you find it informative.

Last fiscal year (July 1, 2022 to June 30, 2023) we published four audits. One was a follow-up audit to assess the status of recommendations made in the Code of Ethics audit. The other three audits made new recommendations related to Portland's Centers for the Arts' intergovernmental agreements, surplus property management, and implementation of the 2019 Parks and Nature Bond measure. While our reports don't always generate newspaper headlines or media attention, they are critical sources of information to help the public and Metro Council understand how the agency is managed. If you haven't already, I hope you will read the full reports or the one-page summaries to learn about our conclusions. Those documents and video presentations for each audit are all available on our website.


In May, several members of the office attended the Association of Local Government Auditors annual conference in Baltimore, Maryland. It was nice to be able to complete training and network with the performance auditor community in person again. We welcomed two new auditors and a Hatfield Resident fellow to the office. Our new team members bring experience and education from a variety of fields and they have already brought new insights to our work.

In the coming months, we will publish three audits focused on affordable housing, supportive housing services, and solid waste operations. These are some of the most well-known programs in Metro's portfolio and I'm looking forward to sharing the results. After that, we will start new audits focused more on internal operations. These functions are not always well known to the public, but they can have a significant impact on the effectiveness, efficiency, and equitable provision of services to the region's residents.

Take care,



Brian Evans  
Metro Auditor

 503-797-1892

 [auditor@oregonmetro.gov](mailto:auditor@oregonmetro.gov)

 @MetroAuditor

[www.oregonmetro.gov/regionalleadership/metro-auditor](http://www.oregonmetro.gov/regionalleadership/metro-auditor)

Accountability Hotline: 888-299-5460 or [www.metroaccountability.org](http://www.metroaccountability.org)



## About the Auditor's Office

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The office is led by the Metro Auditor; an elected position serving the entire Metro region. Performance audits are the primary responsibility of the office and follow Government Auditing Standards. Performance audits provide independent and objective information to help management and the Metro Council be accountable to the public, improve program performance, reduce costs, and assist decision-making. The office also oversees the contract for the annual audit of Metro's financial statements and administers the Accountability Hotline where employees and the public can report concerns about Metro's programs and services.

Brian Evans is the third elected auditor since the position was created by the Metro Charter in 1995. Prior to being elected, Brian worked in the Auditor's Office and as an economist with Oregon's economic and community development department. The Auditor's Office welcomed two new auditors last year and recently welcomed a Hatfield Resident fellow (Tram Anh Hoang a recent graduate of the University of Oregon). The office includes the elected auditor, five management auditors, and an administrative assistant:

- Brian Evans, CIA, CGAP, *Metro Auditor*
- Mason Atkin, *Senior Management Auditor*
- David Beller, *Senior Management Auditor*
- Maggie Muldrew, *Senior Management Auditor*
- Angela Owens, CIA, CFE, CAPM, *Principal Management Auditor*
- Paoa Wandke, *Senior Management Auditor*
- Tracy Evans, *Auditor's Administrative Assistant*

To meet audit standards, auditors are required to complete 80 hours of continuing professional education every two years. Auditors attend, and lead, training on performance auditing topics. They also participate in an annual retreat to plan audit work and enhance communication and teamwork.

## Mission and Values

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### **Our mission is to:**

- Ensure that Metro is accountable to the public,
- Ensure that Metro's activities are transparent, and
- Improve the efficiency and effectiveness of Metro programs and services.

It is our vision to be relevant and efficient, choosing the right areas to audit and completing audits quickly so Metro can continually improve its services and be accountable to the public. Audit findings and recommendations are presented publicly before the Council and are intended to assist the Council and Chief Operating Officer in making improvements to better serve the public. Reports are published on the Metro Auditor's web page (<https://www.oregonmetro.gov/regional-leadership/metro-auditor/audits>).

### **Our values are:**

- Professionalism
- Ethical behavior
- Public service
- Wise and equitable use of resources
- Open mindedness
- Respecting others
- Supporting findings with fact
- Fairness
- Teamwork

## Performance measures

The performance of the Auditor’s Office is measured by reviewing results in the following areas:

- Average hours to complete an audit and number of audits completed;
- Number of audits completed per full time equivalent (FTE) employee;
- Audit hours per department;
- Auditee feedback;
- Recommendation implementation rate; and
- Average days to close cases reported to the Accountability Hotline.

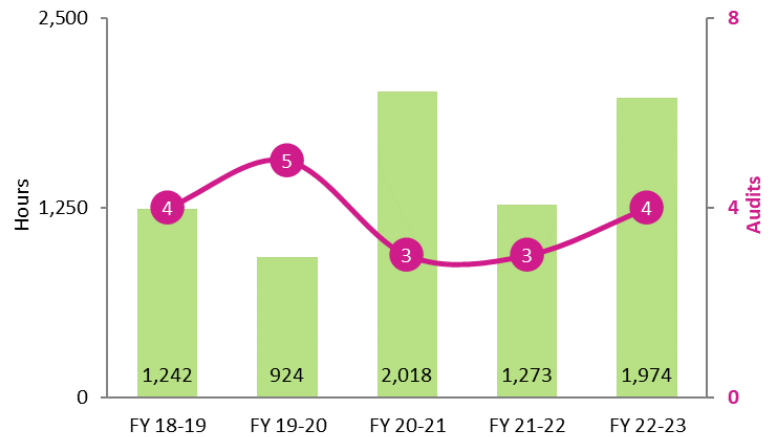
### Average audit hours and number of audits

Average audit hours and the number of audits completed measure the office’s efficiency. In FY 2022-23, four audits were completed. The hours required to complete each audit ranged from 1,025 to 3,300. The average was 1,974 hours.

Audits vary in length, depending on their scope and complexity. Average audit hours in FY 2022-23 were higher than last year due to one audit with a broad scope of work and two others that required more than the typical number of hours (1,200).

The four audit reports published in FY 2022-23 included three full audits and one follow-up audit. A total of 26 recommendations were made. The audit reports released were:

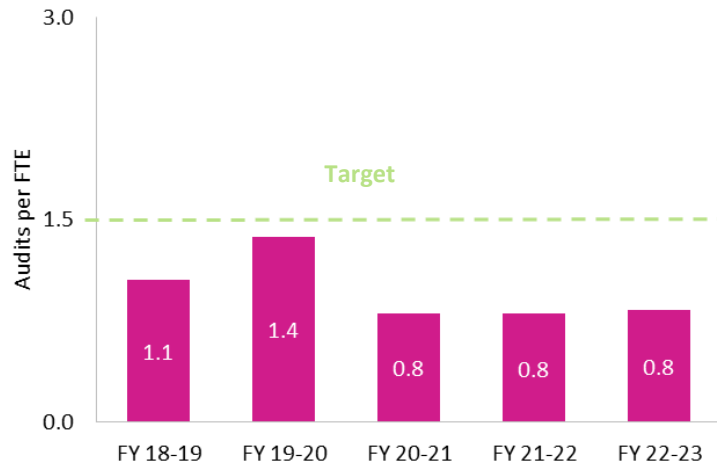
- Surplus Property (July 2022)
- Portland’s Intergovernmental Agreements (August 2022)
- Code of Ethics Follow-up (February 2023)
- Parks and Nature 2019 Bond Measure Implementation (June 2023)



## Audits per FTE

Another way to measure efficiency is by looking at the number of audits completed per full-time equivalent (FTE) employee. In FY 2022-23, 0.8 audits per FTE were completed, which was the same as the previous year. Available staff hours and the scope of the audit determine the number of audits that can be completed each year. The length is affected by the complexity of the subject and size of the program.

Generally, the office tries to complete one and a half audits per FTE each year. We did not meet our performance target last year. Staff turnover and the timing of audits were two contributing causes. Stable staffing should help improve our efficiency in the coming year.

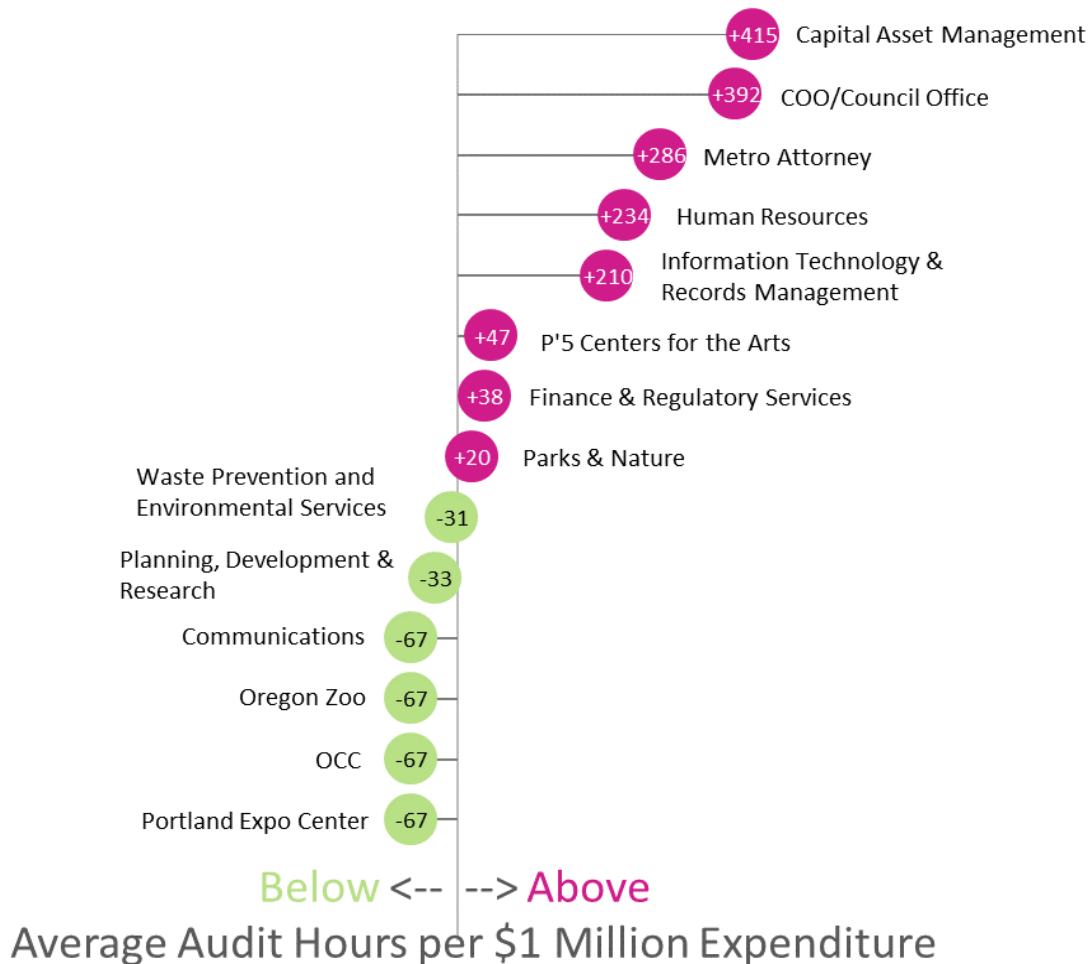


### Audit hours by department

This measure is used to evaluate the office’s effectiveness by showing how audit hours were distributed among Metro departments. It is calculated by dividing the total audit hours spent in each department by the department’s annual expenditures. This analysis is considered when developing the audit schedule.

In the last five years, about 67 audit hours were used for each \$1 million spent annually. If our office was able to provide equal coverage, each department would be stacked along the average line. In reality, more time is spent in some departments than others for a variety of reasons including audit timing and greater risks in some programs and services.

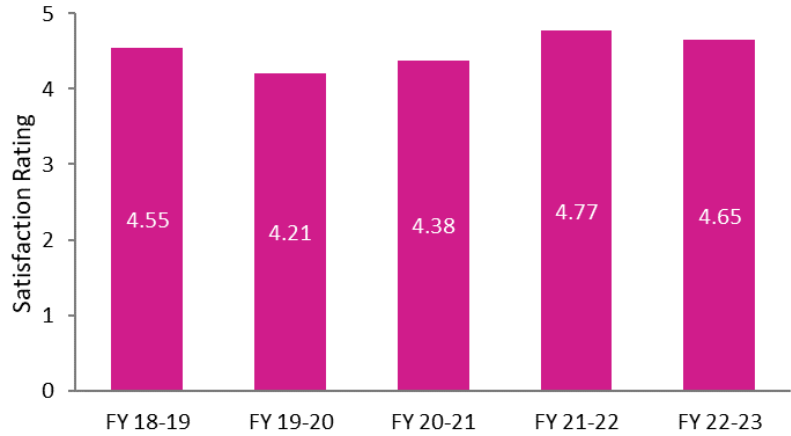
Over the last five years, audit hours have been somewhat unevenly distributed between departments when considering their expenditures. More time was spent in Capital Asset Management; COO/Council Office; Metro Attorney; Human Resources; Information Technology and Records Management; P’5 Centers for the Arts; Finance and Regulatory Services; and Parks and Nature relative to their level of expenditure. In contrast, relatively less time was spent in other parts of the organization such as Waste Prevention and Environmental Services; Communications; Planning, Development and Research; Oregon Zoo; Oregon Convention Center; and Expo Center. The audits in process and the other audits on this year’s schedule will help rebalance audit coverage.



## Auditee feedback

Surveys are a way to get input on the quality of our work. After an audit is published, we ask those involved to provide feedback through an anonymous survey. Survey questions are designed to get information about the audit process, staff, report, and overall satisfaction.

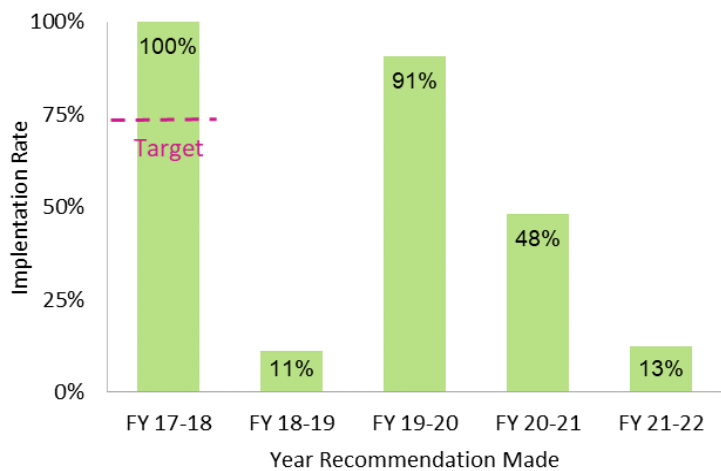
In FY 2022-23, the average level of agreement about the value of our work was 4.6 out of 5. This indicated satisfaction with our reports, staff, and overall process and exceeded our performance target. The response rate for all post-audit surveys was 37%. That was about the same as last year, but below the average over the last five years (42%). Ensuring it is as easy as possible to provide feedback will be an area of focus this year.



## Recommendation implementation rate

The percentage of recommendations implemented shows how much impact audits have on the organization. Each January, the office asks audited programs to report on the status of recommendations made in the last five years. That information, combined with the conclusions from any follow-up audits we completed, is used to track the percent of recommendations implemented after an audit is released.

The performance target is for 75% of recommendations to be implemented within five years. The most recent information showed 100% of our recommendations from five years ago were implemented. This was a great outcome. Additional work may be needed to continue the trend since only 11% of the recommendations made four years ago have been implemented. This is driven by low implementation rates of the recommendations made in our emergency management and information security and technology audits in FY 2018-19.



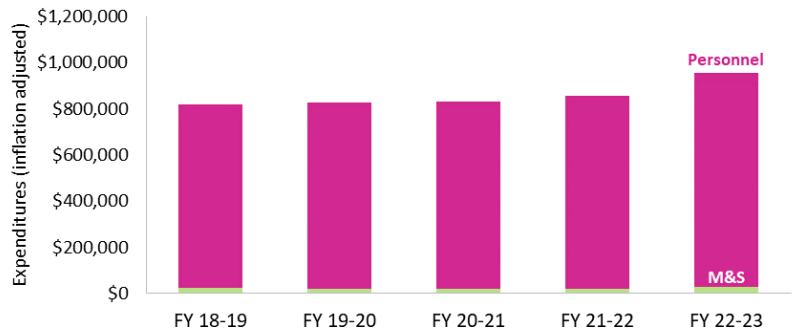
## Audit schedule

The following audits are in process or scheduled to start in FY 2022-23. Audit topics are selected based on input from Metro Council, department management, audit staff, and the public. We also conduct a risk assessment to identify timely topics.

Audit Title	Start	Expected Completion
Solid Waste Transfer Station Operating Controls	October 2022	September 2023
Affordable Housing Bond	November 2022	October 2023
Supportive Housing Services	November 2022	October 2023
Financial Condition of Metro FY2013-14 to FY2022-23	January 2024	TBD
Span of Control	TBD	TBD
Renewal and Replacement	TBD	TBD
Budget Process and Performance Measures	TBD	TBD
Capital Project Management	TBD	TBD

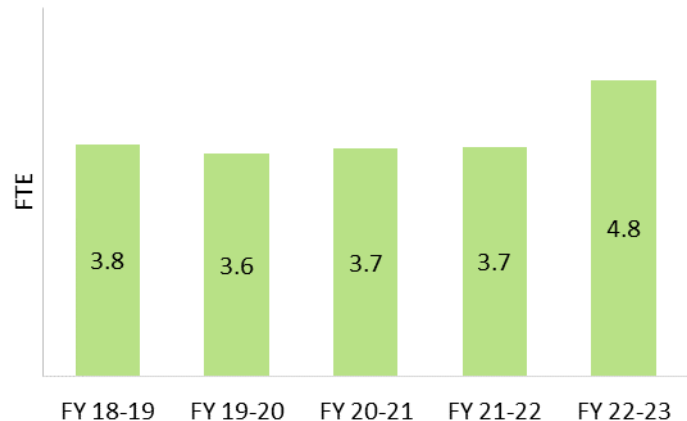
## Expenditures

Expenditures in FY2022-23 rose by about 12% compared to the previous year. This was the result of a 11% increase in personnel costs related to a new position approved by Metro Council. Our ability to attend in-person trainings resulted in higher materials and services (M&S) expenditures last year, too.



## Staffing available

This graph represents actual staff hours available. In FY 2022-23, there were 10,065 audit hours available, or 4.8 full-time equivalent employees (FTE). Last year was the first time the office was fully staffed after several years of disruptions during the global pandemic.



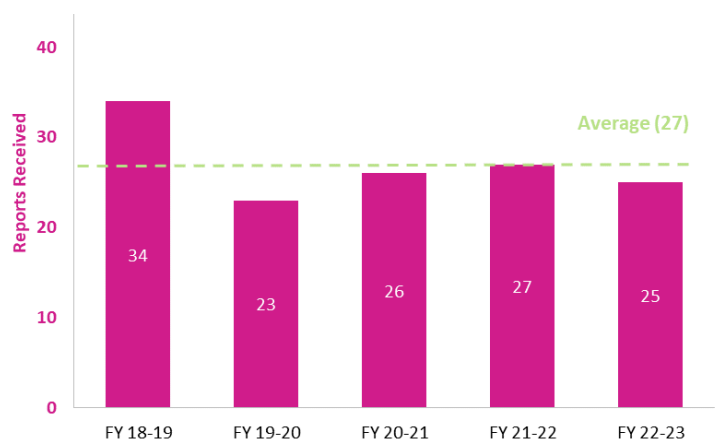
## Accountability Hotline summary

The Accountability Hotline gives employees and the public a way to report waste, inefficiency, or abuse of resources. The Metro Auditor administers the Accountability Hotline through a third-party vendor. All reports are reviewed first by the Metro Auditor to determine the accuracy and significance of the information reported. After the initial review, the Metro Auditor consults with senior management, the Metro Attorney, or the Human Resources Director to determine the appropriate investigation method and priority. Cases may be handled by Human Resources personnel if disciplinary action could result. In some cases, upper management will assign an investigation to a department director if the report involves a service or program in their department. The Auditor reserves the right to conduct an audit on any report received.

### Reports received

In FY 2022-23, a total of 25 reports were received. That was lower than the average number of reports (27) that have been received over the last five-years, and lower than the previous two years.

The reports received varied widely in terms of specificity and issues identified. As a result, they cannot be categorized or summarized easily. Reports related to the entire agency were the most frequent, accounting for 44% of the total. Concerns about the Oregon Zoo were the next highest at 20%. The remaining 36% were evenly distributed between the Metropolitan Recreation and Exposition Commission (MERC), solid waste, and Metro's headquarter building.

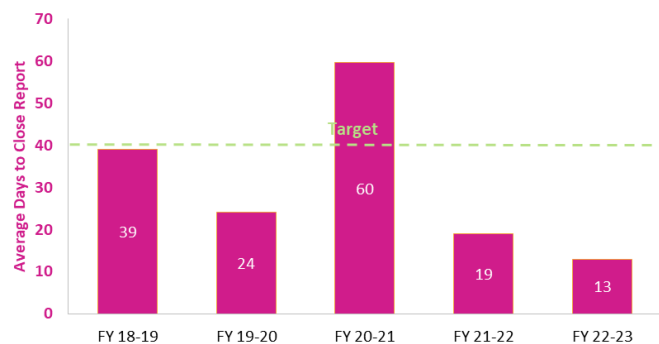


Fifteen reports were successfully investigated. Ten reports were not investigated because they were out of Metro's jurisdiction, did not provide enough information to investigate, or the reporter withdrew their concern.

