

## Council meeting agenda

---

Thursday, November 7, 2019

2:00 PM

Metro Regional Center, Council chamber

---

**1. Call to Order and Roll Call**

**2. Safety Briefing**

**3. Public Communication**

**4. Consent Agenda**

- 4.1 Considerations of the Council Meeting Minutes for [18-5309](#)  
October 31, 2019 Minutes

**5. Resolutions**

- 5.1 Resolution No. 19-5049, For the Purpose of Recognizing [RES 19-5049](#)  
the Observance of Veterans Day on November 11, 2019  
in the Greater Portland Region

Presenter(s): Paul Slyman, Metro

Attachments: [Resolution No. 19-5049](#)  
[Staff Report](#)

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

- 6.1 Ordinance No. 19-1438, For the Purpose of Amending [ORD 19-1438](#)  
Metro Code Chapter 5.00 to Update Certain Terms and  
Definitions

Presenter(s): Warren Johnson, Metro

Attachments: [Ordinance No. 19-1438](#)  
[Exhibit A to Ordinance No. 19-1438](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

- 6.1.1 Public Hearing for Ordinance No. 19-1438, For the Purpose of Amending  
Metro Code Chapter 5.00 to Update Certain Terms and Definitions

- 6.2 Ordinance No. 19-1439, For the Purpose of Amending Metro Code Chapter 5.02 to Improve Clarity, Remove Outdated Sections and Remove Sections Related to Metro Transfer Station Fees [ORD 19-1439](#)
- Presenter(s): Warren Johnson, Metro
- Attachments: [Ordinance No. 19-1439](#)  
[Exhibit A to Ordinance 19-1439](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)
- 6.2.1 Public Hearing for Ordinance No. 19-1439, For the Purpose of Amending Metro Code Chapter 5.02 to Improve Clarity, Remove Outdated Sections and Remove Sections Related to Metro Transfer Station Fees
- 6.3 Ordinance No. 19-1440, For the Purpose of Establishing a New Metro Code Chapter 5.03 that Governs Solid Waste Fees at Metro Transfer Stations [ORD 19-1440](#)
- Presenter(s): Warren Johnson, Metro
- Attachments: [Ordinance No. 19-1440](#)  
[Exhibit A to Ordinance No. 19-1440](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)  
[Attachment 2 to Staff Report](#)
- 6.3.1 Public Hearing for Ordinance No. 19-1440, For the Purpose of Establishing a New Metro Code Chapter 5.03 that Governs Solid Waste Fees at Metro Transfer Stations
- 6.4 Ordinance No. 19-1441, For the Purpose of Establishing a New Metro Code Chapter 5.08 that Governs Administrative Rulemaking Authority for Metro Code Title V [ORD 19-1441](#)
- Presenter(s): Warren Johnson, Metro
- Attachments: [Ordinance No. 19-1441](#)  
[Exhibit A to Ordinance No. 19-1441](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)
-

- 6.4.1 Public Hearing for Ordinance No. 19-1441, For the Purpose of  
Establishing a New Metro Code Chapter 5.08 that Governs Administrative  
Rulemaking Authority for Metro Code Title V

**7. Chief Operating Officer Communication**

**8. Councilor Communication**

**9. Adjourn**

**EXECUTIVE SESSION ORS 192.660(2)(e), TO CONDUCT DELIBERATIONS WITH  
PERSONS DESIGNATED BY THE GOVERNING BODY TO NEGOTIATE REAL PROPERTY  
TRANSACTIONS.**

## Metro respects civil rights

Metro fully complies with Title VI of the Civil Rights Act of 1964 and related 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 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights) or call 503-797-1536. 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 503-797-1700 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. For up-to-date public transportation information, visit TriMet's website at [www.trimet.org](http://www.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 вам 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 kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmaha shaqo 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.

### Metro의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がご要請に対応できるよう、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 ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬស្នើសុំទទួលបានកាតបណ្តឹងរើសអើងសូមចូលទស្សនាគេហទំព័រ [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

### 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 sawn ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntawm lub rooj sib tham.

**Television schedule for Metro Council meetings**

<b>Clackamas, Multnomah and Washington counties, and Vancouver, WA</b> Channel 30 – Community Access Network <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a> <i>Ph:</i> 503-629-8534 Call or visit web site for program times.	<b>Portland</b> Channel 30 – Portland Community Media <i>Web site:</i> <a href="http://www.pcmtv.org">www.pcmtv.org</a> <i>Ph:</i> 503-288-1515 Call or visit web site for program times.
<b>Gresham</b> Channel 30 - MCTV <i>Web site:</i> <a href="http://www.metroeast.org">www.metroeast.org</a> <i>Ph:</i> 503-491-7636 Call or visit web site for program times.	<b>Washington County and West Linn</b> Channel 30– TVC TV <i>Web site:</i> <a href="http://www.tvctv.org">www.tvctv.org</a> <i>Ph:</i> 503-629-8534 Call or visit web site for program times.
<b>Oregon City and Gladstone</b> Channel 28 – Willamette Falls Television <i>Web site:</i> <a href="http://www.wftvmedia.org/">http://www.wftvmedia.org/</a> <i>Ph:</i> 503-650-0275 Call or visit web site for program times.	

**PLEASE NOTE:** Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times. Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities.