Of the 15 reports that were successfully investigated, one was substantiated and 14 were unfounded or inaccurate. The most frequent action taken in response to a report was to relay information to the person reporting the concern to provide context or additional information about what occurred. Corrective actions were made in response to one report.

### Average days to close a case

To be responsive to the person reporting, the Metro Auditor uses the average days to close a case to assess performance. According to the latest benchmark data from the hotline provider, cases are resolved in about 40 days on average, which is target used to evaluate performance. The performance target was achieved in four of the last five years. Longer close times in FY 2020-21 were caused by several factors. There were several reports made about similar issues and the investigations took more time due to their complexity. Closure times have improved in the last two years, which appears to be the result of Human Resources hiring a dedicated investigator to address personnel concerns.





# Annual Report FY 2022-23

**Office of the Auditor**

**Brian Evans, Metro Auditor**

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Twitter: @MetroAuditor

Website: [www.oregonmetro.gov/metro-auditor](http://www.oregonmetro.gov/metro-auditor)

Accountability Hotline: 888-299-5460 or [www.metroaccountability.org](http://www.metroaccountability.org)



# Auditor responsibilities

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- Conduct performance audits
- Manage financial audit contract
- Administer the Accountability Hotline

# Accomplishments

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- 100% of audit recommendations made five years ago were implemented
- Feedback from audited programs exceeded the target for quality
- The amount of time it took to resolve reports to the Accountability Hotline decreased
- The office was fully staffed for the first time in several years

# Performance measures

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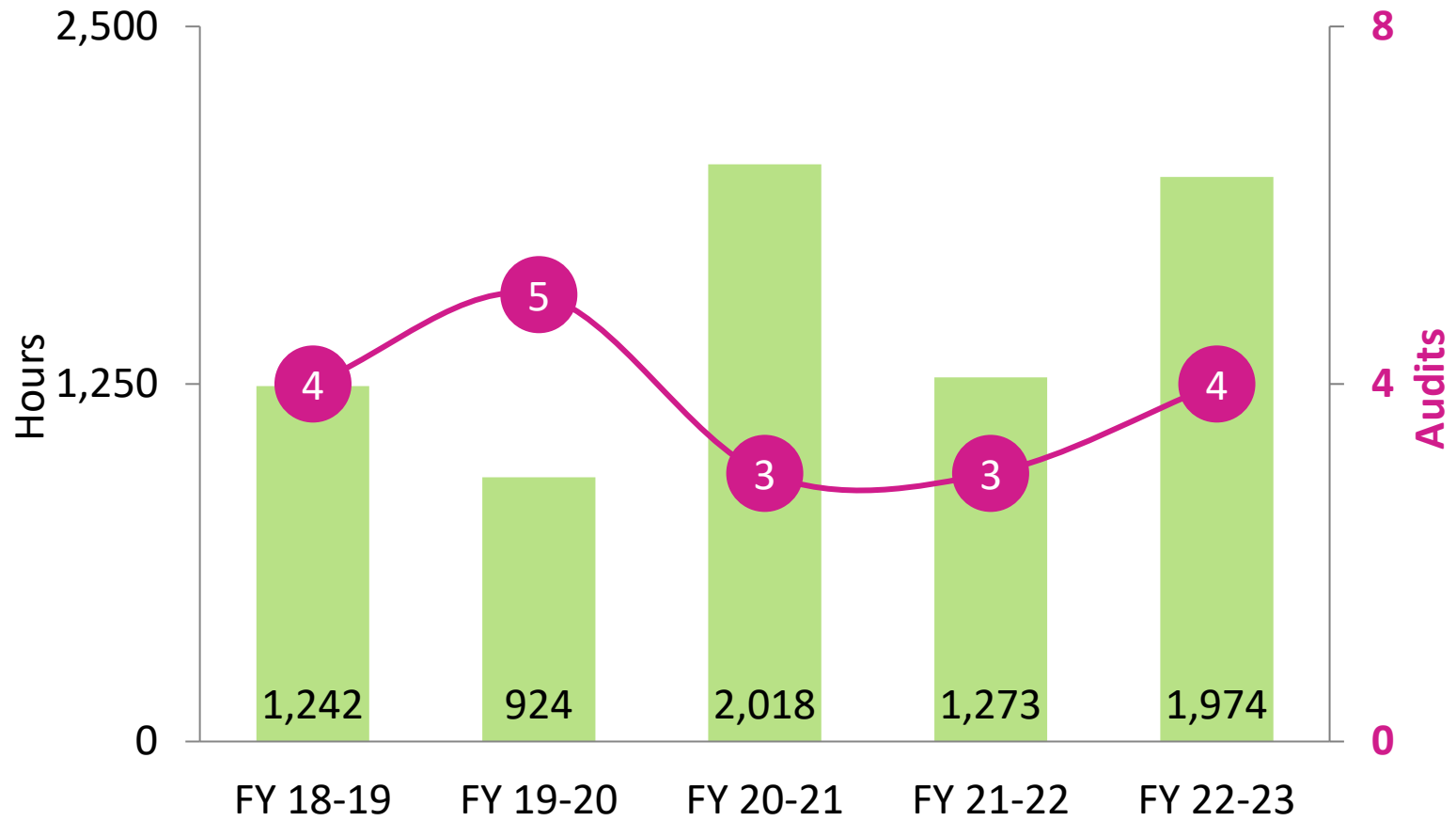
## Efficiency

- Average hours to complete an audit and number of audits
- Audits completed per full-time equivalent (FTE) employee

## Effectiveness

- Total audit hours per department
- Auditee feedback
- Audit recommendation implementation rate

## Average hours per audit and number of audits

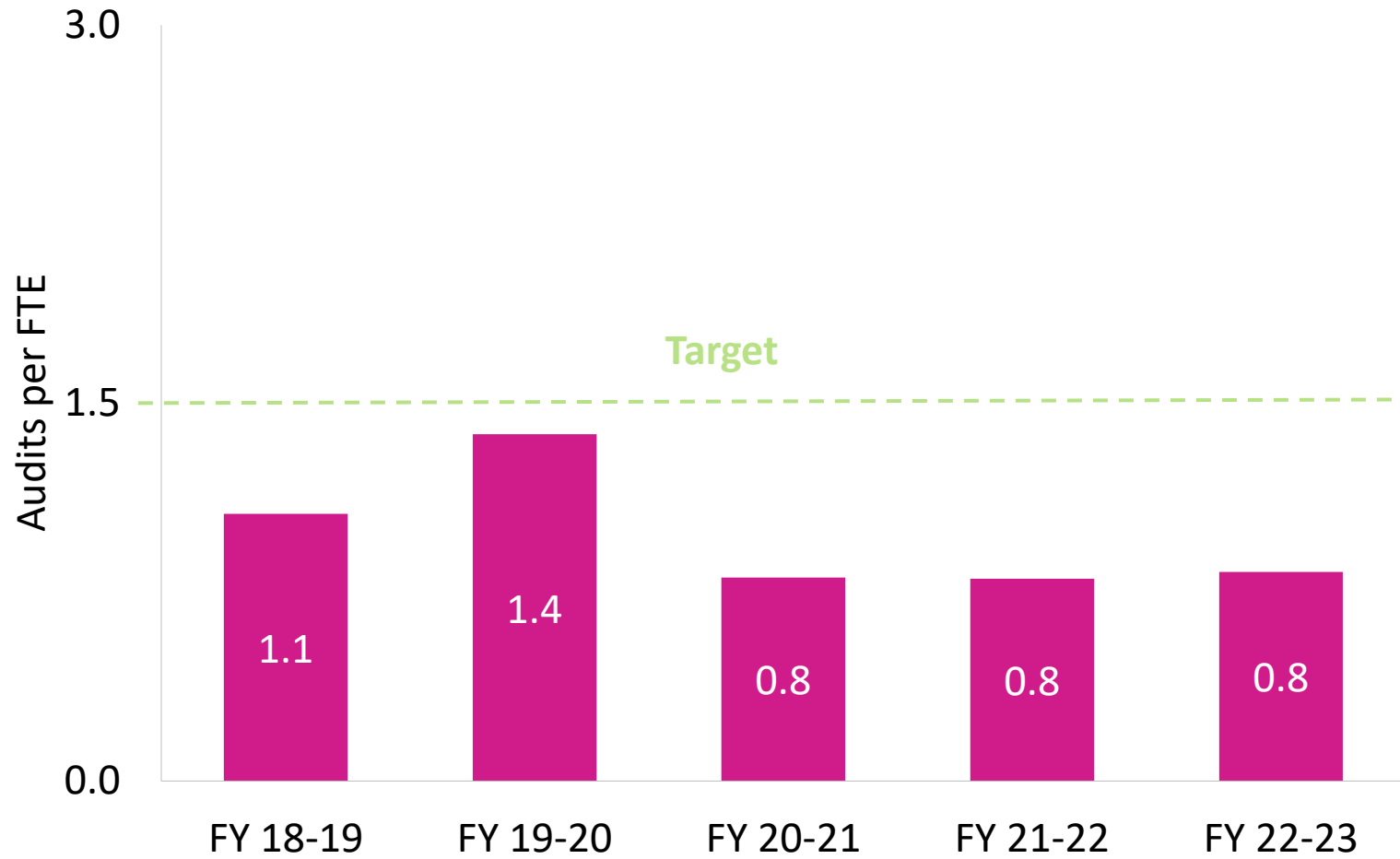


# Audits released

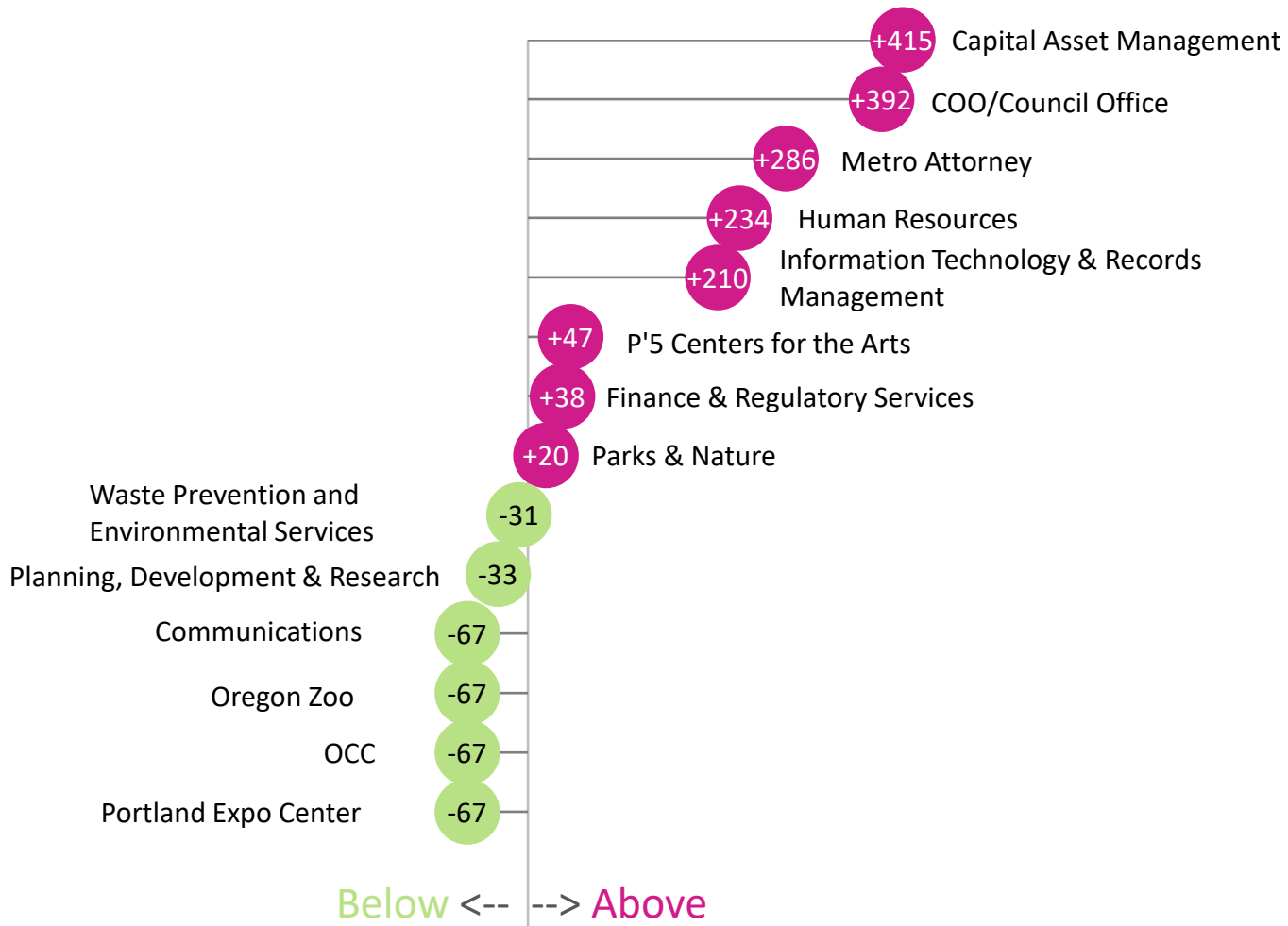
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- Surplus Property (July 2022)
  - Portland's 5 Intergovernmental Agreements (August 2022)
  - Code of Ethics Follow-up (February 2023)
  - Parks and Nature 2019 Bond Measure Implementation (June 2023)
-

## Audits per full-time equivalent employee

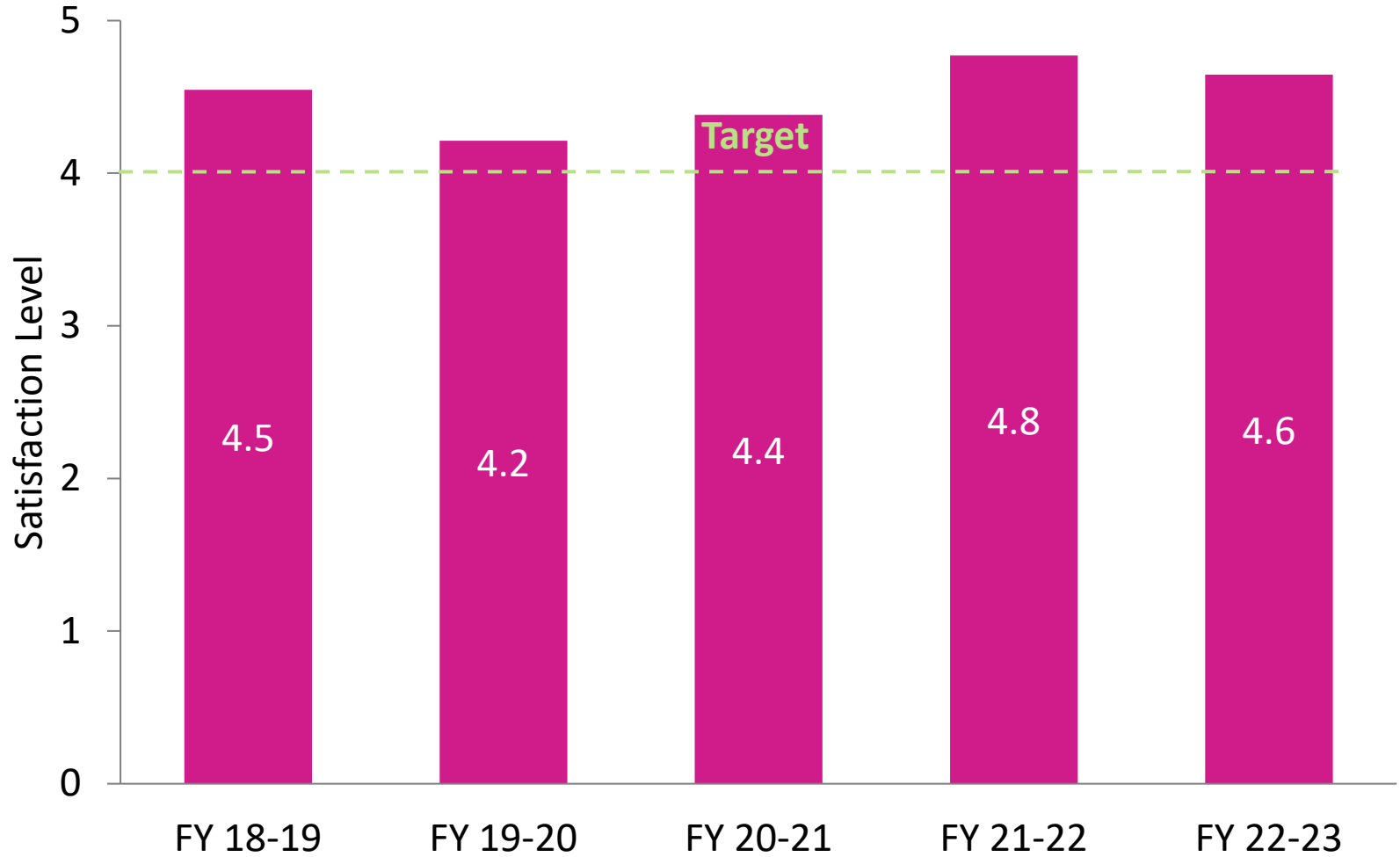


# Audit hours per department



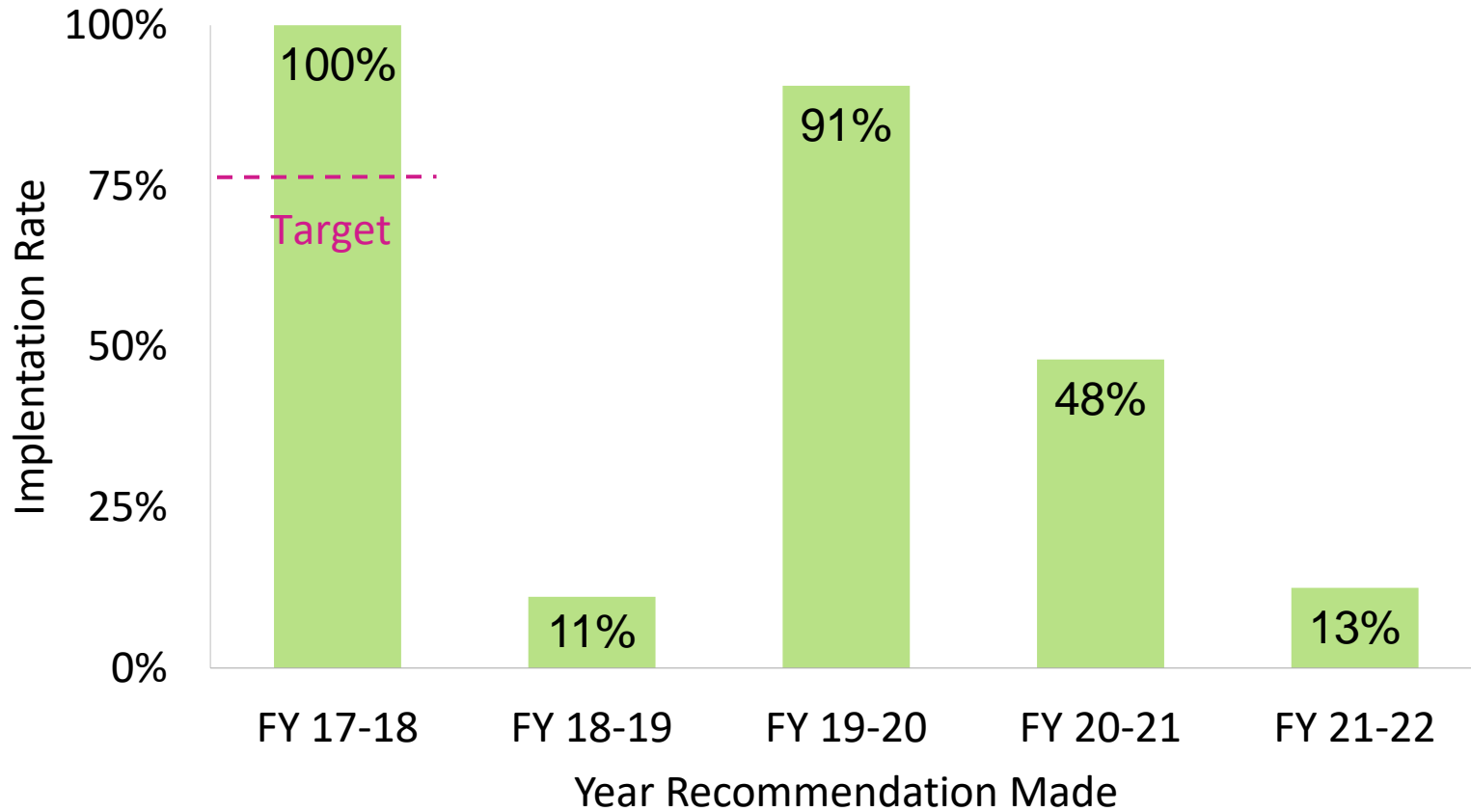
Average Audit Hours per \$1 Million Expenditure

## Auditee feedback

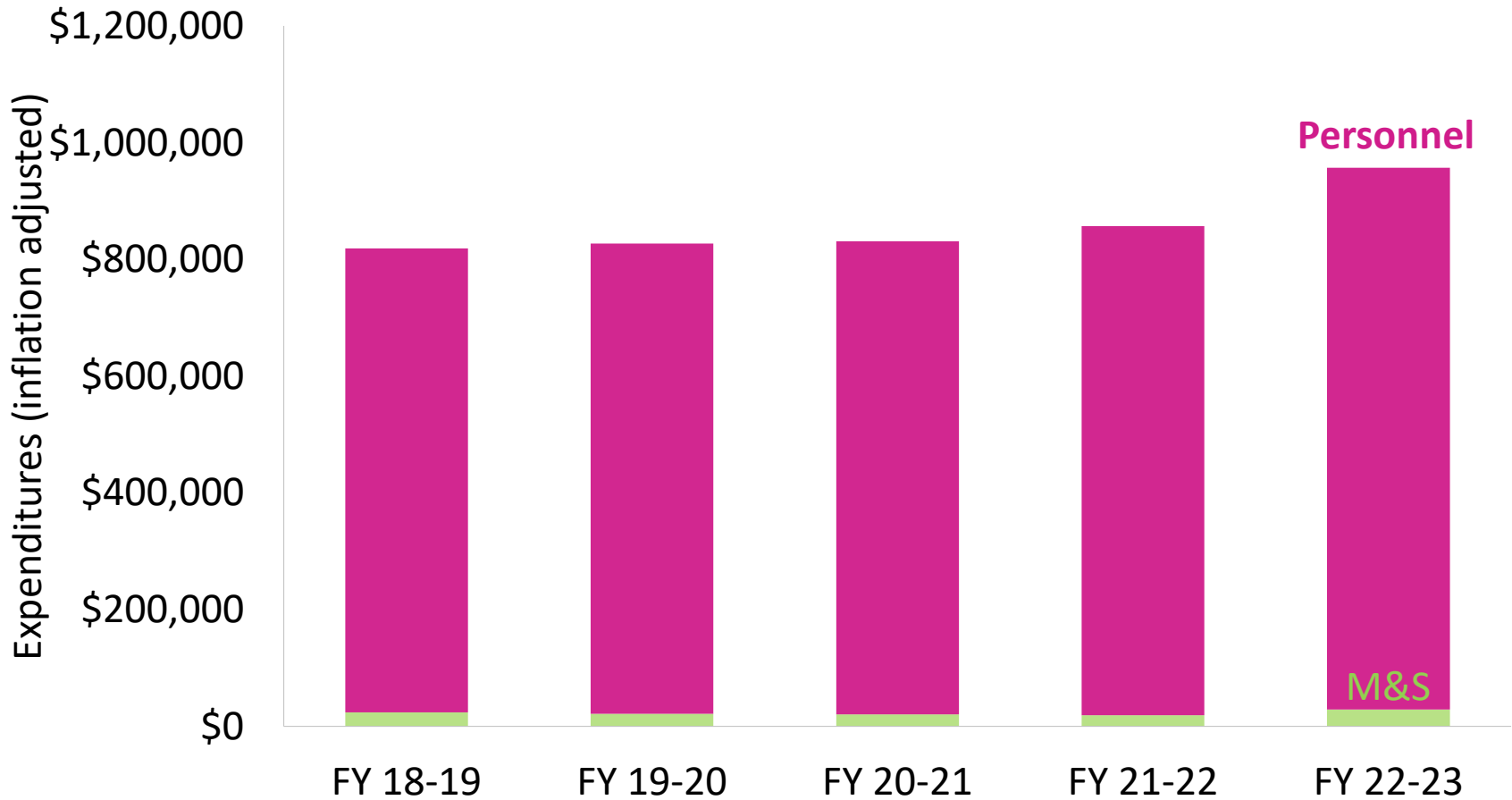




## Audit recommendation implementation rate



# Expenditures



# Audit schedule FY 2022-23

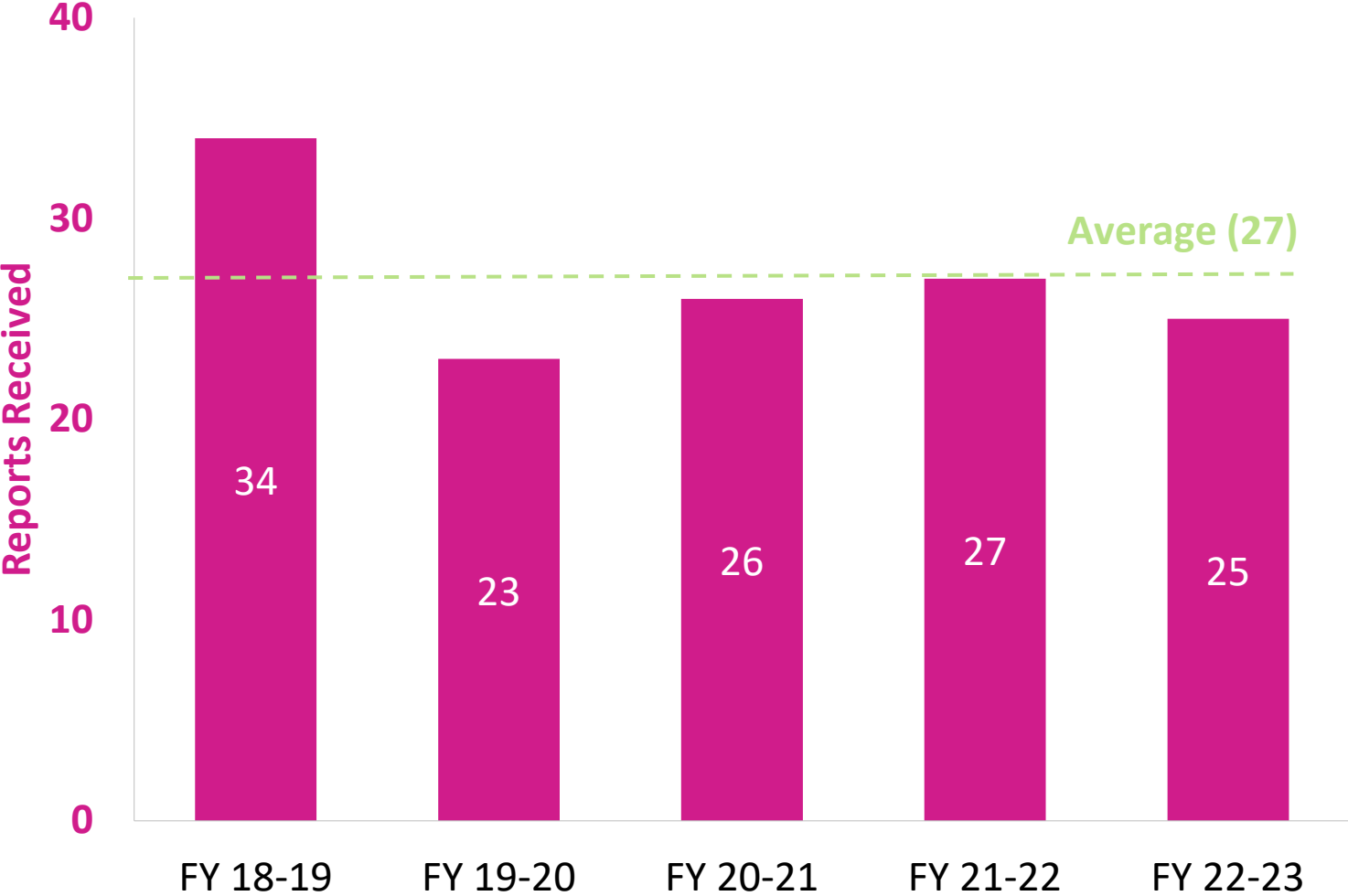
## Audits Completed

Title	Completion
2019 Parks & Nature Bond Program	June 2023
Solid Waste Transfer Station Operating Controls	September 2023

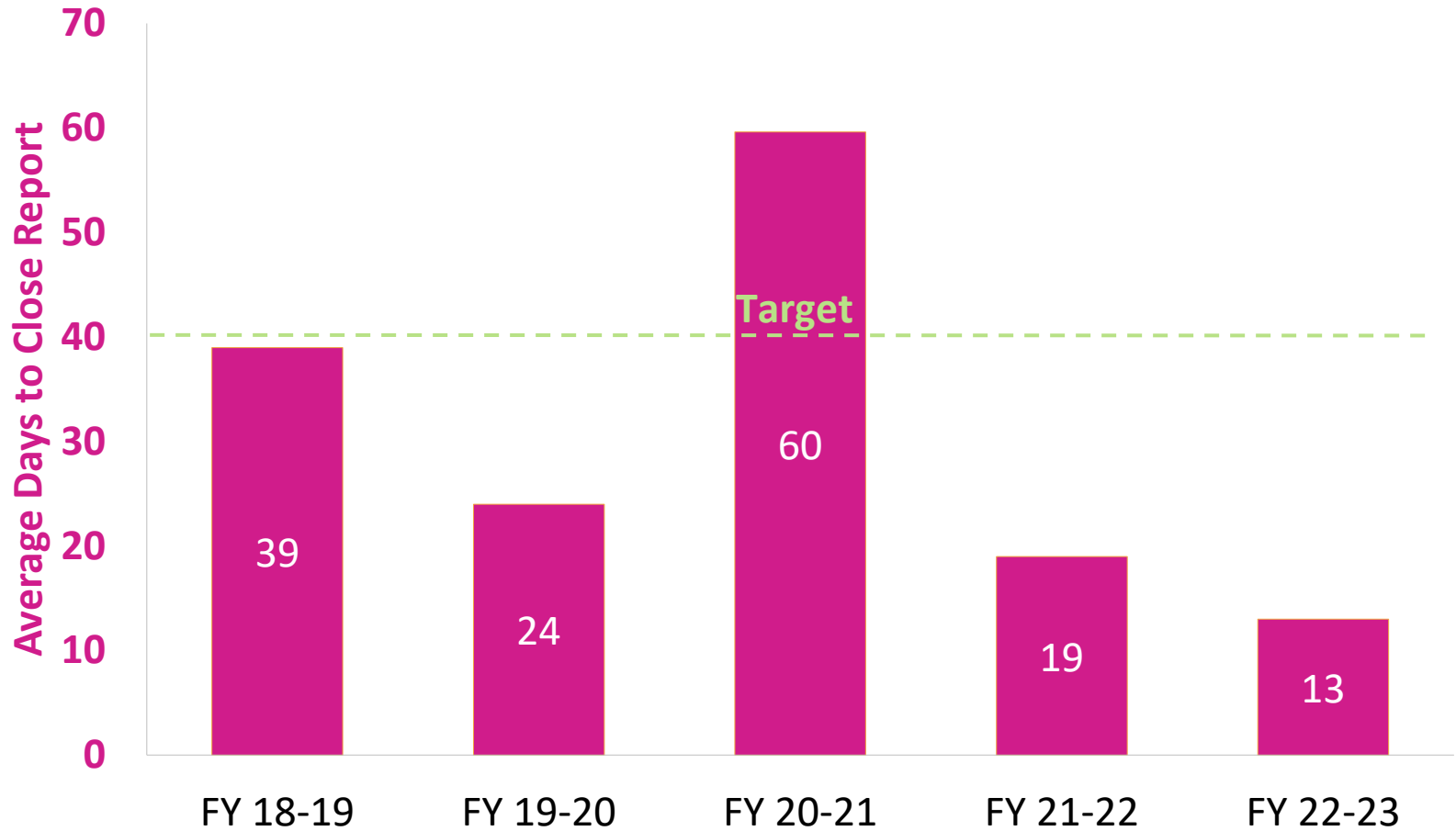
## Audits Underway & Planned

Title	Start
Affordable Housing Bond	November 2022
Supporting Housing Services	November 2022
Financial Policies for Renewal and Replacement	September 2023
Span of Control	October 2023
Budget Process and Performance Measures	October 2023
Capital Project Management	TBD
Financial Condition of Metro FY2013-14 to FY2022-23	TBD

# Accountability Hotline Reports

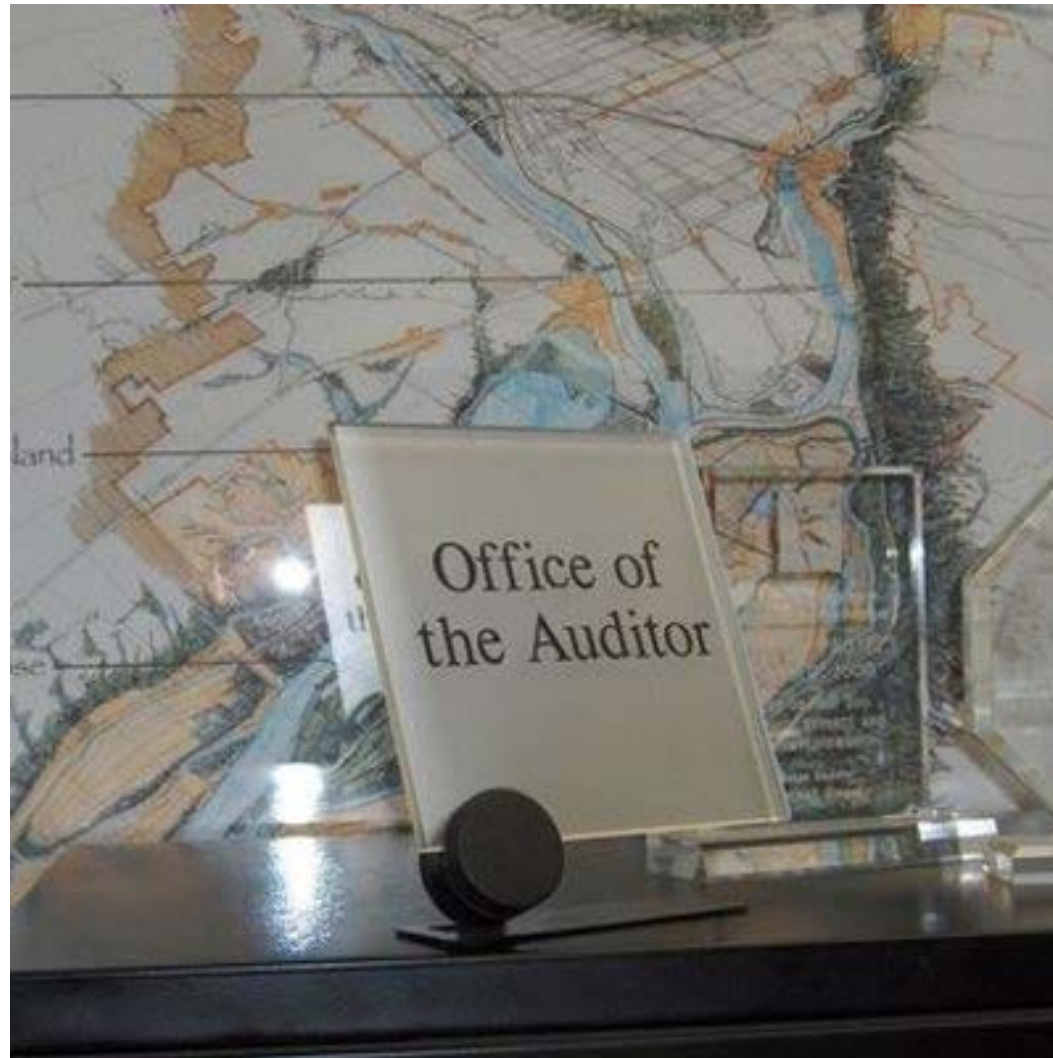


# Average days to close report



# Questions?

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October 2023

**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**  
*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, October 5th, 2023

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.

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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Connor Ayers, Recording Secretary

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Carrie MacLaren, Metro Attorney

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

**CHAPTER 5.01**

**SOLID WASTE FACILITY REGULATION**

**GENERAL PROVISIONS**

- 5.01.010 Purpose
- 5.01.020 Authority and Jurisdiction
- 5.01.030 Prohibited Activities
- 5.01.040 Exemptions to Prohibited Activities

**APPLICATIONS FOR SOLID WASTE FACILITY LICENSES**

- 5.01.050 License Requirements and Fees
- 5.01.060 Pre-Application Conference for Licenses
- 5.01.070 Applications for Licenses
- 5.01.080 License Issuance
- 5.01.090 License Contents
- 5.01.100 Record-keeping and Reporting for Licenses
- 5.01.110 License Renewal
- 5.01.120 Transfer of Ownership or Control of Licenses
- 5.01.130 Change of Authorizations for Licenses
- 5.01.140 Variances for Licenses

**APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES**

- 5.01.150 Franchise Requirements and Fees
- 5.01.160 Pre-Application Conference for Franchises
- 5.01.170 Applications for Franchises
- 5.01.180 Franchise Issuance
- 5.01.190 Franchise Contents
- 5.01.195 Putrescible Waste Tonnage Allocation Framework
- 5.01.200 Record-keeping and Reporting for Franchises
- 5.01.210 Franchise Renewal
- 5.01.220 Transfer of Ownership or Control of Franchises
- 5.01.230 Change of Authorizations for Franchises
- 5.01.240 Variances for Franchises

**OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES**

- 5.01.250 General Obligations of All Regulated Parties
- 5.01.260 Obligations and Limits for Selected Types of Activities
- 5.01.270 Direct Haul of Putrescible Waste

**REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES**

- 5.01.290 Inspections, Audits and other Investigations of Solid Waste Facilities
- 5.01.300 Regional System Fees
- 5.01.310 Determination of Rates

## **ENFORCEMENT AND APPEALS**

- 5.01.320 Enforcement Provisions
- 5.01.330 Penalties
- 5.01.340 Appeals

## **MISCELLANEOUS PROVISIONS**

- 5.01.350 Miscellaneous Provisions

### **Repealed**

- 5.01.010 Definitions  
[Repealed Ord. 14-1331]
- 5.01.065 Issuance and Contents of Certificates  
[Repealed Ord. 03-1018A Sec. 7]
- 5.01.080 Term of Franchise  
[Repealed Ord. 98-762C Sec. 21]
- 5.01.085 Franchises for Major Disposal System Components  
[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  
5.01.380 Facilities and Yard Debris Reload Facilities  
[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  
[Repealed Ord. 12-1272 Sec. 4]
- 5.01.160 Reports from Collection Services  
[Repealed Ord. 98-762C Sec. 42]
- 5.01.210 Acceptance of Tires at a Disposal Site  
[Repealed Ord. 98-762C Sec. 48]
- 5.01.220 Additional Provisions Relating to Issuance of a Franchise for a Facility  
Processing Petroleum Contaminated Soil  
[Repealed Ord. 98-762C Sec. 48]
- 5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards,  
and Forms  
[Repealed Ord. 19-1441]
- 5.01.400 Treatment of Existing Licenses and Franchises  
[Repealed Ord. 03-1018A Sec. 23]

## 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 ~~sd~~ 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.]

**EXHIBIT B**  
**Ordinance No. 23-1498**  
**Solid Waste Flow Control**

**CHAPTER 5.05**

**SOLID WASTE FLOW CONTROL**

- 5.05.010 Purpose
- 5.05.020 Special Findings for Solid Waste Flow Control
- 5.05.030 Authority, Jurisdiction, and Application
- 5.05.040 Prohibited Activities
- 5.05.050 Exemptions to Prohibited Activities
- 5.05.055 Limited Capacity Landfills and New Landfills
- 5.05.060 Designated Facilities of the System
- 5.05.070 Adding Facilities to the Designated Facilities List
- 5.05.080 Removing From and Amending the Designated Facilities List
- 5.05.090 Contents of Designated Facility List and Council Adoption Every Five Years
- 5.05.100 Agreements with Designated Facilities
- 5.05.110 Non-System License to Use Non-System Facility
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- 5.05.140 Factors to Consider Regarding Non-System License Issuance
- 5.05.150 Non-System License Issuance Timetable for Non-Putrescible Waste
- 5.05.160 Non-System License Issuance Timetable for Putrescible Waste
- 5.05.170 Issuance of Non-System License; Contents
- 5.05.180 Non-System Licensee Requirements
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- 5.05.195 Putrescible Waste Tonnage Allocation Framework
- 5.05.196 Obligations and Limits for Selected Types of Activities
- 5.05.200 Issuance of Required Use Orders
- 5.05.210 Content of Required Use Orders; Notice
- 5.05.220 Requests for Reconsideration of Required Use Order
- 5.05.230 Appeals to the Hearings Officer
- 5.05.240 Solid Waste Tracking System
- 5.05.250 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
- 5.05.270 Contested Case Proceedings

**Repealed**

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

### 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 boundaries must provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.260. [Ord. 14-1337; Ord. 16-1389.]