Agenda Item Number 4.1

**Considerations of the Council Meeting Minutes for October 31, 2019 Minutes**

*Consent Agenda*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

Agenda Item Number 5.1

**Resolution No. 19-5049**, For the Purpose of Recognizing the  
Observance of Veterans Day on November 11, 2019  
in the Greater Portland Region

*Resolutions*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RECOGNIZING	)	RESOLUTION NO. 19-5049
THE OBSERVANCE OF VETERANS DAY	)	
ON NOVEMBER 11, 2019 IN THE GREATER	)	Introduced by Councilor Craig Dirksen
PORTLAND REGION		

WHEREAS, in 1954, Congress formally designated November 11 as Veterans Day to pay tribute to all American Veterans on the day previously observed as Armistice Day; and

WHEREAS, the people who serve and protect the United States represent the diversity of our Nation and our community, including Americans of all races, nationalities, colors, abilities, and creeds, and this diversity is what makes our Nation and our Armed Forces stronger and more vibrant; and

WHEREAS; there are more than 100,000 Veterans who live in the Greater Portland region and they share with us their strong work ethic, sense of duty, adaptability, and commitment to their community and public service, and that these skills strengthen our community and our workplaces; and

WHEREAS, Metro honors Veteran employees and job applicants through our Veterans preference policy, and currently employs 70 Veterans who enrich our organization; and

WHEREAS, we recognize that Veterans face profound challenges, both during service and at home, and we must work together to ensure our Veterans have access to the stable and affordable housing that they have earned and deserve.

BE IT RESOLVED that, in observance of Veterans Day on November 11, 2019, that on this day all Veterans and current members of the Armed Forces, Active, Reserve, and National Guard be honored and remembered.

ADOPTED by the Metro Council this 7th day of November 2019.

---

Lynn Peterson, Council President

Approved as to Form:

---

Carrie MacLaren, Metro Attorney

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 19-5049, FOR THE PURPOSE OF  
RECOGNIZING THE OBSERVANCE OF VETERANS DAY ON NOVEMBER 11, 2019 IN  
THE GREATER PORTLAND REGION

---

Date: October 25, 2019  
Department: Council Office  
Meeting Date: November 7, 2019

Prepared by: Anne Buzzini,  
[anne.buzzini@oregonmetro.gov](mailto:anne.buzzini@oregonmetro.gov), (503)  
517-6910  
Presenter: Paul Slyman

---

### ISSUE STATEMENT

The Metro Council has the opportunity to honor and remember Veterans and members of the Armed Services by adopting Resolution No. 19-5049, recognizing the observance of Veterans Day on November 11, 2019 in the Greater Portland region.

### ACTION REQUESTED

Consideration and vote on Resolution No. 19-5049.

### IDENTIFIED POLICY OUTCOMES

Advancing Metro Council's proclamation that November 11, 2019 be observed as Veterans Day in the Greater Portland region.

### STAFF RECOMMENDATIONS

Staff recommends the Metro Council adopt Resolution No. 19-5049.

### STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

#### 1. Known Opposition/Support/Community Feedback

No known opposition. Other jurisdictions in the region, including Multnomah County and the City of Beaverton, have adopted resolutions honoring the observance of Veterans Day.

#### 2. Legal Antecedents

This is the first year that Metro Council has considered adoption of a resolution to observe Veterans Day.

#### 3. Anticipated Effects

November 11, 2019 will be observed as Veterans Day for all Metro employees, honoring and remembering all Veterans and members of the Armed Forces.

#### 4. Financial Implications (current year and ongoing)

None.

**BACKGROUND**

On November 11, 1919—the first anniversary of the end of World War I—the United States began to observe Armistice Day. In 1926, Congress passed a resolution to observe the day annually, and in 1938, the day became a national holiday. In 1954, President Eisenhower issued the first Veterans Day proclamation, changing the name from Armistice Day to Veterans Day to recognize all those who served in the Armed Forces.

Veterans and their families are vital members of our community in the greater Portland region. They have demonstrated a deep commitment to public service and community during their service, and many have sacrificed their lives for our continued liberty.

Veterans exemplify the American values of freedom, courage, and selflessness. They have earned and deserve the support of their community upon their return home. Observing November 11, 2019 as Veterans Day in the greater Portland region will honor and remember all those who have served in the Armed Forces.

**ATTACHMENTS**

None.

Agenda Item Number 6.1

**Ordinance No. 19-1438**, For the Purpose of Amending Metro  
Code Chapter 5.00 to Update Certain Terms and Definitions

*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 19-1438
CODE CHAPTER 5.00 TO UPDATE CERTAIN	)	
TERMS AND DEFINITIONS	)	Introduced by Acting Chief Operating Officer
	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

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

WHEREAS, Metro Code Chapter 5.00 contains the definitions for the solid waste code; and

WHEREAS, updating Metro Code Chapter 5.00 with various housekeeping changes will improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, the various amendments to this chapter include revising the definitions of “rate” and “regional system fee” to clarify the terms; and

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.00 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, the Chief Operating Officer recommends that the Metro Council adopt these amendments to Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other updates and improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.00 provide greater clarity for the public and further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.00 is amended as set forth in the attached Exhibit A.

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

---

Lynn Peterson, Council President

Attest:

Approved as to Form:

---

Sara Farrokhzadian, Recording Secretary

---

Carrie MacLaren, Metro Attorney

# EXHIBIT A TO ORDINANCE NO. 19-1438

## CHAPTER 5.00

### SOLID WASTE DEFINITIONS

#### 5.00.010 Definitions

For the purposes of Title V Solid Waste, unless the context requires otherwise, the following terms have the meaning indicated:

**Activity** means a primary operation or function that is performed in a solid waste facility or at a disposal site, including but not limited to resource recovery, composting, energy recovery, and other types of processing; recycling; transfer; incineration; and disposal of solid waste. This term does not include operations or functions that serve to support the primary activity, such as segregation.

**Agonomic application rate** means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case may the application adversely impact the waters of the State. The application must be designed to:

- (1) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
- (2) Condition and improve the soil comparable to that attained by commonly used soil amendments; or
- (3) Adjust soil pH to desired levels.

**Alternative Program** means a solid waste management service proposed by a local government that differs from the service required under Chapter 5.10.

**Authorized official** means a person authorized to issue citations under Chapter 5.09.

**Business** means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies and excluding businesses whose primary office is located in a residence.

**Business recycling service customer** means a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

**Chief Operating Officer** means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

**Clean fill** means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving that does not contain contaminants that could adversely impact the waters of the State or public health. This term does not include putrescible waste, cleanup material, construction and demolition waste, or industrial waste.

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Cleanup material** means solid waste resulting from the excavation or cleanup of releases of hazardous substances into the environment, including street sweeping waste, non-hazardous contaminated soils that do not qualify as clean fill (such as petroleum contaminated soils) and contaminated debris resulting from the cleanup of chemical spills or releases. This term does not include solid waste generated by manufacturing or industrial processes.

**Closure** means restoring a solid waste facility or a disposal site to its condition before licensed or franchised solid waste activities began at the site. Closure includes, but is not limited to, the removal of all accumulations of solid waste and recyclable materials from the site.

**Code** means the Metro Code.

**Community enhancement fee** or **enhancement fee** means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.

**Compost** means the stabilized product of composting.

**Composting** means the controlled biological decomposition of organic material.

**Conditionally exempt generator** (CEG) means a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

**Council** means the Metro Council.

**DEQ** means the Department of Environmental Quality of the State of Oregon.

**Department** means Metro's Property and Environmental Services Department.

**Designated facility** means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.

**Direct haul** means the delivery of putrescible waste from a solid waste facility directly to Metro's contract operator for disposal of putrescible waste. Direct haul is an activity under Chapter 5.01.

**Disposal fee** means a fee that pays the direct unit costs of transportation and disposal of general purpose solid waste.

**Disposal site** means the land, buildings, and equipment used for the disposal of solid waste whether or not open to the public. This term does not include a solid waste facility.

**Electronic device** means:

- (1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;
- (2) A desktop computer or portable computer;

## EXHIBIT A TO ORDINANCE NO. 19-1438

- (3) A television of any type having a viewable area greater than four inches measured diagonally; or
- (4) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

**Energy recovery** means a type of resource recovery that is limited to methods in which all or a part of solid waste materials are processed to use the heat content or another form of energy.

**Facility** means the land, buildings, and equipment used for an activity.

**Franchise** means the grant of authority or privilege given by the Council to operate a disposal site, transfer station, energy recovery facility, or to conduct any other activity that requires authorization under Chapter 5.01.

**Franchisee** means the holder of a current, validly issued franchise granted by the Council under Chapter 5.01.

**Franchise fee** means the fee Metro charges the franchisee for the administration of the franchise.

**Hazardous substance** means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601 et seq., oil, as defined in ORS 465.200, and any substance designated by DEQ under ORS 465.400.

**Hazardous waste** has the meaning provided in ORS 466.005.

**Hearings officer** means a person that Metro designates to hear and decide cases under this title.

**Household hazardous waste** means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. Household hazardous waste may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.

**Inert** means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the State or public health.

**License** means the permission given by the Council or Chief Operating Officer to operate a solid waste facility not otherwise exempted or requiring a franchise under Chapter 5.01.

**Licensee** means the holder of a current, validly issued license granted by the Council or Chief Operating Officer under Chapter 5.01.

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Limited capacity landfill** means a landfill that has sought a site development plan amendment for expansion of the landfill capacity from the Oregon Department of Environmental Quality, and has not received approval from the Department by May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

**Local government** means any city or county that is within Metro's jurisdiction, including the unincorporated areas of Clackamas, Multnomah, and Washington Counties.

**Local government action** means adoption of any ordinance, order, regulation, contract, or program affecting solid waste management.

**Material recovery** means a type of resource recovery that is limited to manual or mechanical methods of obtaining material from solid waste that still has useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material recovery includes obtaining material from solid waste that is used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

**Medical waste** means solid waste that is generated as a result of patient diagnosis, treatment or immunization of human beings or animals.

**Metro Central Station** is the Metro solid waste transfer and recycling station located at 6161 NW 61st Avenue, Portland, Oregon 97210.

**Metro South Station** is the Metro solid waste transfer and recycling station located at 2001 Washington Street, Oregon City, Oregon 97045.

**New landfill** means a landfill that receives its initial permission from DEQ to receive solid waste on or after May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

**Non-commercial customer** means a person who is not primarily engaged in the business of collection or transportation of solid waste and who is not authorized by any federal, state or local government to perform such collection or transportation.

**Non-putrescible waste** means any waste that contains no more than trivial amounts of putrescible materials or minor amounts of putrescible materials contained in such a way that they can be easily separated from the remainder of the load without causing contamination of the load. This term includes construction and demolition waste. This term does not include cleanup material, source-separated recyclable materials, special waste, land clearing debris or yard debris.

**Non-system facility** means any solid waste facility, disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste if the facility is not part of the system.

**Non-system license** means the permission given by the Council or Chief Operating Officer to transport solid waste generated within the Metro boundary to a non-system facility.