### 5.05.130 Non-System License Application Fees

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

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

Non-system licenses that authorize the transport of more than 500 tons of solid waste per year.	\$1,000	\$1,000	\$250
<b>Type of Non-System License Application</b>	<b>Application Fee for a New Non-System License</b>	<b>Application Fee for the Renewal of a Non-System License</b>	<b>Application Fee for Change in Authorization to an Existing Non-System License</b>
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

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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

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**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.”

**Ordinance No. 23-1499, For the Purpose of Repealing Metro Code Chapter 2.05  
(Procedure for Contested Cases) and Replacing it with a New, Updated  
Metro Code Chapter 2.05 (Contested Cases Procedures)**  
*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, October 5th, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING METRO	)	ORDINANCE NO. 23-1499
CODE CHAPTER 2.05 (PROCEDURE FOR	)	
CONTESTED CASES) AND REPLACING IT	)	Introduced by Chief Operating Officer
WITH A NEW, UPDATED METRO CODE	)	Marissa Madrigal in concurrence with
CHAPTER 2.05 (CONTESTED CASES	)	Council President Lynn Peterson
PROCEDURES)	)	

WHEREAS, Metro Code Chapter 2.05 (Procedure for Contested Cases) prescribes the procedures and requirements for the notice and hearings when a party seeks a contested case hearing; and

WHEREAS, a contested case hearing opportunity exists when Metro makes a decision that affects individual legal rights, duties, or privileges of specific parties. This includes Metro decisions regarding licenses, franchises, permits, or the imposition of civil penalties; and

WHEREAS, several Metro code chapters authorize a person or entity to seek a “contested case” hearing based on a Metro decision that affects that person or entity’s rights; and

WHEREAS, although the availability to contest a Metro decision applies to a broad range of Metro decisions, it is rarely exercised and has primarily been used with respect to solid waste license and franchise decisions and enforcement of solid waste authorizations; and

WHEREAS, current Metro Code Chapter 2.05 (Contested Cases) was originally adopted in 1979 by the former Metropolitan Service District Board, with only limited change or updating since that original adoption nearly 45 years ago; and

WHEREAS, some Metro Code chapters and sections that were established in the 1970s and 1980s—before Metro had an independent charter and home rule authority—were modeled after existing state statutes involving similar circumstances; and

WHEREAS, Metro’s Procedures for Contested Cases Chapter 2.05 was modeled almost exclusively on the state of Oregon’s contested case procedures found in ORS Chapter 183; and

WHEREAS, procedures established for use by Oregon state government do not often easily transfer to local government practices, which can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement; and

WHEREAS, as but one example of this disconnect between state and local governments, Metro’s Contested Case chapter code language generally substitutes the term “Metro Council” for state “agency” (which is defined as a state board, commission, department or division thereof), even though “state agencies” and “Metro Council” serve different roles, with different responsibilities and considerations; and

WHEREAS, many of the procedures established in Metro Code Chapter 2.05 (Contested Case Procedures) are unclear, cumbersome, and difficult to implement. This makes it burdensome for Metro staff and hearings officers to effectuate, while also creating barriers and confusion for individuals and entities seeking a contested case hearing based on a Metro decision or imposition of civil penalty; and

WHEREAS, in December 2022 Metro Council adopted Resolution No. 22-5293, which among other things requires that Metro Code be written using plain and inclusive language best practices; and

WHEREAS, the newly proposed Chapter 2.05 incorporates plain and inclusive language best practices as required; and

WHEREAS, Metro Code Chapter 2.05 (Procedures for Contested Cases) should be repealed and replaced with a new Contested Case Procedures chapter that more closely aligns Metro’s contested case hearing and appeal procedures with local government practices, and which also incorporates plain and inclusive language best practices; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.05 (Procedures for Contested Cases) is repealed in its entirety.
2. A new Metro Code Chapter 2.05 (Contested Cases Procedures) is established as set forth in the attached Exhibit A.
3. The Metro Attorney is authorized to take any action reasonably necessary to correct and update any code chapter or code section reference to implement this ordinance.
4. Any contested case hearing that is requested before the effective date of this ordinance will continue to be governed by the contested case procedures established at the party request a contested case, including any appeals related to that contested case hearing.

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

**EXHIBIT A**  
**Ordinance No. 23-1499**

**CHAPTER 2.05**

**CONTESTED CASES PROCEDURES**

2.05.010	Purpose
2.05.020	Definitions
2.05.030	Jurisdiction for Contested Cases
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2.05.120	Burden of Proof
2.05.130	Record of Hearing
2.05.140	Service of Documents on All Parties
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2.05.160	Evidentiary Rules During a Contested Case Hearing
2.05.170	Ex Parte Communications to the Hearings Officer
2.05.180	Orders When No Hearing Requested or For Failure to Appear
2.05.190	Final Order; Notification; Review
2.05.200	Nature of Determination; Judicial Review
2.05.210	Authority to Adopt Administrative Rules



### **2.05.010 Purpose**

The purposes of this chapter are to give clear guidelines to persons involved in a contested case, to provide an understanding of what participants can expect, and to provide for thorough, fair, and timely hearings.

### **2.05.020 Definitions**

**Ex Parte Communication** means a direct or indirect communication about a contested case pending before the hearings officer, which is between the hearings officer and a party to the contested case or the party's representative, and which occurs outside of a public hearing.

**Hearings Officer** means a person appointed by the Chief Operating Officer to hear and determine a contested case.

**In Camera Review** means a review by the hearings officer of a document or exhibit that is not available for public review.

**Party** means:

- (a) Metro.
- (b) Any person requesting and entitled to a contested case hearing under Metro Code.
- (c) Any person requesting to participate at the hearing as a party or a limited party which the hearings officer determines (i) has an interest in the result of the proceeding or represents a public interest in the result, and (ii) that the identified interest is not already adequately represented by one of the current parties.

**Received** means the date and time Metro or the hearings officer records a document as received by the hearings officer or Metro, as applicable. A document delivered to the hearings officer or Metro after regularly scheduled business hours or on a Saturday, Sunday, or official Metro holiday or closure is deemed received on the next business day at the start of business hours.

### **2.05.030 Jurisdiction for Contested Cases**

- (a) Whenever a person has the right to a contested case hearing from any Metro decision or determination as provided in Metro Code generally or Section 2.05.040(a) specifically, the contested case hearing will follow the procedures set forth in this chapter.
- (b) No person has the right to a contested case hearing unless that right is expressly provided for in Metro Code. If Metro Code does not expressly provide for a contested case hearing, then the appropriate review is a writ of review in Multnomah County Circuit Court as set forth in ORS Chapter 34.

### **2.05.040 Contested Case Applicability**

- (a) A contested case is a quasi-judicial administrative action that exists when:

- (1) Individual legal rights or duties of specific parties are required by Metro Code, Oregon statute, the Oregon Constitution, or the United States Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard;
  - (2) Metro has discretion to suspend or revoke a right or duty of a person;
  - (3) Metro refuses to issue, renew, modify, or amend any license, franchise, or permit required to pursue any activity governed or regulated by Metro;
  - (4) There is a proceeding in which Metro has directed by ordinance, rule, or otherwise that the proceeding be conducted in accordance with contested case procedures;
  - (5) Metro imposes a civil penalty; or
  - (6) Metro issues an Illegal Disposal citation pursuant to Metro Code Chapter 5.09.
- (b) A contested case does not exist when:
- (1) Metro approves or denies a grant application or Metro amends or revokes a grant;
  - (2) Metro finds a breach of contract, including a designated facility agreement authorized under Metro Code Title V;
  - (3) Metro imposes a condition, law, rule, or requirement of general applicability on a class of facilities, licensees, franchisees, or permittees; or
  - (4) Metro Code specifically authorizes a department director or other Metro staff member to hear appeals regarding decisions affecting the rights or duties of a person or entity.

#### **2.05.050 Notice of Opportunity for Hearing; Service of Notice**

- (a) Metro must give notice to a party when that party has the right to seek a contested case hearing. The notice must include:
- (1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;
  - (2) A statement of the authority under which Metro will hold the hearing;
  - (3) A reference to the applicable Metro Code sections, ordinances, or rules involved;
  - (4) A short and plain statement of the matters asserted, charged, or proposed;
  - (5) A statement that an attorney may represent the party at the hearing; and

- (6) When applicable, a statement that if the party desires a hearing, the party must notify Metro in writing within 30 calendar days of receiving Metro's notice of right to a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the party of the hearing. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
  - (1) Personal delivery;
  - (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
  - (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
  - (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

#### **2.05.060 Hearings Officer Appointment; Qualifications**

- (a) The Chief Operating Officer appoints the hearings officer from a list of at least three prospective, qualified hearings officers recommended by the Metro Attorney. The Chief Operating Officer may appoint more than one hearings officer at any given time depending on the circumstances and frequency of contested case hearings. The Chief Operating Officer may appoint a hearings officer for a specific hearing (or hearings), or for a specific duration of time.
- (b) The hearings officer must be a member in good standing of the Oregon State Bar.
- (c) The hearings officer must be independent of all Metro departments. However, for administrative purposes, the officer may be established as part of the Finance and Regulatory Services Department or Office of the Metro Attorney.

#### **2.05.070 Hearings Officer Duties**

- (a) The hearings officer conducts impartial administrative hearings and renders decisions when a person or entity contests Metro's decision to:
  - (1) Suspend, fail to renew, or revoke a right or duty previously conferred by Metro as authorized under Metro Code, or
  - (2) Refuse to grant a franchise, license, or other regulatory instrument pursuant to Metro Code Title V.

- (b) The hearings officer will coordinate with applicable Metro staff on scheduling and other administrative matters related to the hearing.

#### **2.05.080 Initiation of Hearing Request**

- (a) Unless otherwise specified in Metro Code, a party must file a request for a contested case hearing within 30 days after the date of the Metro decision or determination. The party must direct the request to the Metro staff position identified on the relevant Metro determination or citation. If no staff position is identified, the party should direct the request to the Metro Attorney's Office.
- (b) The request must be in writing and contain a statement of grounds upon which the party contends that the decision or determination is invalid, unauthorized, or otherwise improper.
- (c) The request must include a current address and contact information for the requesting party, including a phone number and, if applicable, an electronic email address for future correspondence.

#### **2.05.090 Scheduling a Hearing; Notice**

- (a) Upon Metro's receipt of a request for a contested case hearing, Metro will notify the hearings officer of the request to assist in scheduling the hearing.
- (b) The hearings officer, in coordination with applicable Metro staff, will specify a time, date, and place for a public hearing on the matters alleged in the request.
- (c) The date set for hearing may not be less than 30 days nor more than 180 days after the date that Metro receives the hearing request. However, the hearings officer may specify a date for hearing less than 30 days after the request is received if it appears there may exist an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person.
- (d) The hearings officer will give each party notice of the time, date, and location of the hearing in the same manner authorized for notice under 2.05.050(b).
- (e) The hearings officer may postpone, continue, set over, or reschedule any hearing with the consent of all parties; or, upon the hearings officer's discretion, on the motion of any party for good cause shown.
- (f) Notwithstanding an earlier request for an in-person hearing, the hearings officer may determine the matter without an in-person hearing upon consent of all parties and a review of written materials, if any, submitted by the parties. Any party seeking a determination without an in-person hearing must request this option at least five business days before the scheduled hearing.

### **2.05.100 Rights of Parties in Contested Cases**

- (a) After the request for a hearing but at least 15 business days before the contested case hearing begins, Metro must provide the following information in writing to all parties:
  - (1) A general description of the hearing procedure, including the order of presentation of evidence and what kinds of evidence are admissible. Before the hearing begins, the hearings officer may provide further information regarding the officer's preferred hearing procedures, including the order of presentation of evidence.
  - (2) Whether Metro will record the proceeding, the manner of recording, and its availability to the parties.
  - (3) That an attorney may represent any party, including Metro.
  - (4) A description of the appeal process from the final order.
- (b) A failure to give notice of any item specified in subsection (a) does not invalidate any order unless upon an appeal from or review of the order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court will remand the matter to Metro for a reopening of the hearing and may direct Metro as to what steps Metro must take to remedy the prejudice to the rights of the complaining party.

### **2.05.110 Hearings Procedures**

- (a) The hearings officer will conduct and control the hearing.
- (b) The hearings officer has authority to administer oaths and take testimony of witnesses.
- (c) By agreement of all parties, the hearing may be conducted using technology such as telephone or video conferencing equipment. If setting a hearing by telephone or video conference, the hearings officer will set the date and time by which the parties must exchange documents, exhibits, and witness lists.
- (d) Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default.
- (e) As set forth in subsection 2.05.090(f) and with the consent of all parties, the hearings officer may determine the matter without a hearing upon a review of written materials, if any, submitted by the parties.
- (f) Parties may elect to be represented by legal counsel and to respond to and present evidence and argument on all issues involved.
- (g) At the discretion of the hearings officer, the hearing will proceed as follows:
  - (1) Metro staff or case file report, if any.

- (2) Statement and evidence by Metro staff in support of Metro's action.
- (3) Statement and evidence of affected persons disputing Metro's action.
- (4) Rebuttal testimony.
- (h) The hearings officer, Metro's attorney of record or Metro staff as applicable, and the affected parties (or their attorneys if represented) have the right of direct examination of any witness. The hearings officer may ask follow-up questions of any witness as appropriate.
- (i) Each party may seek to cross-examine a witness by directing proposed cross-examination questions to the hearings officer. The hearings officer has discretion whether to allow any or all cross-examination questions.
- (j) Each party has the right to submit rebuttal evidence.
- (k) The hearings officer may continue the hearing for a reasonable period at the hearing officer's discretion.
- (l) The hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial testimony.
- (m) Parties must mark exhibits and the markings must identify the person offering the exhibits. Metro will preserve the exhibits as part of the record of the proceedings for a period of not less than five years.
- (n) A verbatim oral, written, or mechanical record must be made of all the proceedings. The verbatim record need not be transcribed unless necessary for judicial review.
- (o) After the hearing concludes, the hearings officer will close the record, and new evidence is not admissible thereafter.
- (p) Notwithstanding subsection (o), upon proper showing, the hearings officer may reopen the hearing to receive new evidence that a party could not have introduced earlier, and which is otherwise admissible under Section 2.05.160.

### **2.05.115 Subpoenas**

- (a) In response to a request by a party, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or if not addressed in this section, with the Oregon Rules of Civil Procedure.
- (b) A party requesting a subpoena must demonstrate to the hearings officer that the potential witness has evidence of general relevance and probative value, that the evidence sought is reasonable in scope, and that it would otherwise be difficult or impossible to obtain the evidence sought by means other than a subpoena. The hearings officer may make available a form with the information required to make this showing.
- (c) Witnesses appearing pursuant to a subpoena, other than the parties or officers or employees of Metro, are eligible to receive fees and mileage as prescribed by law for

witnesses in civil actions. Unless a witness expressly declines payment for fees and mileage, the witness' obligation to appear is contingent on the payment of fees and mileage.

- (d) If a person fails to comply with an issued subpoena, or if any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, then the hearings officer or the party requesting the subpoena may apply to a Multnomah County Circuit Court judge to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court or a refusal to testify.

#### **2.05.120 Burden of Proof**

Metro has the burden of proving the alleged violation by a preponderance of the evidence.

#### **2.05.130 Record of Hearing**

The contested case hearing record consists of:

- (a) All pleadings, motions, and intermediate rulings;
- (b) Evidence received or considered;
- (c) Stipulations;
- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof, objections, and rulings thereon;
- (f) A statement of any ex parte communication on a fact in issue made to the hearings officer during the pendency of the proceedings;
- (g) Any proposed, intermediate, or final order prepared by the hearings officer.

#### **2.05.140 Service of Documents on All Parties**

- (a) A party must serve on all other parties all documents, written correspondence, or other material filed with or submitted to the hearings officer. Service is required within five days of when the materials are filed or submitted to the hearings officer, but not less than three days before a scheduled hearing.
- (b) Any document filed with or submitted to the hearings officer must contain a statement of proof of service on all parties.

#### **2.05.150 Discovery**

- (a) On petition of any party and a showing of the general relevance of the documents or things sought, the hearings officer has discretion to enter an order directing any party to produce and make available to the petitioning party to inspect and copy any document or to inspect and copy any things that are in the possession of a party.

- (b) The hearings officer may not enter an order requiring a party to produce any document or thing that is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law. However, the hearings officer may request an in-camera review of the document.
- (c) The hearings officer may allow a party to take a deposition, but only upon a showing that relevant information cannot be obtained otherwise and that the requesting party would suffer extreme prejudice if not allowed to take a deposition before the hearing. If the hearings officer allows a deposition, the deposition must be in the manner prescribed by Oregon law for depositions in civil actions.

#### **2.05.160 Evidentiary Rules During a Contested Case Hearing**

- (a) The hearings officer may admit evidence of a type commonly relied upon by a reasonably prudent person in the conduct of that person's serious affairs.
- (b) Irrelevant, immaterial, or unduly repetitious evidence is not allowed.
- (c) The hearings officer will receive all offered evidence not objected to, subject to the hearing officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (d) The hearings officer may receive evidence objected to and then rule on its admissibility or exclusion at the time the hearings officer issues a final order.
- (e) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.
- (f) The hearings officer may not consider information or evidence not offered and made a part of the record. However, the hearings officer may take notice of judicially cognizable facts and may take official notice of general, technical, or scientific facts within the specialized knowledge of the hearings officer or Metro employees. The hearings officer must notify parties of officially noticed material and must afford the parties an opportunity to contest the officially noticed facts.

#### **2.05.170 Ex Parte Communications to the Hearings Officer**

The hearings officer must place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding. Upon request, a party must be given a reasonable opportunity to rebut any ex parte communications.

#### **2.05.180 Orders When No Hearing Requested or For Failure to Appear**

- (a) When a party has been given an opportunity to request a hearing and fails to do so within the specified time, no further action is required of Metro and Metro's action is upheld.



- (b) If a party that requested a hearing fails to appear at the specified time and place of the hearing, then the hearings officer may enter an order that upholds or denies Metro's action based on any written materials submitted at the time of the scheduled hearing. The hearings officer may allow Metro to submit further additional evidence at the scheduled hearing time to support a prima facie case.
- (c) The order supporting Metro action must set forth the material on which the hearings officer based the officer's action.

### **2.05.190 Final Order; Notification; Review**

- (a) After due consideration of the evidence and arguments, the hearings officer will determine whether Metro has proven the violation alleged and enter an order as follows:
  - (1) If the hearings officer determines that Metro has not proven the violation, the hearings officer will enter a final order dismissing the action.
  - (2) If the hearings officer determines that Metro has proven the violation, the hearings officer will enter an appropriate final order.
- (b) A final order must be in writing.
- (c) A final order must include the following:
  - (1) Rulings on admissibility of offered evidence.
  - (2) Findings of fact. The findings of fact must consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact, each stipulated fact, and as to each ultimate fact required to support the hearings officer's order.
  - (3) Conclusions of law. The conclusions of law will apply the controlling law to the facts found and legal results arising from those facts.
  - (4) Civil Penalties. If applicable, the amount of any civil penalties and costs owed, and instructions regarding payment.
- (d) Within 30 calendar days of the hearing, the hearings officer must serve a copy of the final order on all parties to a contested case and their attorneys of record if any. The hearings officer may serve a copy by electronic mail, regular mail, or personal delivery.
- (e) The hearings officer must notify all parties of their right to judicial review of the final order as set forth in ORS Chapter 34 (Writ of Review).
- (f) Upon a showing of due diligence, the hearings officer may at any time set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by the order.

### **2.05.200 Nature of Determination; Judicial Review**

- (a) The hearings officer's determination is a quasi-judicial decision and is not appealable to the Metro Council or any other Metro staff person.
- (b) Appeals from any hearings officer determination under this chapter is by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010—34.100.

### **2.05.210 Authority to Adopt Administrative Rules**

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies.

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

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Date: September 18, 2023  
Department: Office of Metro Attorney  
Meeting Date: October 5, 2023

Prepared by: Shane Abma  
Presented by: Shane Abma  
Length: 20 minutes

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*[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]*

**ISSUE STATEMENT**

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro’s “Illegal Disposal” chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

### **ACTION REQUESTED**

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

### **IDENTIFIED POLICY OUTCOMES**

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

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

Metro Council has several polity options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro’s hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

## **STAFF RECOMMENDATIONS**

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

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

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
  - Reducing the number of people that can understand the Code, and therefore follow it correctly.
  - Reducing Metro's efforts to be transparent.
  - Having code chapters that are inconsistent with one another.
  - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
- 
- *Known Opposition/Support/Community Feedback*  
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
  - *Legal Antecedents*  
There are no specific legal antecedents other than current Metro Code language.
  - *Anticipated Effects*  
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
  - *Financial Implications (current year and ongoing)*  
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

## **BACKGROUND**

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

## **ATTACHMENTS**

Attachment 1 summarizes the proposed changes to Metro Code chapters 2.03 (Civil Penalties), 2.05 (Contested Case Procedures), and 5.09 (Illegal Disposal).