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Person** has the same meaning as in Metro Code Section 1.01.040. For any person other than an individual, the acts of the person's employees, contractors, and authorized agents are considered the acts of the person.

**Petroleum contaminated soil** means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. This term does not include soil that is contaminated with petroleum products but also contaminated with hazardous waste or radioactive waste.

**Process, processing, or processed** means a method or system of altering the form, condition or content of wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping. This term does not include incineration or mechanical volume reduction techniques such as baling and compaction.

**Processing facility** means a facility where or by which solid wastes are processed. This term does not include commercial and home garbage disposal units which are used to process food wastes and are part of the sewage system, hospital incinerators, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

**Processing residual** means the solid waste that remains after resource recovery has occurred and which is intended for disposal.

**Putrescible** means rapidly decomposable by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

**Putrescible waste** means waste containing putrescible material.

**Radioactive waste** means the same as defined in ORS 469.300.

**Rate** means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste. Metro approves and that the franchisee charges, excluding the regional system fee and franchise fee.

**Recoverable solid waste** means source-separated or homogeneous material accepted in a single transaction at Metro Central Station or at Metro South Station in a form that is usable by existing technologies (notwithstanding the presence of incidental amounts or types of contaminants) for reuse, recycling, controlled biological decomposition of organic material including composting and digestion, and the preparation of fuels that meet an engineering, industrial, or market specification. This term does not include mass burning, incineration in refuse derived fuel facilities, and similar methods of extracting energy from mixed solid wastes.

**Recyclable material** means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Recycle** or **recycling** means any process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

**Recycling drop center** means a facility that receives and temporarily stores multiple source-separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale. This term does not include a facility that processes source-separated recyclable materials.

**Regional Solid Waste Management Plan** or **RSWMP** means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

**Regional system fee** means a fee that recovers the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.~~pays the costs for all associated Metro solid waste services related to management of the entire recycling, processing and disposal system.~~

**Reload** means the activity of receiving solid waste for the purpose of consolidating and transferring it to a solid waste facility.

**Required use order** means a written order issued pursuant to Chapter 5.05 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

**Residence** means the place where a person lives.

**Resource recovery** means a process by which useful material or energy resources are obtained from solid waste.

**Reuse** means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

**RSWMP requirement** means the portions of the Regional Solid Waste Management Plan that are binding on local governments as set forth in Chapter 5.10.

**Segregation** means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the transfer of solid waste. Segregation does not include resource recovery or other processing of solid waste. The sole intent of segregation is not to separate useful material from the solid waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

**Solid waste** means all putrescible and non-putrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste; and other such wastes, including without limitation cleanup materials, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris. This term does not include:

## EXHIBIT A TO ORDINANCE NO. 19-1438

- (1) Hazardous wastes;
- (2) Radioactive wastes;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

~~**Solid waste disposal transaction** means a customer's use of a Metro transfer station disposal facility, hazardous waste facility, or household hazardous waste collection event, for the purpose of delivering for disposal a single load of solid or hazardous waste during a single visit from a single vehicle (whether or not accompanied by, or transporting, one or more trailers). A solid waste disposal transaction occurs when a customer enters a Metro transfer station facility, hazardous waste facility, or household hazardous waste collection event.~~

**Solid waste facility** means a facility at which solid waste is received for transfer, resource recovery, and/or processing. The term does not include disposal sites.

**Solid waste system facility** means a facility that Metro designates as part of Metro's system for the management and disposal of solid and liquid waste. This term includes, but is not limited to, all designated facilities set forth in Chapter 5.05 and any non-system facility that receives solid waste from within the Metro area, whether pursuant to an authorized non-system license or otherwise.

**Source separate or source separated or source separation** means that the person who last uses recyclable material separates the recyclable material from solid waste.

**Source-separated recyclable material or Source-separated recyclables** means solid waste that has been source separated by the waste generator for the purpose of reuse, recycling, or composting. This term includes (1) all homogenous loads of recyclable materials that have been source separated by material type for the purpose of recycling (i.e., source-sorted) and (2) residential and commercial commingled recyclable materials, which include only those recyclable material types that the local jurisdiction, where the materials were collected, permits to be mixed together in a single container as part of its residential curbside recyclable material collection program. This term does not include any other commingled recyclable materials.

**Special waste** means any waste (even though it may be part of a delivered load of waste) that falls within one or more of the following categories:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 or 11 of this definition below.
- (2) Waste transported in a bulk tanker.

## EXHIBIT A TO ORDINANCE NO. 19-1438

- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) that once held commercial products or chemicals, unless the containers (or drums) are empty as provided in 40 CFR 261.7(b)(1).
- (5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, laundromats or car washes.
- (6) Waste from an industrial process.
- (7) Waste from a pollution control process.
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.
- (10) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical-containing equipment).
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.
- (12) Any waste that requires extraordinary management or special handling. Examples of such special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.
- (13) Medical waste.

**Standard recyclable materials** means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans.

**State** means the State of Oregon.

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Substantial compliance** means local government actions, on the whole, conform to the purposes of the performance standards in Chapter 5.10 and any failure to meet individual performance standard requirements is technical or minor in nature.

**System** means all facilities that Metro designates as part of its system for the management and disposal of solid and liquid waste. This includes, but is not limited to, the following:

- (1) Recycling and other volume reduction facilities;
- (2) Landfills, or other disposal means;
- (3) Resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel);
- (4) Recycling and transfer stations;
- (5) Roads, water lines, wastewater lines and treatment facilities to the extent used to carry out the provisions of ORS chapter 268 and other applicable laws of the state of Oregon;
- (6) All buildings, fixtures, equipment, real property and personal property that Metro owns, leases, operates or uses to dispose of solid and liquid waste;
- (7) Designated facilities as provided in Chapter 5.05.

**Transaction** means a customer's use of a Metro transfer station disposal facility, hazardous waste facility, or household hazardous waste collection event, for the purpose of delivering for disposal a single load of solid or hazardous waste during a single visit from a single vehicle (whether or not accompanied by, or transporting, one or more trailers). A solid waste disposal transaction occurs when a customer enters a Metro transfer station facility, hazardous waste facility, or household hazardous waste collection event.

**Transaction charge fee** means the fee that Metro imposes for each transaction at a Metro transfer station to pay for related scalehouse costs.

**Transfer** means the activity of receiving solid waste for purposes of transferring it from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of solid waste from more than one vehicle, and compaction. This term does not include resource recovery or other processing of solid waste.

**Transfer station** means a solid waste facility whose primary activity includes, but is not limited to, the transfer of solid waste to a disposal site.

**Unacceptable waste** means waste that is either:

- (1) Prohibited from disposal at a disposal site by state or federal law, regulation, rule, code, permit or permit condition; or
- (2) Special waste without an approved special waste permit.

## EXHIBIT A TO ORDINANCE NO. 19-1438

**Useful material** means material that still has useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from solid waste, is suitable for use in the same or other purpose(s). For purposes of this Code, cleanup materials are not useful materials. Types of useful materials include, but are not limited to:

- (1) Material that can be reused;
- (2) Recyclable material;
- (3) Organic material(s) suitable for controlled biological decomposition (such as for making compost);
- (4) Material used in the preparation of fuel;
- (5) Material intended to be used, and which is in fact used, for construction or land reclamation (such as inert material for fill);
- (6) Material intended to be used, and which is in fact used, productively in landfill operations (such as roadbeds or alternative daily cover).

**Vermiprocessing** means a controlled method or system of biological processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

**Waste** means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose. For the purpose of Chapter 5.09, the term “waste” also includes any such material even if it is broken, recoverable, or recyclable.

**Waste hauler** means any person who is (1) franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul solid waste; or (2) engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated by such person or others within the Metro boundary.

**Waste hierarchy** means first, reduce the amount of solid waste generated; second, reuse material for its originally intended purpose; third, recycle or compost material that cannot be reduced or reused; fourth, recover energy from material that cannot be reduced, reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and fifth, landfill solid waste that cannot be reduced, reused, recycled, composted or from which energy cannot be recovered.

**Waste Reduction Program** means the Waste Reduction Program required by ORS 459.055(2)(a), adopted by the Metro Council as part of the RSWMP, and accepted and approved by the DEQ as part of the RSWMP.

**Yard debris** means vegetative and woody material generated from residential or commercial landscaping activities. Yard debris includes landscape waste, grass clippings, leaves, hedge trimmings, branches, sod, scrapings, stumps and other vegetative waste having similar properties. This term does not include other solid waste such as soil, demolition debris, painted or treated wood waste. [Ord. 81 111, Sec. 2; Ord. 82-146, Sec. 2; Ord. 86-

## **EXHIBIT A TO ORDINANCE NO. 19-1438**

210, Sec. 1; Ord. 88-257, Sec. 2; Ord. 88-278, Sec. 1; Ord. 89-269, Sec. 2; Ord. 89-295, Sec. 1; Ord. 89-319; Ord. 90-337, Sec. 2; Ord. 90-372, Sec. 1; Ord. 91-386C, Sec. 2; Ord. 91-388, Secs. 1 and 8; Ord. 91 422B, Sec. 1; Ord. 92-455B, Sec. 1; Ord. 92-473A, Sec. 1; Ord. 93-482, Sec. 1; Ord. 94-531, Sec. 2; Ord. 94-557; Ord. 95-597, Sec. 1; Ord. 95-621A, Sec. 2; Ord. 97-681B, Sec. 1; Ord. 98-720A, Sec. 2; Ord. 98 762C, Secs. 1 and 54; Ord. 00 866, Sec. 1; Ord. 00-867, Secs. 1-2; Ord. 00-873, Sec. 1; Ord. 00-876A, Sec. 1; Ord. 01-907A, Sec. 1; Ord. 01 914, Sec. 1; Ord. 01 916C, Sec. 1; Ord. 01-917, Sec. 1; Ord. 02-937A, Sec. 3; Ord. 02-951B, Sec. 1; Ord. 02 974, Sec. 1; Ord. 03 1018A, Sec. 1; Ord. 03-1019, Sec. 1; Ord. 06 1101; Ord. 06-1103, Sec. 1; Ord. 06-1107; Ord. 07-1147B, Secs. 1, 5 and 9; Ord. 08-1183A; Ord. 08-1200; Ord. 12-1272, Secs. 1-2; Ord. 12-1277, Sec. 4; Ord. 13-1306, Sec. 1; Ord. 13-1311; Ord. 14-1323, Sec. 6; Ord. 14-1331; Ord. 16-1386.]