**ATTACHMENT 1**  
**Ordinance Nos. 23-1499, 23-1500, and 23-1501**

**Summary of Changes to Code Chapters at Issue**

**A. Contested Case Procedures (Chapter 2.05)**

Metro's Contested Case Procedures Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Contested Case Procedures (ORS 183), but several procedures are not best practices (or even practical) for a local government. Following is a summary of the proposed changes to current code language.

- General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
  - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an “agency” can review a proposed order. An “agency” is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term “agency” was just replaced with “Metro Council.” However, “state agencies” and “Metro Council” serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
  - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
  - Current code language states that a hearings officer will send a “Proposed Order” to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
  - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).



- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
  - Breaches of contract
  - Denial of grant requests
  - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

## **B. Civil Penalties (Chapter 2.03)**

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

## **C. Illegal Disposal (Chapter 5.09)**

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
  - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.

**Ordinance No. 23-1500, For the Purpose of Repealing Metro Code Chapter 2.03 (Civil Penalties) and Replacing it with a new Metro Code Chapter 2.03 (Civil Penalties), and Amending Certain Metro Code Chapters to Align with the new Chapter 2.03**  
*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, October 5th, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING METRO )      ORDINANCE NO. 23-1500  
CODE CHAPTER 2.03 (CIVIL PENALTIES) )  
AND REPLACING IT WITH A NEW METRO )      Introduced by Chief Operating Officer  
CODE CHAPTER 2.03 (CIVIL PENALTIES), )      Marissa Madrigal in concurrence with  
AND AMENDING CERTAIN METRO CODE )      Council President Lynn Peterson  
CHAPTERS TO ALIGN WITH THE NEW )  
CHAPTER 2.03 )

WHEREAS, Metro Code Chapter 2.03 prescribes “the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties” by Metro; and

WHEREAS, several Metro code chapters authorize the imposition of civil penalties for violating Metro code, regulations, orders, or rules, including violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste; and

WHEREAS, although Metro is authorized to impose civil penalties for violations of many code chapters, Metro primarily imposes civil penalties for illegal solid waste disposal violations and violations related to solid waste franchises and licenses; and

WHEREAS, current Metro Code Chapter 2.03 (Civil Penalties) was originally adopted in 1977 by the former Metropolitan Service District Board, with little change or updating since that original adoption nearly 50 years ago; and

WHEREAS, some Metro Code chapters and sections established in the 1970s and 1980s—before Metro had an independent charter and home rule authority—were modeled after existing state statutes involving similar circumstances and procedures. This includes, for example, the *Civil Penalties* Code Chapter 2.03 and the *Procedure for Contested Cases* Code Chapter 2.05; and

WHEREAS, procedures established for use by Oregon state government do not often easily transfer to local government practices, which can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement; and

WHEREAS, many of the procedures established in Metro Code Chapters 2.03 (Civil Penalties) are unclear, cumbersome, and difficult to implement. This makes it burdensome for Metro staff and hearings officers to effectuate, while also creating barriers and confusion for individuals and entities facing a violation or civil penalty; and

WHEREAS, in December 2022 the Metro Council adopted Resolution No. 22-5293, which among other things requires that Metro Code be written using plain and inclusive language best practices; and

WHEREAS, the proposed updated Chapter 2.03 incorporates plain language best practices as required; and

WHEREAS, Metro Code Chapter 2.03 (Civil Penalties) should be repealed and replaced with a new civil penalties chapter setting forth procedures that align more closely with local government procedures and which also incorporates plain and inclusive language best practices; and

WHEREAS, two sections of the current Chapter 2.03 establishing penalty amounts for violations related to the Zoo and Parks and Nature should be moved to the code chapters that establish those rules and regulations (Chapter 4.01 for the Zoo and Chapter 10.02 for Metro Parks and Natural Areas) rather than being embedded in the civil penalties code chapter; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.03 (Civil Penalties) is repealed in its entirety.
2. A new Metro Code Chapter 2.03 (Civil Penalties) is established as set forth in the attached Exhibit A.
3. Metro Code Chapter 4.01 (Oregon Zoo Regulations) is amended as set forth in attached Exhibit B.
4. Metro Code Chapter 10.02 (Permits, Enforcement and Appeals) is amended as set forth in attached Exhibit C.
5. The Metro Attorney is authorized to take any action reasonably necessary to correct and update any code chapter or code section reference to implement this ordinance.
6. Any civil penalty imposed before the effective date of this ordinance will continue to be governed by the procedures established at the time Metro imposed the civil penalty, including any appeals or contested case hearings related to that civil penalty imposition.

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

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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Connor Ayers, Recording Secretary

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Carrie MacLaren, Metro Attorney

**EXHIBIT A**  
**Ordinance No. 23-1500**

**CHAPTER 2.03**

**CIVIL PENALTIES**

2.03.010	Purpose
2.03.020	Definitions
2.03.030	Each Violation Separate and Distinct
2.03.040	Consolidation of Proceedings
2.03.050	Notice of Civil Penalty Assessment; Service of Notice
2.03.060	Mitigating and Aggravating Factors for Civil Penalties
2.03.070	Amount of Financial Civil Penalties
2.03.080	When Civil Penalty is Due
2.03.090	Appeals
2.03.100	Compromise or Settlement of Civil Penalty
2.03.110	Judgment
2.03.120	Authority to Adopt Administrative Rules

### **2.03.010 Purpose**

The purpose of this chapter is to proscribe the procedures and requirements to notice, assess, collect, and enforce civil penalties.

### **2.03.020 Definitions**

Unless otherwise required by context, as used in this chapter:

**Civil Penalty** means a non-criminal remedy for any violation of a Metro regulation, order, code section, law, administrative rule, permit, franchise, license or any other similar regulatory requirement.

**Director** means “Department Director” as defined in Metro Code Chapter 2.17.

**Hearings Officer** means a person appointed by the Chief Operating Officer to hear and determine a contested case.

**Respondent** means the person against whom Metro has assessed a civil penalty.

### **2.03.030 Each Violation Separate and Distinct**

Each violation is a separate and distinct offense. In cases of continuing violation, each days' continuance is a separate and distinct violation.

### **2.03.040 Consolidation of Proceedings**

Notwithstanding subsection 2.03.030, proceedings to assess multiple civil penalties for multiple violations may be consolidated into a single proceeding.

### **2.03.050 Notice of Civil Penalty Assessment; Service of Notice**

- (a) Metro must give notice in writing to a respondent when Metro assesses a civil penalty. The notice must include:
  - (1) A reference to the particular Metro Code section, ordinance, order, permit, regulation, or rule involved;
  - (2) A short and plain statement of the matters asserted or charged;
  - (3) A statement of the amount of the penalty or penalties imposed; and
  - (4) A statement of the respondent's right to request a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the respondent of the civil penalty assessment. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
  - (1) Personal delivery;



- (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
- (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
- (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

### **2.03.060 Mitigating and Aggravating Factors for Civil Penalties**

- (a) In establishing the amount of a civil penalty to be assessed, Metro may consider the following factors:
  - (1) Whether the respondent has committed any prior violation, regardless of whether any administrative, civil, or criminal proceeding was commenced as a result;
  - (2) The history of the respondent in taking all feasible actions necessary or appropriate to correct any violation; or
  - (3) The respondent's economic and financial condition.
- (b) In establishing whether Metro should mitigate a civil penalty, Metro may consider the following factors:
  - (1) The gravity and magnitude of the violation;
  - (2) Whether the violation was repeated or continuous;
  - (3) Whether a cause of the violation was a negligent or an intentional act of the respondent;
  - (4) The opportunity and degree of difficulty to correct the violation;
  - (5) The respondent's cooperativeness and efforts to correct the violation for which Metro may assess the penalty;
  - (6) The cost to Metro to investigate or correct the cited violation; or
  - (7) Any other relevant factor.

### **2.03.070 Amount of Financial Civil Penalties**

Unless specified otherwise in Metro Code, no financial civil penalty may exceed \$500 per day per violation.

### **2.03.080 When Civil Penalty is Due**

Unless otherwise stated in the written notice of civil penalty assessment, a civil penalty is due and payable when Metro serves the respondent with the written notice of civil penalty assessment.

### **2.03.090 Appeals**

- (a) The respondent has 30 calendar days from Metro's notice of civil penalty assessment to request a contested case hearing regarding the validity or amount of the civil penalty.
- (b) All hearings will be conducted as set forth in Metro Code Chapter 2.05 ("Contested Case Procedures").

### **2.03.100 Compromise or Settlement of Civil Penalty**

At any time after Metro serves the written notice of assessment of civil penalty, the appropriate Director is authorized to compromise or settle any unpaid civil penalty that the Director deems appropriate.

### **2.03.110 Judgment**

Unless the respondent pays the amount of the penalty within 10 days after a contested case order becomes final, the order constitutes a judgment and Metro may file it in accordance with the provisions of Oregon Law. Metro may execute upon the order in the same manner as execution upon a judgment of a court of record.

### **2.03.120 Authority to Adopt Administrative Rules**

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies.

**EXHIBIT B**  
**Ordinance No. 23-1500**

1. Metro Code Section 4.01.100 (Penalties) is amended as set forth with underlined text inserted and ~~strikethrough~~ text deleted:

***4.01.100 Penalties***

*(a) Each violation of these rules and regulations ~~is shall be~~ punishable by a fine set by the schedule of civil penalties set forth in Section ~~2-03-060~~ 4.01.110.*

2. A new Metro Code Section 4.01.110 (Civil Penalty Schedule) is added as set forth:

***4.01.110 Civil Penalty Schedule***

*In addition to any liability, duty, or other penalty provided by law, the Zoo Director may assess a civil penalty for any violation pertaining to the Zoo in the manner set forth in Metro Code Chapter 2.03 (Civil Penalties). The amount of the civil penalty must be consistent with the following schedule:*

- (a) Not less than \$25 nor more than \$500 for any violation which causes, contributes to, or threatens the injury of any Zoo animals.*
- (b) Not less than \$25 nor more than \$500 for any other violation.*

**EXHIBIT C**  
**Ordinance No. 23-1500**

1. Metro Code Section 10.02.110 (Citation, Ejection and Exclusion, Hearing) is amended as set forth with underlined text inserted and ~~striketrough~~ text deleted:

***10.02.110 Citation, Ejection and Exclusion, Hearing***

*(a) The Director and the Director's authorized enforcement personnel have the authority to: cite for civil penalties in the manner set forth in Metro Code Chapter 2.03 for any violation pertaining to its parks, cemeteries, and natural areas; or eject from any Property any person acting in violation of Title X, any Rules, or the laws of the State of Oregon. A civil penalty issued under the authority of this section may not be less than \$25 nor more than \$500.*

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

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Date: September 18, 2023  
Department: Office of Metro Attorney  
Meeting Date: October 5, 2023

Prepared by: Shane Abma  
Presented by: Shane Abma  
Length: 20 minutes

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*[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]*

**ISSUE STATEMENT**

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro’s “Illegal Disposal” chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

### **ACTION REQUESTED**

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

### **IDENTIFIED POLICY OUTCOMES**

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

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

Metro Council has several polity options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro’s hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

## **STAFF RECOMMENDATIONS**

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

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

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
  - Reducing the number of people that can understand the Code, and therefore follow it correctly.
  - Reducing Metro's efforts to be transparent.
  - Having code chapters that are inconsistent with one another.
  - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
- 
- *Known Opposition/Support/Community Feedback*  
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
  - *Legal Antecedents*  
There are no specific legal antecedents other than current Metro Code language.
  - *Anticipated Effects*  
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
  - *Financial Implications (current year and ongoing)*  
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

## **BACKGROUND**

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to



implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

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- General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
  - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an “agency” can review a proposed order. An “agency” is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term “agency” was just replaced with “Metro Council.” However, “state agencies” and “Metro Council” serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
  - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
  - Current code language states that a hearings officer will send a “Proposed Order” to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
  - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
  - Breaches of contract
  - Denial of grant requests
  - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

## **B. Civil Penalties (Chapter 2.03)**

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

## **C. Illegal Disposal (Chapter 5.09)**

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
  - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.

**Ordinance No. 23-1501, For the Purpose of Amending Metro Code Chapter 5.09 (Illegal Disposal) to Align it with the new Metro Code Chapter 2.05 (Contested Cases) and Incorporate Plain Language Best Practices**  
*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, October 5th, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 23-1501
CODE CHAPTER 5.09 (ILLEGAL DISPOSAL)	)	
TO ALIGN IT WITH THE NEW METRO CODE	)	Introduced by Chief Operating Officer
CHAPTER 2.05 (CONTESTED CASES) AND	)	Marissa Madrigal in concurrence with
INCORPORATE PLAIN LANGUAGE BEST	)	Council President Lynn Peterson
PRACTICES	)	

WHEREAS, Metro Code Chapter 5.09 (Illegal Disposal) governs illegal disposal prohibitions in the Metro Area, sometimes colloquially referred to as “illegal dumping”; and

WHEREAS, Chapter 5.09 includes sections regarding enforcement of illegal disposal prohibitions, issuance of civil penalties for illegal disposal, and hearings procedures for individuals and entities that wish to contest illegal disposal citations; and

WHEREAS, Metro has observed a significant increase in illegal disposal activities within the region. This has led to heightened environmental concerns, public safety issues, and increased workload for Metro staff; and

WHEREAS, the rise in illegal disposal incidents has resulted in an increasing number of citations issued by Metro, along with a subsequent increase in requests for hearings to contest these citations, which strains the resources and efficiency of the citation enforcement process; and

WHEREAS, the proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro's regulatory illegal disposal code chapter and the process for parties to challenge Metro’s enforcement actions; and

WHEREAS, current Chapter 5.09 language has references to certain criminal state statutes regarding discovery and proceedings for illegal disposal hearings that are not applicable to a local government civil administrative hearing, and, at worst, practically impossible to implement; and

WHEREAS, although staff and hearings officers have worked diligently to apply current code procedures whenever possible, these procedures are confusing and proving unworkable and, with an increase in citations, will only cause further administrative difficulties if current code language is not updated; and

WHEREAS, staff anticipates that Metro Council will, in companion with this Ordinance, adopt ordinances that likewise update Metro’s Contested Case Procedures and Civil Penalties code chapters to address similar state-law modeled shortcomings; and

WHEREAS, the proposed updates to Chapter 5.09 Illegal Disposal will now align with the expected updates to the Contested Case Procedures and Civil Penalties chapters, which includes incorporating the hearings procedures and civil penalty issuance procedures in those newly updated code chapters; and

WHEREAS, in December 2022 Council adopted Resolution No. 22-5293, which, among other things, required that Metro code chapters use plain and inclusive language best practices to improve readability, transparency, and understanding of Metro’s requirements and procedures; and

WHEREAS, Resolution No. 22-5293 also recognized that Metro’s regulatory code chapters demand a more frequent housekeeping update schedule to keep abreast of changes in state and federal law and to more quickly address Metro Code sections that are unclear or confusing to regulated individuals and entities; and

WHEREAS, in addition to removing unworkable references to state law and procedures and better aligning with Metro’s new Contested Case Procedures and Civil Penalties code chapters, the updated Chapter 5.09 also incorporates plain and inclusive language best practices as required; and

WHEREAS, section 5.09.040(g) from the current Chapter 5.09 (regarding material sorting) should be moved to Chapter 5.05 (Solid Waste Flow Control) in a new section 5.05.040(d); and

WHEREAS, Metro is dedicated to upholding its role as a responsible and accountable local government agency by updating its code for increased clarity and alignment; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.09 (Illegal Disposal) is amended as set forth in Exhibit A, with inserted text underlined and deleted text in strikethrough.
2. Chapter 5.05 (Solid Waste Flow Control) is amended to add a new section 5.05.040(d) as set forth in Exhibit B.
3. Any illegal disposal citation issued before this ordinance takes effect will be governed by the code language in Chapter 5.09 that existed at the time Metro issued the citation.

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

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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Connor Ayers, Recording Secretary

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Carrie MacLaren, Metro Attorney



**EXHIBIT A**  
**Ordinance No. 23-1501**

**CHAPTER 5.09**  
**ILLEGAL DISPOSAL**

<del>5.09.005</del>	<del>Title</del>
5.09.010	Purpose
5.09.020	Jurisdiction
5.09.030	Prohibition on Illegal Disposal of Solid Waste
5.09.040	Prohibition on Illegal Household Hazardous Waste Disposal
5.09.050	Exemption from Illegal Disposal Prohibitions
5.09.060	Illegal Disposal Declared a Nuisance
5.09.070	Civil Penalties and Costs
5.09.080	Persons Authorized to Issue a Citation
5.09.090	Procedure for Service of Citation
5.09.100	Citation Content
5.09.110	Citation Error
5.09.120	Appearance by Cited Person; Request for Hearing
5.09.130	Prehearing Discovery
5.09.140	Procedures Before Hearings Officer
5.09.150	Burden of Proof
5.09.160	Evidentiary Rules During a Hearing
5.09.170	Representation at Hearing
5.09.180	Failure to Appear by Cited Person; Entry of Final Order
5.09.190	Failure to Pay Civil Penalties; Consequences
5.09.200	Collection of Civil Penalties and Costs; Other Legal Actions
5.09.210	Severability
5.09.220	Authority to Settle

**Repealed**

<del>5.09.020</del>	<del>Definitions</del> <del>[Repealed Ord. 14-1331]</del>
<del>5.09.170</del>	<del>Administrative Policies and Procedures</del> <del>[Repealed Ord. 19-1441]</del>

### **5.09.005 Title**

This chapter may be cited as the "Metro Illegal Disposal Ordinance." [Ord. 94-557.]

### **5.09.010 Purpose**

The purposes of this chapter are:

- (a) To ~~carry out~~effectuate Metro's responsibility to manage the flow of solid waste in the ~~Metro Area~~ Portland metropolitan area;
- (b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro ~~region~~Area;
- (c) To ~~carry out~~effectuate the provisions related to illegal disposal in the Regional Waste Plan; and
- (d) To prevent fraudulent and unauthorized deliveries of ~~hazardous~~ waste to Metro transfer stations and Metro household hazardous waste facilities. [Ord. 94-557; Ord. 06-1107; Ord. 13-1311; Ord. 14-1331, Sec. 6; Ord. 19-1432.]

### **5.09.~~030~~ 020 Jurisdiction**

This chapter ~~shall apply~~applies to all territory within the jurisdictional boundaries of Metro, ~~as well as any additional area as may be established through an intergovernmental agreement.~~ [Ord. 94-557.]

### **5.09.~~040~~ 030 Prohibitions on Illegal Disposal of Solid Waste**

- (a) No person ~~shall~~may transport or carry, or direct another person to transport or carry, any solid waste, ~~including rubbish, trash, garbage, debris or other refuse, or recyclable material~~, in or on a motor vehicle or trailer, upon a public road right-of-way within the Metro Area, unless ~~such the~~ solid waste ~~or recyclable material~~ is:
  - (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer; and
  - (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste ~~or recyclable material~~ from being deposited upon any private or public property, road, right-of-way or driveway within Metro.
- (b) No person ~~shall~~may throw or place any solid waste, or direct another person to throw or place any solid waste, upon the private land or waters of another person, into a solid waste receptacle of another person without the owner's permission ~~of the owner~~, upon public lands or waters, or upon any public place other than at a solid waste facility authorized to accept such waste by Oregon law and the Metro Code.

- (c) No person who has generated or otherwise has possession or control of solid waste ~~shall may~~ direct or permit another person to dispose of ~~such the~~ solid waste if the person who has generated or otherwise has possession or control of ~~such the~~ solid waste knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of ~~such the~~ solid waste in compliance with all applicable local, state, and federal laws and regulations. ~~No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this chapter for illegal disposal of such waste.~~

#### **5.09.040 Prohibition on Illegal Household Hazardous Waste Disposal**

- (a) ~~Other than hazardous waste delivered to a Metro household hazardous waste facility, no~~ person ~~shall may~~ deliver to a Metro transfer station any hazardous waste, ~~other than hazardous waste delivered to a Metro household hazardous waste facility,~~ that is household hazardous waste or hazardous waste generated by a ~~very small quantity conditionally exempt~~ generator.
- (b) No person ~~shall may~~ deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than household hazardous waste or hazardous waste generated by a ~~conditionally exempt very small quantity~~ generator.
- (c) No person ~~shall may~~ make a false statement to Metro certifying that hazardous waste ~~the person has they have~~ delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is household hazardous waste or hazardous waste generated by a ~~conditionally exempt very small quantity~~ generator.
- ~~No person shall deliver non-putrescible solid waste generated within Metro that has not undergone material recovery, or direct another person to deliver such solid waste, to any facility other than a Metro authorized material recovery facility.~~[Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107.]