IN CONSIDERATION OF ORDINANCE NO. 19-1438 FOR THE PURPOSE OF AMENDING  
METRO CODE CHAPTER 5.00 TO UPDATE CERTAIN TERMS AND DEFINITIONS

---

Date: October 24, 2019

Prepared by: Warren Johnson  
(503) 797-1836  
[warren.johnson@oregonmetro.gov](mailto:warren.johnson@oregonmetro.gov)

Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

---

### **ISSUE STATEMENT**

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

### **ACTION REQUESTED**

Adopt Ordinance No. 19-1438 to amend Metro Code Chapter 5.00 (Solid Waste Definitions) to update certain terms and definitions to improve clarity and consistency and to conform with other proposed updates and improvements to Metro Code Chapter 5.02. This ordinance is a companion to Ordinance Nos. 19-1439 and 19-1440 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

### **IDENTIFIED POLICY OUTCOMES**

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

### **POLICY QUESTION(S)**

Should the Metro Council approve of the proposed updates and improvements to Metro Code Chapter 5.00 to make the code easier to understand and more adaptive to changing conditions?

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

1. Approve the ordinance as proposed to amend Metro Code Chapter 5.00 as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.

2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.00 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the scope of the alternate proposal. In addition, such revisions may require similar changes to the other code chapters proposed in Ordinance Nos. 19-1439 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1438 to amend Metro Code Chapter 5.00.

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

Approval of this ordinance would result in updates and housekeeping improvements to certain terms and definitions in Metro Code Chapter 5.00 as detailed in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440.

Staff recommends revising the following terms and definitions in Metro Code Chapter 5.00 as described below:

- 1) Rate – Revise the definition to clarify that the term means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste.
- 2) Regional system fee - Revise the definition to clarify that the term means the fee that Metro assess to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.
- 3) Solid Waste Disposal Transaction - Shorten the term to *transaction*.
- 4) Transaction Charge – Change the term to *transaction fee* for clarification and consistency.

## **KNOWN OPPOSITION**

There is no known opposition to the proposed revisions to Metro Code Chapter 5.00. However, Metro received comments requesting that Metro add a new term and amend other definitions in Metro Code Chapter 5.00 as part of these proposed revisions.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted a general comment about Metro's authority to use the regional system fee to recover system

costs. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.00 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

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

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

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

## **LEGAL ANTECEDENTS**

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

## **ANTICIPATED EFFECTS**

Approval of this ordinance would amend Metro Code Chapter 5.00 as provided in Exhibit A to update and clarify certain solid waste definitions.

## **BUDGET IMPACTS**

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

## **BACKGROUND**

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

various types of materials.

Metro staff seeks to revise Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other proposed housekeeping changes to Chapters 5.02 and 5.03. The collective changes proposed under Ordinance Nos. 19-1438, 19-1439, and 19-1440 are intended to update and improve current Metro Code Chapter 5.02.

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

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1438

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

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

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

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

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

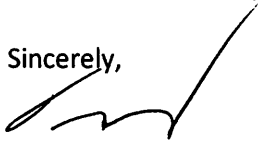
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from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

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

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

Terrell Garrett

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren –

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

Thanks!

Bruce

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

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

Bruce

---

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

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

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

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

CITY OF  
GRESHAM

---

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

**CAUTION:** External Email

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

---

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

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

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

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

**Theresa Koppang | Manager**

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

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

[Website](#) | [Facebook](#) | [Sign Up](#) for e-news and alerts

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

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

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

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

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

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

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

## Warren Johnson

---

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

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

Warren,

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

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

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

---

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

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

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

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

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

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

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

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

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

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association

Agenda Item Number 6.2

**Ordinance No. 19-1439**, For the Purpose of Amending Metro Code  
Chapter 5.02 to Improve Clarity, Remove Outdated Sections and  
Remove Sections Related to Metro Transfer Station Fees

*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

BEFORE THE METRO COUNCIL

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

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

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

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

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

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

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

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.02 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

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

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

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

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

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

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

---

Lynn Peterson, Council President

Attest:

Approved as to Form:

---

Sara Farrokhzadian, Recording Secretary

---

Carrie MacLaren, Metro Attorney

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

## **CHAPTER 5.02**

### **REGIONAL SYSTEM FEE**

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

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

### **5.02.010 Purpose**

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

### **5.02.020 Regional System Fee Requirement**

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

### **5.02.030 Exceptions to Regional System Fee**

The regional system fee does not apply to:

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

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

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

### **5.02.040 Declaration of Origin**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5.02.120 Scale Weights Required**

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

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

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

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

---

Date: October 24, 2019

Prepared by: Warren Johnson  
(503) 797-1836  
[warren.johnson@oregonmetro.gov](mailto:warren.johnson@oregonmetro.gov)

Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

---

## ISSUE STATEMENT

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

## ACTION REQUESTED

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

## IDENTIFIED POLICY OUTCOMES

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

## POLICY QUESTION(S)

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

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

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

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

### **STAFF RECOMMENDATIONS**

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

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

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

Staff recommends updating Metro Code Chapter 5.02 as described below:

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

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

## KNOWN OPPOSITION

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

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

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

## **PUBLIC OUTREACH**

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

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

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

## **LEGAL ANTECEDENTS**

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

## **ANTICIPATED EFFECTS**

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

## **BUDGET IMPACTS**

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

## **BACKGROUND**

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

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

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

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

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

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

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

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

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

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

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

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

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

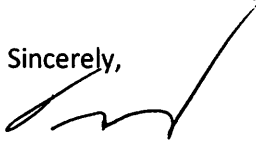
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from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

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

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

Terrell Garrett

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren –

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

Thanks!