#### **5.09.050 Exemption from Illegal Disposal Prohibitions**

~~A person does not violate the solid waste illegal disposal provisions of this chapter if a hauler that is franchised or otherwise authorized by a local government to collect solid waste collected the solid waste at issue.~~

#### **5.09.060 Illegal Disposal Declared a Nuisance**

~~A violation of Section 5.09.030 or Section 5.09.040 is a nuisance and is subject to abatement or injunction as any other nuisance, in addition to other penalties as described in this chapter.~~

#### **5.09.050-070 Civil Fines Penalties and Costs**

- (a) ~~Any A~~ person ~~violating that violates~~ any provision of this chapter ~~is shall be~~ subject to:

- (1) A civil fine-penalty of not more than \$500 for each violation; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
  - (A) administrative costs of investigation and collection; and
  - (B) cleanup, management, and disposal costs incurred.

~~The fines and costs shall be included in the citation and a hearings officer shall not assess additional fines or costs except the hearings officer may assess an additional fee, not to exceed \$50, if a party fails to appear at a hearing that he or she requested, unless for good cause shown.~~

- (b) An illegal disposal violator is not relieved of responsibility to remedy the violation by virtue of paying Payment of a civil fine-penalty imposed by a citation issued under this chapter ~~does not relieve a violator of responsibility to remedy the violation.~~
- ~~(c) Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance. [Ord. 94-557; Ord. 94-581, Sec. 1; Ord. 06-1107; and Ord. 13-1311.]~~

#### **5.09.060-080 Persons Authorized to Issue a Citations**

The following persons are authorized to issue a citations under this chapter:

- (a) The Chief Operating Officer or designee; and
- (b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]

#### **5.09.070-090 Procedure for Service of Citation**

- (a) An authorized official ~~shall~~may serve a citation on a cited person by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the alleged violator of the citation. The following notice methods satisfy the notice requirements of this section in at least one of the following ways:
  - (1) Personal delivery;
  - (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
  - (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or

~~(1)(4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.~~

~~(1) Personally;~~

~~(2) By delivery to a person over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;~~

~~(3) If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or~~

~~(4) By certified or registered mail, return receipt requested. If the cited person is an individual, then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.~~

- (b) An authorized official may not arrest any person for violation of this chapter. An authorized official may detain any person reasonably believed to have committed a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state. [Ord. 94-557; and Ord. 06-1107.]

#### **5.09.080 Issuance of Warnings**

~~(a) A person authorized to issue a citation under this chapter may issue a warning of an alleged violation under this chapter.~~

~~(b) If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the violation in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail. [Ord. 94-557; Ord. 94-581, Sec. 2; Ord. 06-1107; and Ord. 13-1311.]~~

#### **5.09.090-100 Citation Content**

~~For all violations enforceable under this chapter, Metro will use a A-citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all violations enforceable under this chapter. Each A citation shall must contain the following information:~~

(1) Identification of Metro, as the public body in whose name the action is brought;

~~(2) Hearings officer file number;~~

~~(3)(2) Name of the cited person;~~

~~(4)(3) The Metro Code section violated;~~

~~(5)~~(4) The date and time at which the violation is alleged to have occurred, or the date that a complainant or the authorized official issuing the citation first observed the violation ~~was first observed by the authorized official issuing the citation or a complainant;~~

~~(6)~~(5) A short and plain statement of the violation of which the person is charged;

~~(7)~~(6) The place at which the violation is alleged to have occurred;

~~(8)~~(7) The date on which the citation was issued;

~~(9)~~(8) The name of the authorized official issuing the citation;

~~(10)~~(9) \_\_\_\_\_  
The ~~amount of the~~ civil fines penalties and costs imposed for the violation;

~~(11)~~(10) \_\_\_\_\_ A  
n explanation statement informing the cited person that paying the civil fine penalty assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;

~~(12)~~(11) \_\_\_\_\_ T  
he time by which the cited person must respond to the citation by either:  
(a) requesting a hearing, (b) admitting responsibility and paying the civil fine penalty and costs, or (c) ~~paying the civil fine and costs and~~ submitting a written explanation of why Metro should not find the cited person ~~should not be found~~ in violation of the Metro Code or of any mitigating circumstances related to the violation, ~~and requesting that a hearings officer reduce and refund all or part of the civil fine and costs paid;~~

~~(13)~~(12) \_\_\_\_\_ T  
he place where the cited person must direct the person's his or her response;

~~(14)~~(13) \_\_\_\_\_ A  
notice statement informing the cited person that failure to respond to the citation could result in the entry of a default order against the cited person, including the imposition of a civil fine penalty of up to \$500 per violation plus additional costs ~~(incurred to investigate costs; the violation; costs to cleanup, manage, and dispose of solid waste that is~~ at issue the subject of the violation; and ~~collection to collect all civil fines and costs).~~ The notice shall must further inform the cited person that the failure to pay civil fines penalties and costs imposed by order of a hearings officer could result in (i) entry of a judgment against the cited person for the unpaid civil fines penalties and costs, (ii) the county clerk recording the person's name and the amount of the fines penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law; and

~~(15)~~(14) \_\_\_\_\_ A  
certification by the authorized official issuing the citation, under penalty of perjury ~~ORS 153.990~~, that the authorized official issuing the citation has

reasonable grounds to believe, and does believe, that the cited person committed a violation enforceable under this chapter. A certificate conforming to this subsection ~~shall be is~~ deemed equivalent to a sworn citation. ~~;~~ ~~and~~

~~(16) The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the citation and the required certification of service may be made upon receipt of the "return receipt." Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).~~

### **5.09.110 Citation Error**

- (a) ~~If an~~ An error in transcribing information into a citation, ~~when determined by the hearings officer to be is~~ non-prejudicial to the defense of the cited person, Metro or the hearings officer may correct the error may be corrected at the time of hearing or prior to time of before the hearing with notice to the cited person, or it may be corrected at the time of the hearing if allowed by the hearings officer.
- (b) Except as provided in this subsection, ~~the hearings officer must set aside~~ a citation that does not conform to the requirements of ~~this Ssection 5.09.100 shall be set aside by the hearings officer~~ upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation ~~shall not beare~~ not a basis for setting aside a citation.
- (c) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion. [Ord. 94-557; Ord. 94-581, Sec. 3; Ord. 06-1107; Ord. 13-1311.]

### **5.09.100 Representation at Hearing**

- ~~(a) A cited person may retain an attorney, at the person's own expense, for representation at the hearing provided that written notice of such representation is received by the Metro Attorney five working days in advance of the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.~~
- ~~(b) When a cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case, be present at the hearing for the purpose of consulting with and advising Metro staff, and answer procedural questions posed by the hearings officer. Nothing prevents the unrepresented party from consenting to legal counsel representing Metro at the hearing. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

### 5.09.110-120 Appearance by Cited Person; Request for Hearing

(a) The cited person ~~shall~~must either (i) appear as specified in the citation by admitting responsibility on or before the close of business on the date indicated in the citation, or ~~prior to (ii) before~~ such time deliver to the address noted in the citation:

- (1) A request for a hearing;
- (2) A statement of responsibility and ~~a check, cash or money order payment~~ in the amount of the civil ~~fine penalty~~ set forth in the citation; or
- (3) ~~A statement of An~~ explanation in mitigation of the ~~violation offense charged~~ with a request ~~that Metro reduce the for a reduction in fines penalties~~ and costs, ~~and a check, cash, or money order in the amount of the civil fine set forth in the citation, which~~ The explanation and payment combined ~~shall~~ constitute a waiver of hearing and consent to judgment by the hearings officer. The hearings officer will base judgment upon the explanation provided by the cited person and the citation case information provided by Metro.

(b) If the cited person requests a hearing, the request must be in writing and contain a statement of grounds upon which the party contends that citation is invalid, unauthorized, or otherwise improper. The request must include a current address and contact information for the requesting party, including a phone number and, if applicable, an electronic email address for future correspondence.

~~(b)(c)~~ The hearings officer ~~will set~~shall fix a date and time for a hearing ~~and. Unless notice is waived, the hearings officer shall notify mail to~~ the cited person ~~a notice~~ of the ~~date and time of the~~ hearing schedule at least 30 five working business days ~~prior to before~~ the hearing. The notice ~~shall~~must:

- (1) Be in the form of a "Notice to Appear" and contain a warning that if the cited person fails to appear, the hearings officer will enter a finding of responsibility ~~will be entered~~ against that person; and
- (2) Be sent to the cited person at the person's last known address by regular mail or such other communication means as requested by the cited person or which, under the circumstances, is reasonably likely to apprise the cited person of the hearing schedule.

~~By agreement of all parties, the hearing may be conducted using technology such as the telephone or video conferencing equipment. If setting a hearing by telephone or video conference, the hearings officer shall set the date and time by which the parties must exchange documents, exhibits, and witness lists.~~ [Ord. 94-557; Ord. 94-581, Sec. 4; Ord. 06-1107; and Ord. 13-1311.]

### 5.09.120-130 Prehearing Discovery

Metro must provide the following prehearing discovery to the cited person at least 30 days before the scheduled hearing:

- (a) Issued citation or enforcement action;



- (b) Solid waste enforcement incident report;
- (c) Initial complainant report to Metro of illegally disposed waste (if any);
- (d) Copies of any correspondence between Metro staff and the cited person.

~~The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to violation cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a cited person under this chapter. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

## **5.09.130 140 Procedures Before Hearings Officer**

Any hearing requested under this chapter will be conducted as set forth in Metro Code Section 2.05.110 (Contested Case Procedures).

- ~~(a) An allegation of violation of any provision of this chapter shall, if not admitted by the cited person or settled by the department prior to or during the hearing, be resolved by a hearings officer.~~
- ~~(b) The hearings officer shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the Finance and Regulatory Services Department, Office of the Metro Attorney, or Office of the Auditor.~~
- ~~(c) Metro shall have the burden of proving the alleged violation by a preponderance of the evidence.~~
- ~~(d) The hearings officer shall apply the following rules of evidence:
  - ~~(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible.~~
  - ~~(2) Evidence objected to may be admitted at the hearing officer's discretion and all evidence offered but not objected to shall be received. All evidence is subject to the hearings officer's discretion to exclude irrelevant, prejudicial, untimely or unduly repetitious evidence and to weigh all evidence received.
    - ~~(A) Relevant evidence. Relevant evidence means evidence having any tendency to make the existence of any material fact more or less probable than it would be without the evidence.—~~
    - ~~(B) Prejudicial evidence. Prejudicial evidence means evidence whose probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time or needless presentation of cumulative evidence.~~~~~~

- ~~(3) Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.~~
- ~~(4) Upon reconsideration of an evidentiary ruling, a hearings officer shall preclude action only if the ruling was both erroneous and substantially prejudicial to the rights of a party.~~
- ~~(5) The hearings officer shall give effect to the rules of privilege recognized by law.~~
- ~~(e) A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code 5.09.040(b) or 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and shall so notify the cited person following presentation of Metro's case.~~
- ~~(f) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication. The hearings officer shall have the authority to administer oaths and take testimony of witnesses. In response to a request by Metro or the cited person, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or if not addressed herein, with the Oregon Rules of Civil Procedure:~~
- ~~(1) Metro or the cited person shall request that the hearings officer order witnesses to appear by subpoena in writing at any time at least five days prior to the scheduled hearing.~~
- ~~(2) A \$15 deposit for each witness shall accompany each request for a subpoena by a cited person. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.~~
- 
- ~~(3) Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.~~
- ~~(4) If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.~~
- ~~(g) The parties shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.~~
- ~~(h) The cited person may not be required to be a witness in the hearing of any violation under this chapter.~~

~~(i) Proof of a culpable mental state is not an element of a violation under this chapter.~~

~~(j) After due consideration of the evidence and arguments, the hearings officer shall determine whether the violation alleged in the citation has been proven and enter an order as follows:~~

~~(1) (1) If the hearings officer determines that the violation has not been proven, a final order dismissing the citation shall be entered.~~

~~(2) If the hearings officer determines that the violation has been proven, the hearings officer shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.~~

~~(3) A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, by regular mail with certificate of service from the hearings officer.~~

~~An audio recording shall be made of the hearing unless waived by both parties. The recording or a written transcript shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later. [Ord. 94-557; Ord. 94-581, Sec. 5; Ord. 02-974, Sec. 1; Ord. 06-1107; and Ord. 13-131~~

### **5.09.150 Burden of Proof**

Metro has the burden of proving the alleged violation by a preponderance of the evidence.

### **5.09.160 Evidentiary Rules During a Hearing**

(a) The evidentiary rules established in Chapter 2.05 (Contested Case Procedures) apply to any hearing conducted under this chapter.

(b) Notwithstanding subsection (a) above, proof of a culpable mental state is not an element of a violation under this chapter.

(c) A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code 5.09.040(b) or 5.09.040(c). The hearings officer will determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and will so notify the cited person following presentation of Metro's case.

### **5.09.170 Representation at Hearing**

A cited person may, at the person's own expense, be represented by an attorney at the hearing provided that Metro receives written notice of the representation at least 10

business days before the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

#### **5.09.140-180 Failure to Appear by Cited Person; Entry of Final Order**

- (a) A cited person fails to appear if ~~that person~~~~he or she~~ does not respond by the time specified on the citation or if ~~that person~~~~he or she~~ requests a hearing and does not appear at the time scheduled by the hearings officer.
- (b) If the cited person fails to appear, the hearings officer shall will review any evidence submitted to determine if Metro has established the violation by a preponderance of the evidence, and The hearings officer shall will enter an appropriate final order that includes instructions regarding payment and the process to appeal the decision.  
~~Where a cited person requests a hearing and fails to appear, the hearings officer may assess an additional fee not to exceed \$50. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in Metro Code 5.09.070. [Ord. 94-557; Ord. 94-581, Sec. 6; Ord. 06-1107; and Ord. 13-1~~

#### **5.09.190 Failure to Pay Civil Penalties; Consequences**

A failure to pay civil penalties imposed by order of a hearings officer may result in (i) entry of a judgment against the cited person for the unpaid civil penalties, (ii) a county clerk recording the person's name and the amount of the penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law.

#### **5.09.150 Review of Hearings Officer Decisions**

- (a) ~~A motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.~~
- (b) ~~A cited person may appeal a final order by Writ of Review as provided in ORS 34.010 through 34.100. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

#### **5.09.160-200 Collection of Civil Fines Penalties and Costs; Other Legal Actions**

- (a) ~~Fines-Civil penalties~~ and costs are payable upon receipt of citation or an invoice from Metro pursuant to a written settlement or final order imposing finer civil penalties and costs. ~~Fines-Civil penalties~~ and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.
- (b) ~~The Chief Operating Officer or designee~~Metro may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

- (c) ~~In addition to other remedies available in law or equity, when~~ When an order assessing civil ~~fin~~es ~~penalties~~ and costs under this chapter becomes final by operation of law or on appeal and the ~~violater has not paid the penalties~~amount of the fines or costs ~~is not paid~~ within 10 days after the order becomes final, Metro may record and enforce the order ~~may be recorded and enforced~~ as provided in ORS 268.360~~(5)~~. [Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107; and Ord. 13-1311.]
- (d) Nothing in this chapter prevents other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether Metro has commenced an action under this chapter.

~~5.09.170 [Repealed Ord. 19-1441; Effective February 19, 2020]~~

#### **5.09.180-210 Severability**

If a court of competent jurisdiction finds any ~~section, subsection, paragraph, sentence, clause, phrase, or other~~ portion of this chapter ~~is found to be~~ invalid or unconstitutional ~~by a court of competent jurisdiction~~, that portion of the chapter ~~is~~shall be deemed separate and distinct, and the remainder of this chapter ~~shall~~continues in full force and effect. [Ord. 94-557.]

#### **5.09.190-220 Authority to Settle**

The Chief Operating Officer or designee may negotiate a settlement ~~is authorized to enter into negotiations with the parties or their legal representatives~~ involving any provision of this chapter for the collection of fines civil penalties and costs, ~~to negotiate a settlement, or both~~. [Ord. 13-1311.]

**EXHIBIT B**  
**Ordinance No. 23-1501**

A new section 5.05.040(d) (Prohibited Activities) is added to Metro Code Chapter 5.05 as follows:

*5.05.040 Prohibited Activities*

*(d) No person may transport or direct another person to transport non-putrescible solid waste generated within the Metro jurisdictional boundary that has not undergone material recovery to any facility other than a Metro-authorized material recovery facility as provided in this chapter.*

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

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Date: September 18, 2023  
Department: Office of Metro Attorney  
Meeting Date: October 5, 2023

Prepared by: Shane Abma  
Presented by: Shane Abma  
Length: 20 minutes

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*[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]*

**ISSUE STATEMENT**

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro’s “Illegal Disposal” chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

### **ACTION REQUESTED**

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

### **IDENTIFIED POLICY OUTCOMES**

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

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

Metro Council has several polity options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro’s hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.



## **STAFF RECOMMENDATIONS**

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

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

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
  - Reducing the number of people that can understand the Code, and therefore follow it correctly.
  - Reducing Metro's efforts to be transparent.
  - Having code chapters that are inconsistent with one another.
  - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
- 
- *Known Opposition/Support/Community Feedback*  
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
  - *Legal Antecedents*  
There are no specific legal antecedents other than current Metro Code language.
  - *Anticipated Effects*  
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
  - *Financial Implications (current year and ongoing)*  
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

## **BACKGROUND**

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

## **ATTACHMENTS**

Attachment 1 summarizes the proposed changes to Metro Code chapters 2.03 (Civil Penalties), 2.05 (Contested Case Procedures), and 5.09 (Illegal Disposal).

**ATTACHMENT 1**  
**Ordinance Nos. 23-1499, 23-1500, and 23-1501**

**Summary of Changes to Code Chapters at Issue**

**A. Contested Case Procedures (Chapter 2.05)**

Metro's Contested Case Procedures Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Contested Case Procedures (ORS 183), but several procedures are not best practices (or even practical) for a local government. Following is a summary of the proposed changes to current code language.

- General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
  - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an “agency” can review a proposed order. An “agency” is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term “agency” was just replaced with “Metro Council.” However, “state agencies” and “Metro Council” serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
  - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
  - Current code language states that a hearings officer will send a “Proposed Order” to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
  - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
  - Breaches of contract
  - Denial of grant requests
  - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

## **B. Civil Penalties (Chapter 2.03)**

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

## **C. Illegal Disposal (Chapter 5.09)**

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
  - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.