Bruce

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

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

Bruce

---

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

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

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

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

CITY OF  
GRESHAM

---

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

**CAUTION:** External Email

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

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

**Theresa Koppang | Manager**

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

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

[Website](#) | [Facebook](#) | [Sign Up](#) for e-news and alerts

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

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

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

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

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

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

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

## Warren Johnson

---

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

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

Warren,

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

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

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

---

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

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

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

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

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

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

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

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

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

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association

Agenda Item Number 6.3

**Ordinance No. 19-1440**, For the Purpose of Establishing a  
New Metro Code Chapter 5.03 that Governs Solid Waste  
Fees at Metro Transfer Stations

*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A	)	ORDINANCE NO. 19-1440
NEW METRO CODE CHAPTER 5.03 THAT	)	
GOVERNS SOLID WASTE FEES AT METRO	)	Introduced by Acting Chief Operating Officer
TRANSFER STATIONS	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

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

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

WHEREAS, moving all provisions and sections related to Metro transfer station fees from Chapter 5.02 to a new "Solid Waste Fees at Metro Transfer Stations" chapter would improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, updating the code to remove the requirement that Metro transfer station fees be set by ordinance would enable greater flexibility for Metro to protect the public's interest and better respond to changing conditions; and

WHEREAS allowing Metro's Chief Operating Officer to temporarily establish or change Metro transfer station fees when necessary for a new waste stream or when emergency circumstances exist would likewise enable greater flexibility to respond to changing conditions; and

WHEREAS, moving certain sections of code into administrative rules, removing unnecessary and outdated provisions, clarifying terms, and making other housekeeping revisions would improve its readability and make it easier to understand; and

WHEREAS, staff solicited input from the public on establishing new Metro Code Chapter 5.03 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, the Metro Council finds that establishing a new Metro Code Chapter 5.03 to govern Metro transfer station fees will provide greater clarity for the public; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Title V, Solid Waste, is amended to add a new Metro Code Chapter 5.03, ("Solid Waste Fees at Metro Transfer Stations"), as set forth in the attached Exhibit A.
2. All Metro transfer station fees in effect as of the date this ordinance becomes effective will remain in effect until the Metro Council adopts a new fee schedule.

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

---

Lynn Peterson, Council President

Attest:

Approved as to Form:

---

Sara Farrokhzadian, Recording Secretary

---

Carrie MacLaren, Metro Attorney

# EXHIBIT A TO ORDINANCE NO. 19-1440

## CHAPTER 5.03

### SOLID WASTE FEES AT METRO TRANSFER STATIONS

5.03.010	Purpose
5.03.020	Metro Transfer Station Fees
5.03.030	Source-Separated Recyclable Materials Credit
5.03.040	Metro Transfer Station Operating Authority
5.03.050	Metro Transfer Station Fees Adopted Annually
5.03.060	Fee Setting Requirements; Provisional Fees
5.03.070	Independent Review of Fee Setting Process; Written Report
5.03.080	Council Adoption of Metro Transfer Station Fees; Emergency Fee
5.03.090	Posting Metro Transfer Station Fees
5.03.100	Solid Waste Fees at Metro Transfer Stations
5.03.110	Transaction Fee
5.03.120	Minimum Fee
5.03.130	Waiver of Metro Transfer Station Fees
5.03.140	Review of Metro Transfer Station Fee Criteria and Policies
5.03.150	Account Policy at Metro Transfer Stations
5.03.160	Administrative Rules to Implement Chapter

#### **5.03.010 Purpose**

The purpose of this chapter is to establish a consistent, predictable and transparent framework when Metro adopts solid waste fees for its transfer stations.

#### **5.03.020 Metro Transfer Station Fees**

- (a) Metro assesses the following fees at its transfer stations and household hazardous waste facilities:
  - (1.) Disposal fee
  - (2.) Transaction fee
  - (3.) Household hazardous waste management fee
  - (4.) Conditionally exempt generator waste fee
  - (5.) Recoverable solid waste fee
  - (6.) Special waste fee
  - (7.) Litter control fee
- (b) In addition to the fees listed in subsection (a), Metro may also assess any applicable Metro “pass through” fees (such as the regional system fee, Metro excise tax and community enhancement fee) as well as any applicable DEQ fees.

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.030 Source-Separated Recyclable Materials Credit**

- (a) A non-commercial customer at Metro Central Station or Metro South Station who delivers certain source-separated recyclable materials (except yard debris) that are generated by a household may receive a disposal charge credit. The Chief Operating Officer will establish by administrative rule the circumstances under which the credit is available.
- (b) Notwithstanding subsection (a), the Chief Operating Officer may also designate source-separated recyclable materials that Metro will accept from customers at no charge.

### **5.03.040 Metro Transfer Station Operating Authority**

- (a) The Chief Operating Officer has authority to operate and manage the Metro transfer stations. The Chief Operating Officer may delegate that authority.
- (b) In addition to the Chief Operating Officer's authority to operate and manage the Metro transfer stations, the Chief Operating Officer may also establish by administrative rule the circumstances and conditions under which Metro transfer station fees apply.
- (c) The Chief Operating Officer may establish an additional fee as necessary for a waste stream not specifically listed in Section 5.03.020. If the Chief Operating Officer establishes a fee not listed in Section 5.03.020, that fee is only effective for not more than 120 days unless the Metro Council affirms or modifies it.

### **5.03.050 Metro Transfer Station Fees Adopted Annually**

Each year the Metro Council will determine Metro transfer station fees. In doing so, the Council will use the procedures and criteria set forth in this chapter. The Council may adopt changes to the fees as it deems necessary and may update the fee amount more frequently than annually.