# Annual Report FY 2022-23

**Office of the Auditor**

**Brian Evans, Metro Auditor**

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Accountability Hotline: 888-299-5460 or [www.metroaccountability.org](http://www.metroaccountability.org)



# Auditor responsibilities

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- Conduct performance audits
- Manage financial audit contract
- Administer the Accountability Hotline

# Accomplishments

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- 100% of audit recommendations made five years ago were implemented
- Feedback from audited programs exceeded the target for quality
- The amount of time it took to resolve reports to the Accountability Hotline decreased
- The office was fully staffed for the first time in several years

# Performance measures

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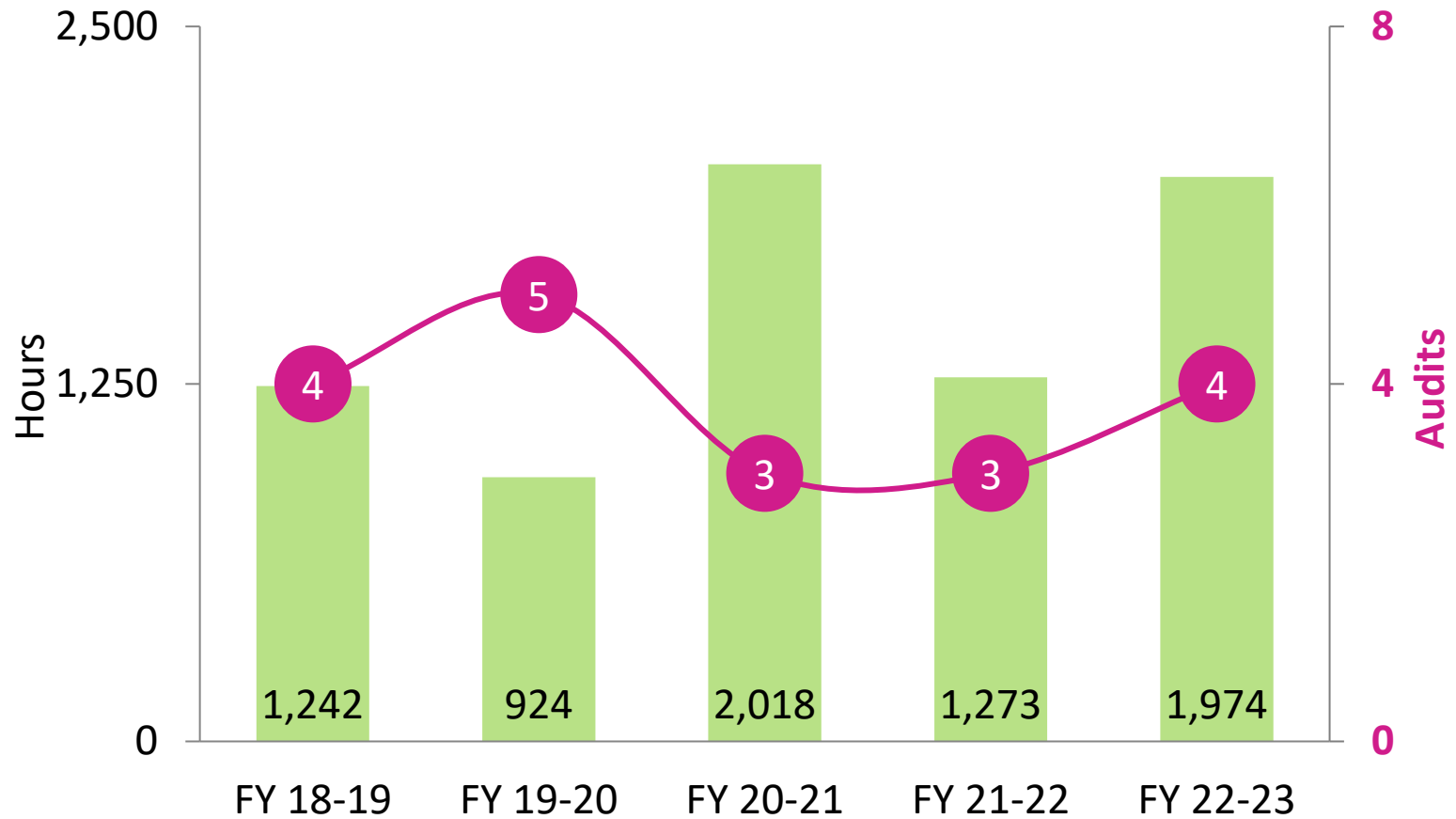
## Efficiency

- Average hours to complete an audit and number of audits
- Audits completed per full-time equivalent (FTE) employee

## Effectiveness

- Total audit hours per department
- Auditee feedback
- Audit recommendation implementation rate

## Average hours per audit and number of audits

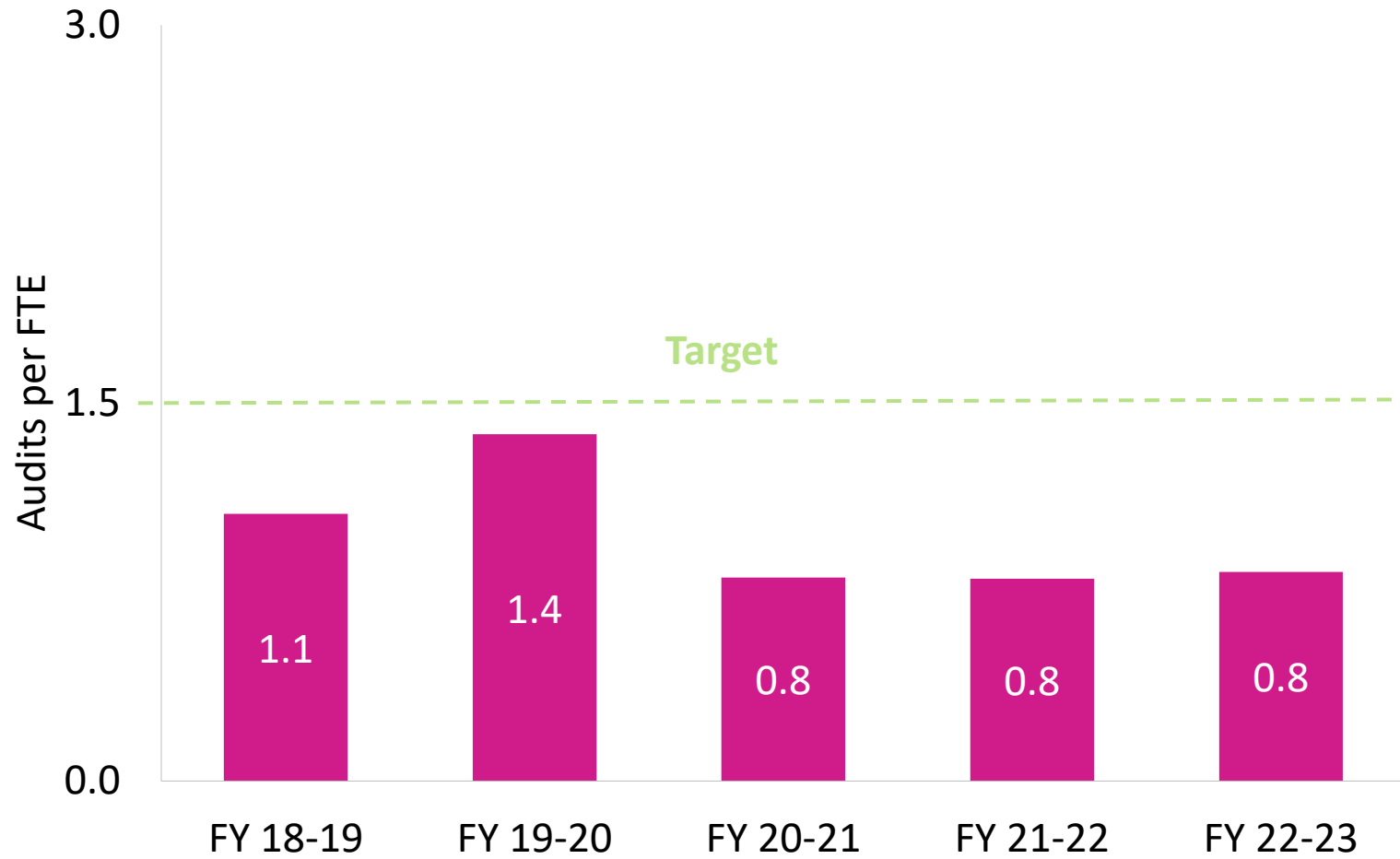


# Audits released

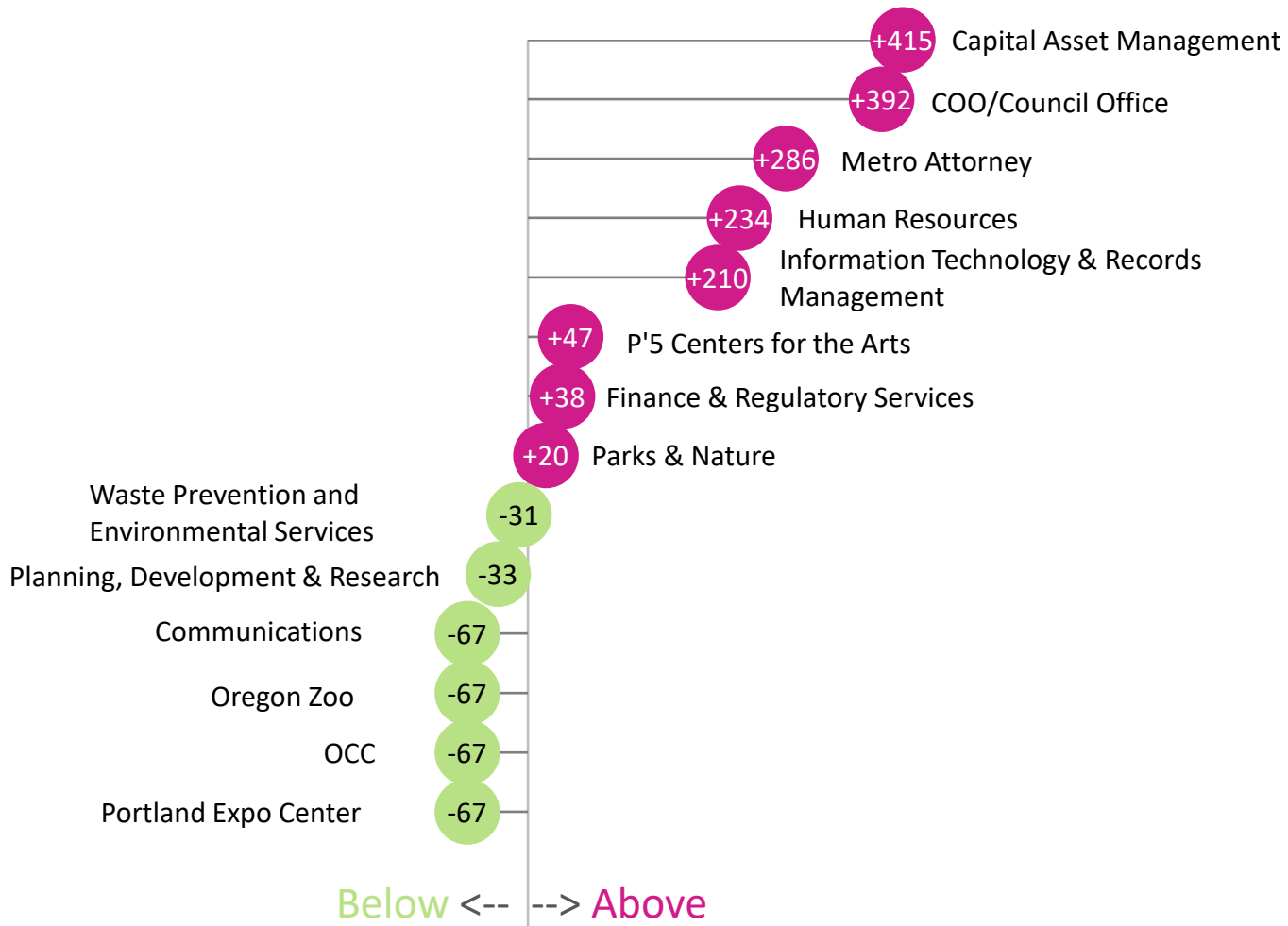
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- Surplus Property (July 2022)
  - Portland's 5 Intergovernmental Agreements (August 2022)
  - Code of Ethics Follow-up (February 2023)
  - Parks and Nature 2019 Bond Measure Implementation (June 2023)
-

## Audits per full-time equivalent employee

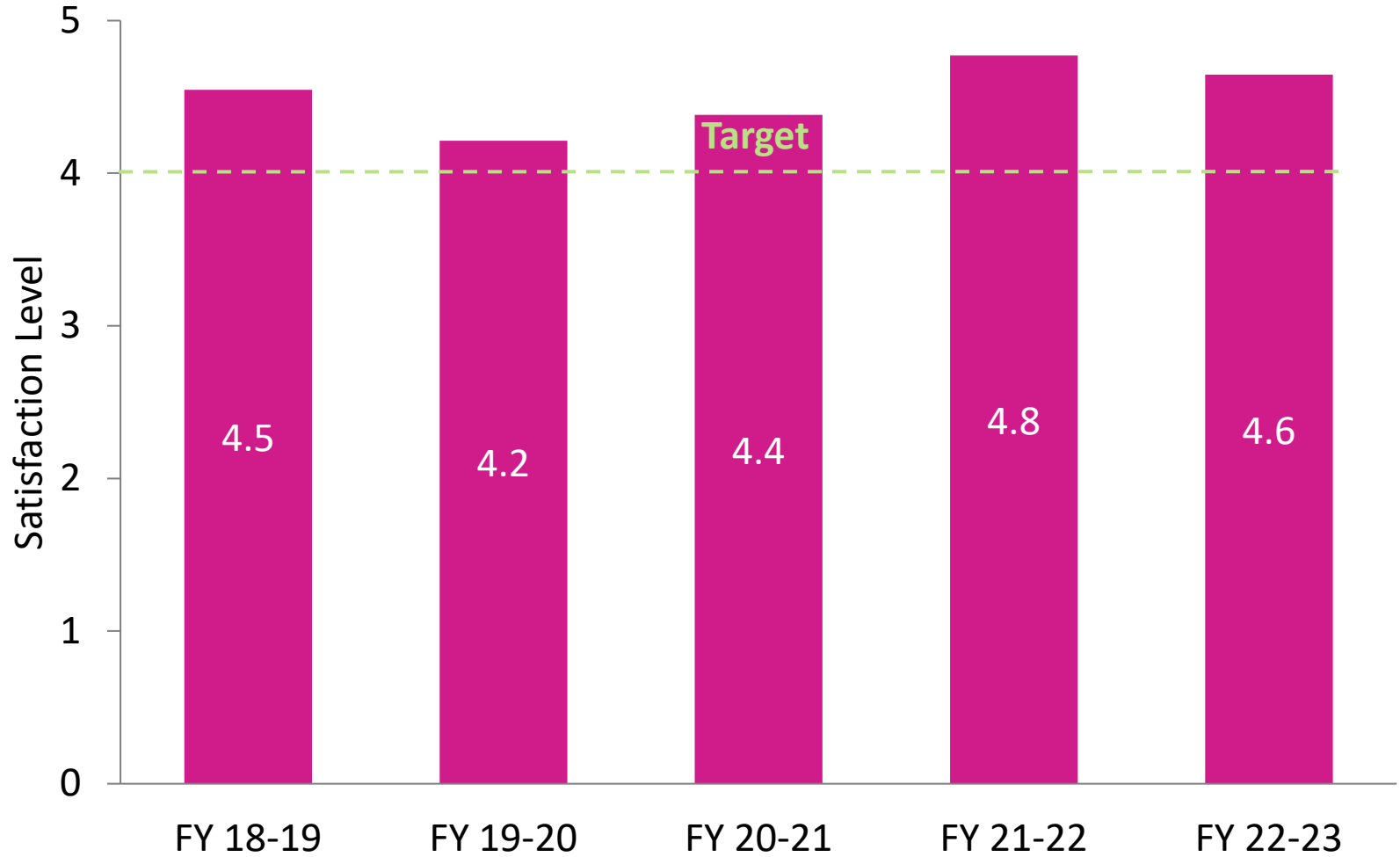


# Audit hours per department



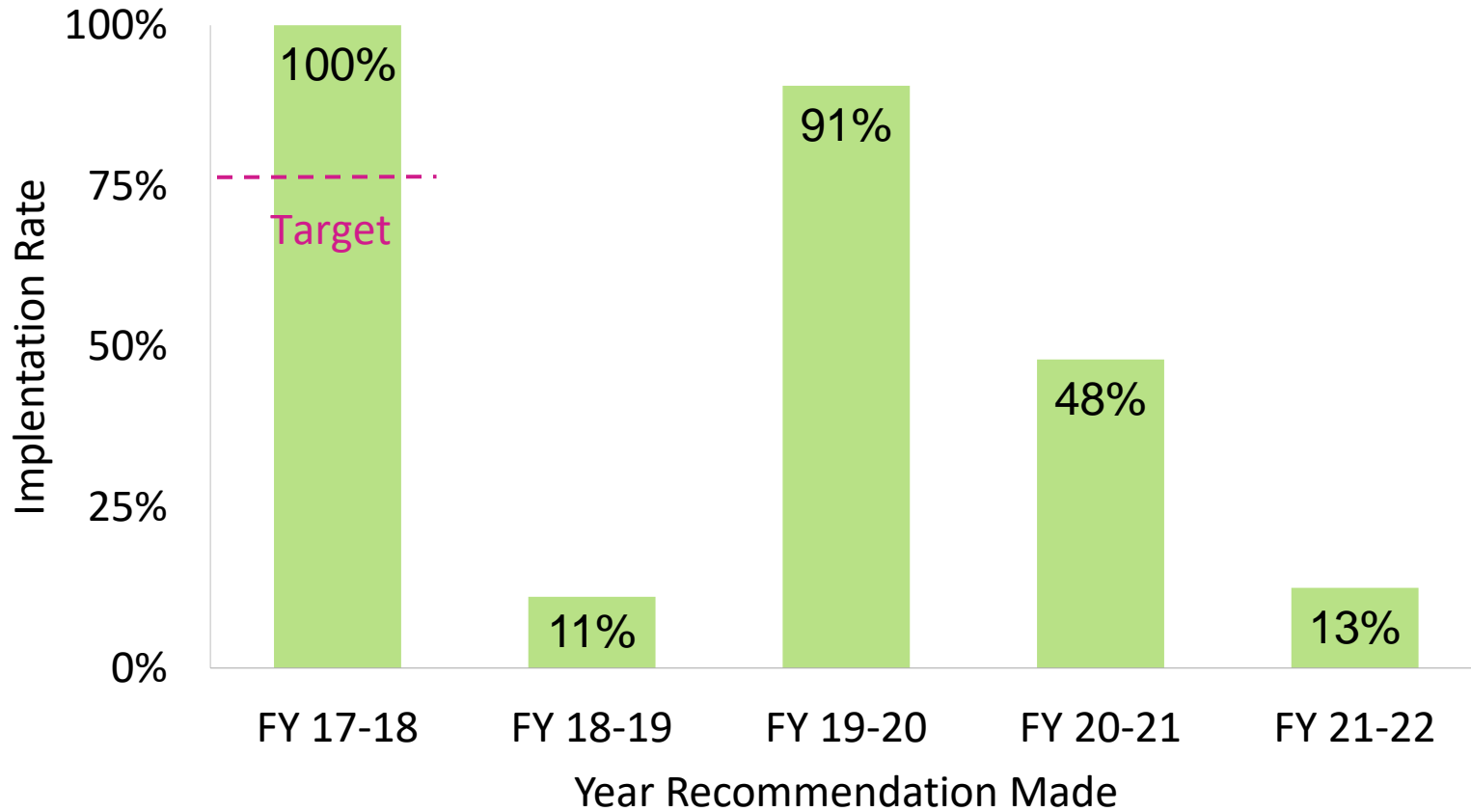
Average Audit Hours per \$1 Million Expenditure

## Auditee feedback

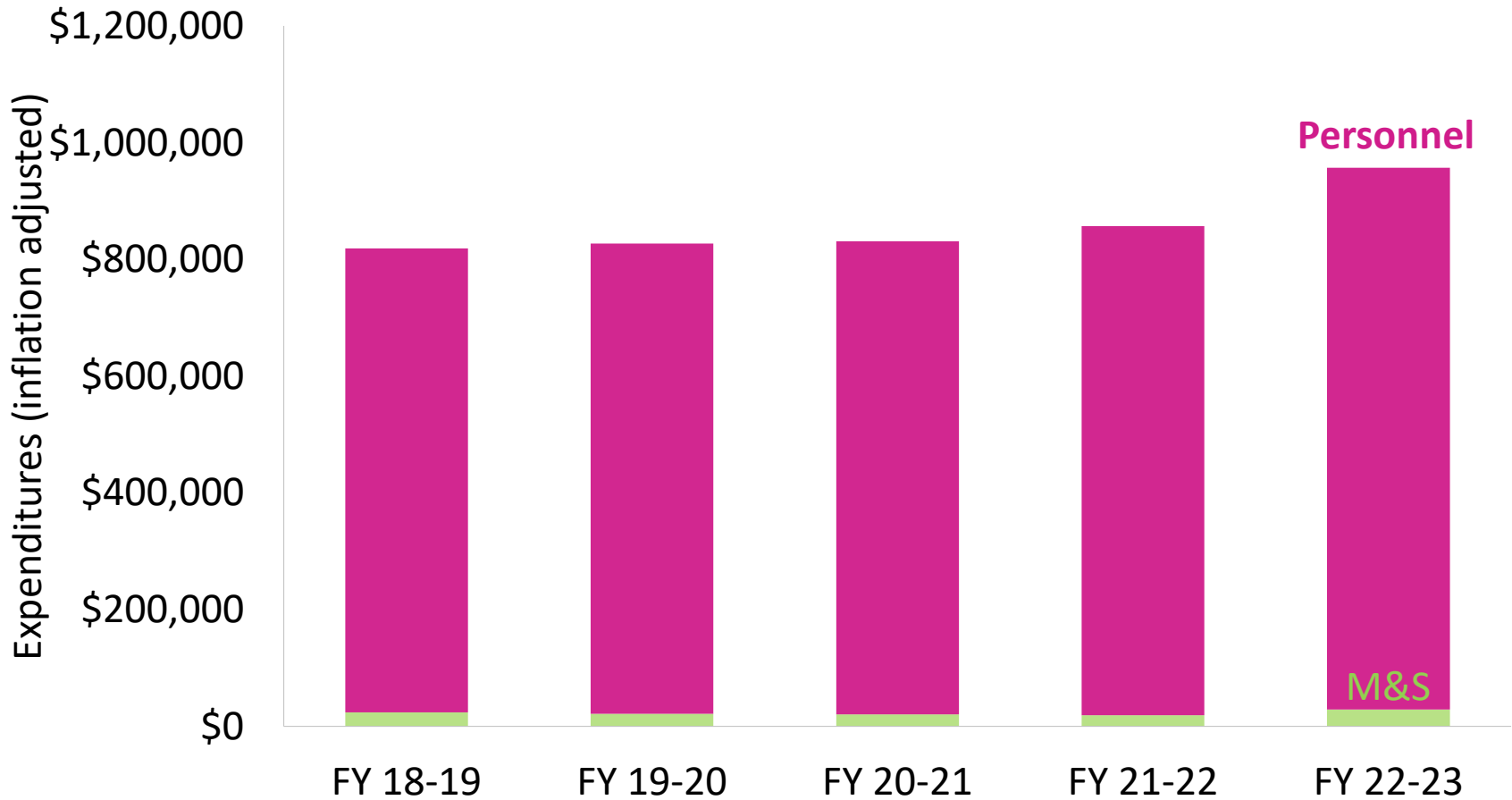




## Audit recommendation implementation rate



# Expenditures



# Audit schedule FY 2022-23

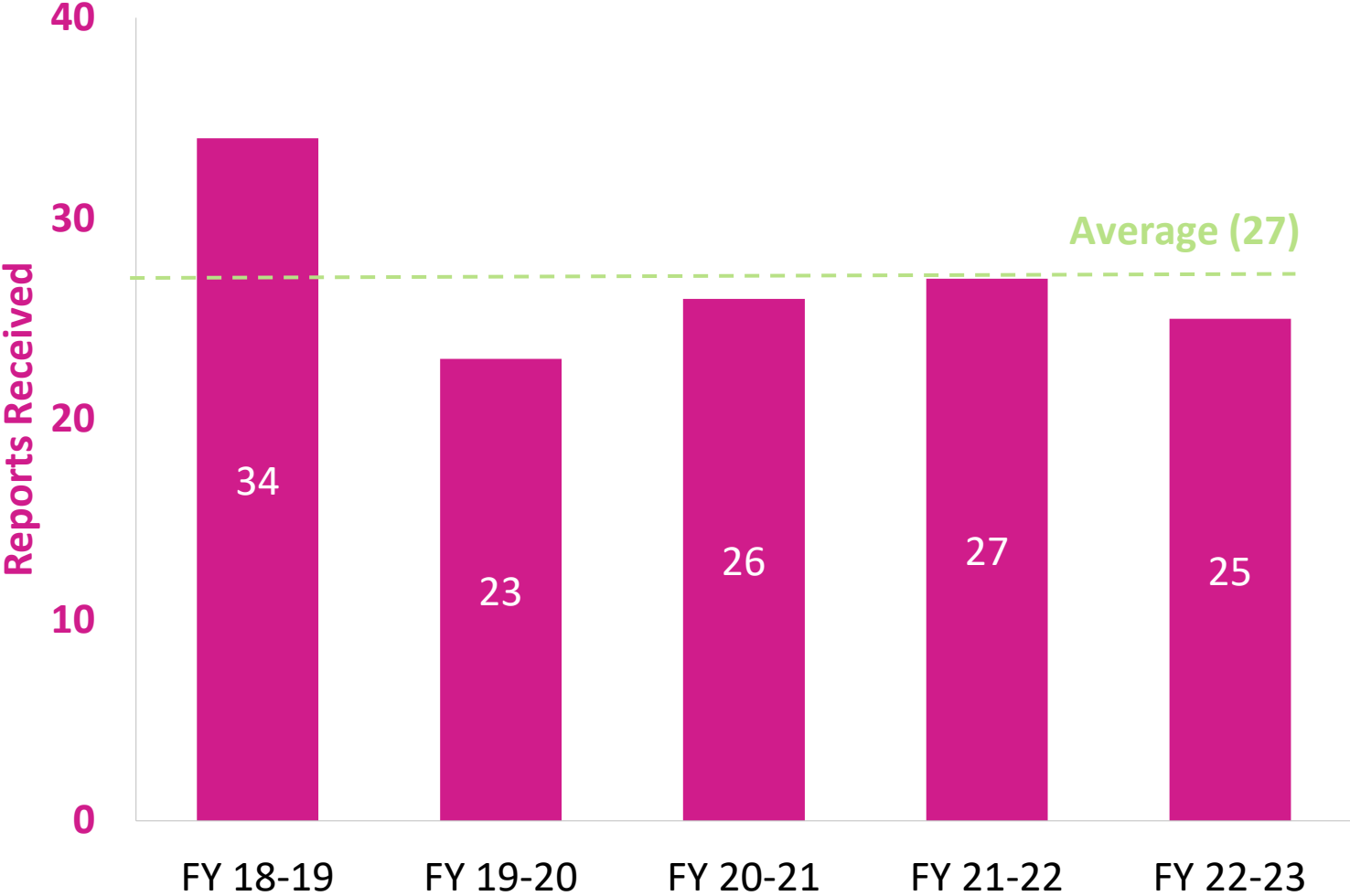
## Audits Completed

Title	Completion
2019 Parks & Nature Bond Program	June 2023
Solid Waste Transfer Station Operating Controls	September 2023

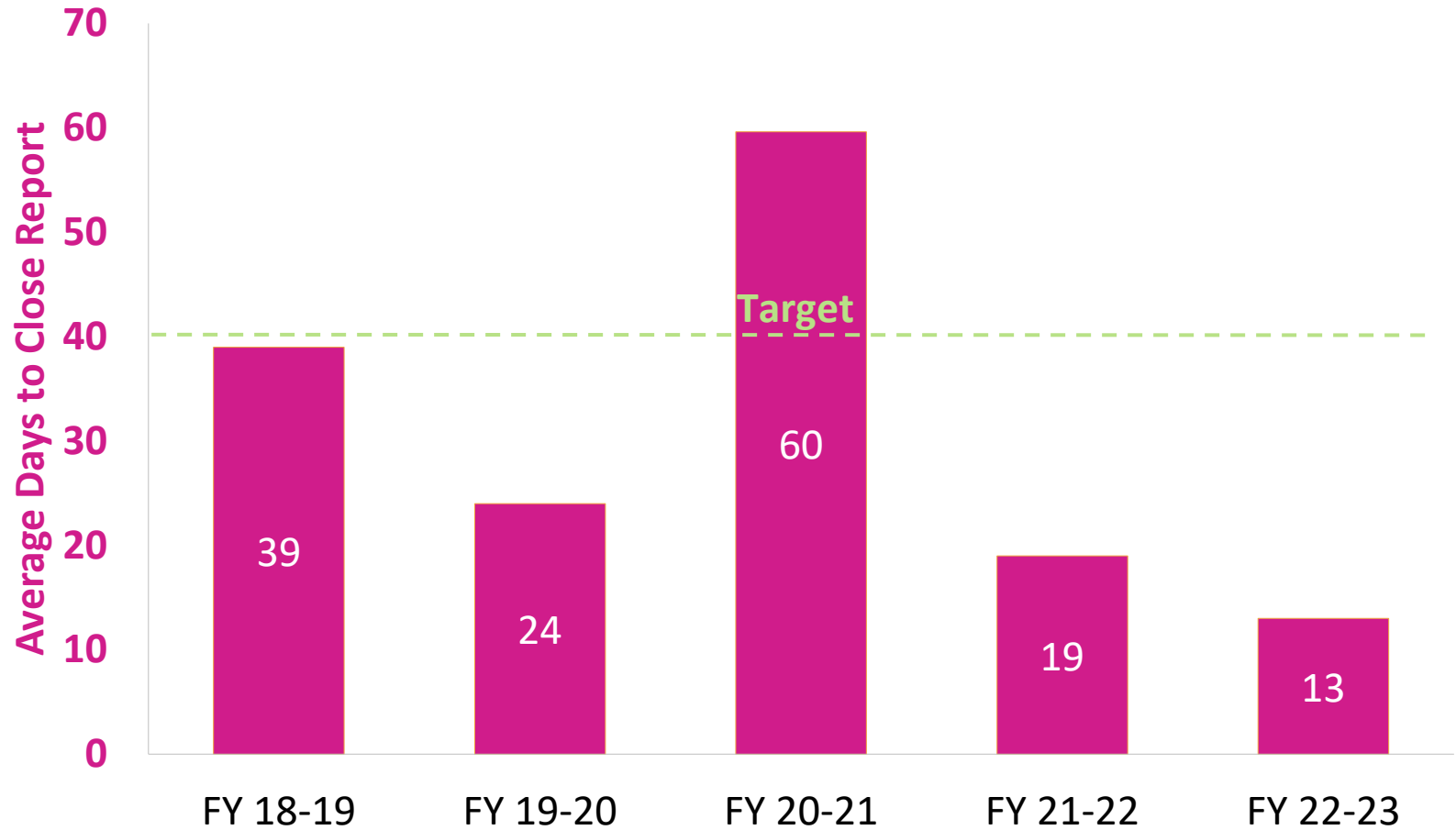
## Audits Underway & Planned

Title	Start
Affordable Housing Bond	November 2022
Supporting Housing Services	November 2022
Financial Policies for Renewal and Replacement	September 2023
Span of Control	October 2023
Budget Process and Performance Measures	October 2023
Capital Project Management	TBD
Financial Condition of Metro FY2013-14 to FY2022-23	TBD

# Accountability Hotline Reports

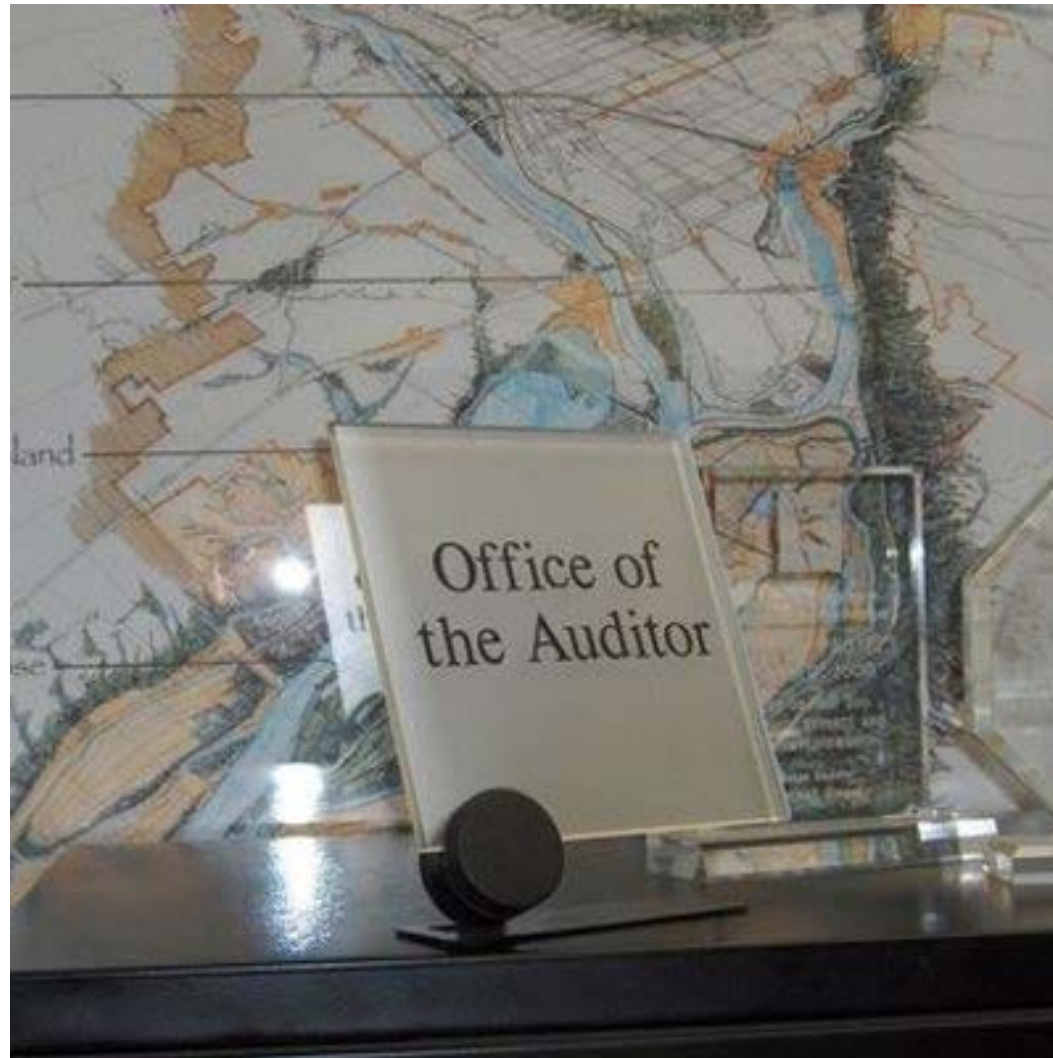


# Average days to close report



# Questions?

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October 2023

# Contested Case, Civil Penalties & Illegal Disposal Code Chapter Updates

Metro Council Presentation

Ordinance Nos. 23-1499, 23-1500, 23-1501

October 5, 2023



# Updating Three Metro Code Chapters

These ordinances will repeal and replace two code chapters and update a third chapter.



## Civil Penalties

(Chapter 2.03, repeal and replace)



## Contested Case Procedures

(Chapter 2.05, repeal and replace)



## Illegal Disposal

(Chapter 5.09, update and streamline)



# What do these chapters govern?

## Civil Penalties

(Chapter 2.03)



- Prescribes “the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties.”
- Metro can impose civil penalties for violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste.
- Primarily used to impose civil penalties for illegal solid waste disposal violations and violations related to solid waste franchises and licenses.

# What do these chapters govern?

## Contested Cases

(Chapter 2.05)



- Prescribes the procedures and requirements for notice and hearings when a party seeks a contested case hearing.
- A “contested case” exists when a Metro decision affects individual legal rights, duties, or privileges of specific parties.
- Examples include Metro decisions regarding licenses, franchises, permits, or the imposition of civil penalties.
- Rarely exercised (primarily with solid waste decisions).

# What do these chapters govern?

## Illegal Disposal

(Chapter 5.09)



- Governs illegal disposal prohibitions in the Metro Area (colloquially referred to as “illegal dumping”).
- Prescribes Metro’s Illegal Disposal citation requirements.
- Authorizes civil penalties and recovery of Metro’s administrative costs.
- Hearings procedures for contesting illegal disposal citations.

# Why should Council update these chapters?

## Civil Penalties and Contested Case Chapters



- Established in late 1970s with virtually no updating since then.
- Modeled on state law, which doesn't work for local government.
- Should remove procedures that are impractical and difficult to implement.
- Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.

# Why should Council update these chapters?

## Illegal Disposal Chapter



- There has been a significant increase in illegal disposal within the Metro region.
- Increased number of citations and requests for hearings to contest them.
- Current code language references certain criminal state statutes not applicable to a local government civil administrative hearing.
- Current hearings procedures are confusing and proving unworkable.
- Should align Illegal Disposal chapter with the Contested Case and Civil Penalties chapters.

# Why should Council update these chapters?

## Incorporate Plain Language Best Practices



- In December 2022, Metro Council adopted Resolution No. 22-5293.
- Requires plain and inclusive language best practices in Metro Code.
- Requires a scheduled review of Metro Code chapters for opportunities to update.
- Updating Metro Code ensures that it:
  - remains consistent internally
  - reflects changes in law, circumstances, or best practices
  - is clear, concise, inclusive, and easy to understand

# Brief Summary of Updates

## Contested Case Procedures



- ✓ General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs.
- ✓ Clarifies when a contested case exists.
- ✓ Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer’s determination.
- ✓ Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow.
- ✓ Removes personnel discharges from possible contested case hearings.
- ✓ Creates a new section of “Hearings Officer Duties” to clarify the hearings officer’s role.

# Brief Summary of Updates

## Civil Penalties



- ✓ General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs.
- ✓ Updated definitions section to reflect current meanings.
- ✓ Removed specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations. These are instead moved to the appropriate sections in those department code chapters.



# Brief Summary of Updates

## Illegal Disposal



- ✓ General plain language review to remove “shalls,” passive voice, nominalizations, lengthy sentences and paragraphs.
- ✓ Removes cumbersome, unworkable appeal hearings procedures. Instead, refers to Metro’s new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure.
- ✓ Removes unnecessary up-front cost burdens on cited individuals.
- ✓ Aligns appeal notice requirements with those for contested case and civil penalties.
- ✓ Removes references to state criminal law for prehearing discovery.
- ✓ Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.

# Questions?



# Title V (Solid Waste) Code Housekeeping Updates

Metro Council Presentation  
Ordinance No. 23-1498  
October 5, 2023



# Updating Two Metro Code Chapters

Ordinance 23-1498 will update two code chapters with housekeeping changes.



## Solid Waste Facility Regulation

Chapter 5.01



## Solid Waste Flow Control

Chapter 5.05

# Resolution No. 22-5293 Requires Code Review

- In December 2022, Metro Council adopted Resolution No. 22-5293.
- Requires plain and inclusive language best practices for the Metro Code.
- Requires a scheduled review of Metro Code chapters for opportunities to update.
- 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.”

# Brief Summary of Updates

## Solid Waste Facility Regulation

### Chapter 5.01



- ✓ 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 and unnecessary words without changing the underlying meaning.

# Brief Summary of Updates

## Solid Waste Flow Control

Chapter 5.05



- ✓ Changed the term “citizens” to “residents.”
- ✓ Changed “regional” boundary to “jurisdictional” boundary to be more precise.
- ✓ Removed redundant and 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.”

# What this Ordinance Doesn't Do

Change current policy, practice, or intent.



# Questions?



**From:** [Revitalize PDX](#)  
**To:** [Revitalize PDX](#)  
**Subject:** [External sender]Testimony to Multnomah County Commission - Sept. 28, 2023  
**Date:** Thursday, September 28, 2023 4:52:15 PM

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Testimony from Erik Cole, Revitalize Portland Coalition

Contact: [info@revitalizeportland.com](mailto:info@revitalizeportland.com); 503-973-0223

**September 28th Meeting of the Multnomah County Commission**

**Testimony from Erik Cole, Revitalize Portland Coalition**

**Topic: Item R1**

Chairperson Vega Pedersen and Commissioners,

Thank you for the opportunity to address you once again. Our members are Portlanders committed to a Portland where everyone can thrive. We are working hard to see downtown Portland turnaround the trend of vacant offices and empty storefronts. Thank you, Madam Chair, for your engagement and leadership on the Governor's Task Force Homelessness committee. We look forward to what you will produce.

The City of Portland is taking a series of steps toward this end and we have supported efforts such as the Downtown Business Incentive Credit Program, the emergency ordinance banning of the use of hard drugs such as fentanyl, heroin and methamphetamine on public property, and the collaborative Advance Portland Plan.

But we all know the City cannot turn things around alone. Your decisions today have a broad impact on Multnomah County's economic trajectory as well.

While we were heartened by the recent joint meeting between city councilmembers and county commissioners and by the county's recent action to support the critical facility at Bybee Lakes, we are frustrated at the lack of overall progress to address this issue strategically.

Metro's corrective action plan has highlighted the severity of the lack of strategic direction, as have several audit and consultant's reports. They report that the County and JOHS have a lack of clear "strategies, vision and measurable outcomes." Local news radio, OPB, in describing findings of the Multnomah County Auditor, stated that the Joint Office's "clunky contract management, poor communication, insufficient data collection, and lack of vision have undermined the program's effectiveness at solving one of the region's most entrenched challenges." Your own County Auditor Jennifer McGuirk has lamented the lack of good program-level data on inflow and outflow and client case disposition. Results delivered by these programs are unclear, hard to find, and frankly anecdotal.

The public and our members are losing faith and confidence in government's ability to lead this effort.

That is why we are calling on you to take the steps:

- Commission an independent government compliance audit of Multnomah County's expenditures on homelessness – focused on performance and outcomes for all programs by all funded agencies.
- **Adopt and rapidly** employ a by-name list to target services and interventions and require coordination of data across agencies and organizations.

RPC believes that accountability and confidence can only be restored with a full review and analysis of what's not working.

Yet, once again, you have a weighty decision before you, involving a large sum of money, and little data and virtually no strategy or plan to base your decisions upon. Further compounded by the lack of a strategy or plan for equitable access to mental health & drug

treatment services.

You all must be asking yourselves if you have adequate information, analysis, or guidance to even make these decisions today.

Yet, urgency requires action, so we encourage you to treat this public health emergency with urgency and common sense.

We respectfully encourage you to dedicate these funds to critical gaps in our system:

- **Funding for facility development and rapid deployment of a 24-hour drop-off sobering center is a necessity.**
- Funding for temporary housing for the medically fragile, those in recovery, and those exiting institutions.
- **Funding for greater capacity for the** necessary and vital services provided by **Bybee Lakes/Helping Hands**, shelter programs, and day programs.

We urge you to take advantage of this moment where the Governor, local leaders, business, and health care are all “leaning in”....and develop a real measurable Behavioral Health plan. We have expertise in Dr. Meieran, Dr. George Keepers and others with subject-matter expertise and real clinical experience.

To help those who need it most, to curb this terrible fentanyl epidemic, and to make our city streets clean and safe once again, we need to think big and act swiftly.

Thank you for this opportunity and your continued public service to our community.

CC: Mayor Ted Wheeler; Commissioner Rene Gonzalez; Commissioner Carmen Rubio; Commissioner Mingus Mapps; Commissioner Dan Ryan; Metro Council President Lynn Peterson; Councilor Ashton Simpson; Councilor Christine Lewis; Councilor Gerrit Rosenthal; Councilor Juan Carlos Gonzalez; Councilor Mary Nolan; Councilor Duncan Hwang; Mayor Travis Stovall; Councilmember Dina DiNucci; Councilmember Eddy Morales; Councilmember Vince Jones-Dixon; Councilmember Jerry Hinton; Council President Sue Piazza; Councilmember Janine Gladfelter; members of the regional media.