### **5.03.060 Fee Setting Requirements; Provisional Fees**

Each year the Chief Operating Officer will propose fee amounts to the Council. The Chief Operating Officer's proposed fees are provisional until adopted by Council pursuant to Section 5.03.080. In preparing provisional fee amounts the Chief Operating Officer will:

- (a) Consider all sources and uses of funds that affect the solid waste revenue fund budget during the next fiscal year;
- (b) Follow generally accepted practices for selection of methodologies, assumptions, requirements, and other technical factors that determine the fees;
- (c) Consider any solid waste fee criteria and fee setting policies adopted by Council;
- (d) Consider operational needs for each transfer station, including customer demand; and

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

- (e) Perform any other due diligence that the Chief Operating Officer finds necessary to meet the purpose of this chapter.

### **5.03.070 Independent Review of Fee Setting Process; Written Report**

- (a) Before the Council can adopt the provisional Metro transfer station fees, the Chief Operating Officer must submit the provisional fees to at least one independent reviewer. The Chief Operating Officer will provide the reviewer with the fee model, data, assumptions, criteria, and any other information that the Chief Operating Officer used to calculate the provisional fees.
- (b) The independent reviewer will test the provisional fees using criteria set forth in this chapter, any fee criteria adopted by Council, and any other criteria the Chief Operating Officer specifies or which the reviewer recommends based on generally accepted best practices for fee review.
- (c) After the review is complete, the independent reviewer will submit a written report to the Chief Operating Officer documenting the reviewer's findings, exceptions and recommendations. The Chief Operating Officer must include this written report in the materials submitted for review during Council consideration.

### **5.03.080 Council Adoption of Metro Transfer Station Fees; Emergency Fee**

- (a) After the independent reviewer has submitted the required written report, the Council may adopt the Chief Operating Officer's provisional fee amounts by resolution. In adopting the fee amounts, Council will consider all materials the Chief Operating Officer provided to the independent reviewer under section 5.03.070(a) as well as the independent reviewer's written report.
- (b) The fees adopted by Council will take effect 30 days after adoption unless Council chooses a later date.
- (c) Notwithstanding subsection (a), the Chief Operating Officer may establish a Metro transfer station fee under an emergency circumstance. Any fee established under this authority is effective for not more than 120 days unless either the Council affirms or modifies the fee or unless the circumstance giving rise to the emergency ceases to exist.

### **5.03.090 Posting Metro Transfer Station Fees**

Upon the effective date of any transfer station fee amount, Metro will post the fees at Metro Central Station and Metro South Station. Metro will also post a list of all current Metro transfer station fees on the Metro website and otherwise publicize the fees to its customers and the public generally.

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.100 Solid Waste Fees at Metro Transfer Stations**

The solid waste fees at the Metro Central Station and Metro South Station consist of:

- (a) A fee for each ton of solid waste comprised of:
  - (1.) A disposal fee;
  - (2.) The regional system fee as set forth in Chapter 5.02;
  - (3.) The community enhancement fee as set forth in Chapter 5.06; and
  - (4.) All applicable DEQ fees established in Oregon Revised Statutes Chapters 459 and 459A, as implemented in Chapter 340 Division 90 of Oregon Administrative Rules.
- (b) All applicable solid waste excise taxes as set forth in Chapter 7.01, stated separately; and
- (c) A transaction fee.

### **5.03.110 Transaction Fee**

There is a fee for every transaction at a Metro transfer station. A transaction may occur at a staffed scale or at an automated scale.

### **5.03.120 Minimum Fee**

Notwithstanding Section 5.03.100, there is a minimum fee to accept solid waste at Metro Central Station and Metro South Station. The minimum fee consists of the transaction fee as set forth in Section 5.03.110 plus a fee based on a minimum load weight.

### **5.03.130 Waiver of Metro Transfer Station Fees**

- (a) The Chief Operating Officer may waive the disposal fee for solid waste accepted from a non-commercial customer at the Metro Central Station or Metro South Station under extraordinary, emergency conditions or circumstances.
- (b) The Chief Operating Officer may waive the regional system fee for solid waste accepted at the Metro Central Station or Metro South Station if the waste is generated outside of the Metro jurisdictional boundary and collected by a hauler that is regulated by a local government.

### **5.03.140 Review of Metro Transfer Station Fee Criteria and Policies**

The Council may undertake a review of the Metro transfer station fee criteria and policies at any time to ensure that they reflect the purpose of this chapter, meet Metro's needs, support Metro's management of the regional solid waste system, and address any Council findings that result from the periodic review.

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.150 Account Policy at Metro Transfer Stations**

By administrative rule the Chief Operating Officer will establish appropriate account policy requirements for Metro's transfer stations. The account policy requirements will be designed to diminish Metro's risk of loss due to non-payment for new and existing accounts, and to establish payment methods, due dates and prudent credit practices.

### **5.03.160 Administrative Rules to Implement Chapter**

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

IN CONSIDERATION OF ORDINANCE NO. 19-1440 FOR THE PURPOSE OF ESTABLISHING A  
NEW METRO CODE CHAPTER 5.03 THAT GOVERNS SOLID WASTE FEES AT METRO  
TRANSFER STATIONS

---

Date: October 24, 2019

Prepared by: Warren Johnson  
(503) 797-1836  
[warren.johnson@oregonmetro.gov](mailto:warren.johnson@oregonmetro.gov)

Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

---

## ISSUE STATEMENT

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

## ACTION REQUESTED

Adopt Ordinance No. 19-1440 to establish a new Metro Code Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations. In addition, move some current code sections into administrative rules to allow Metro to more quickly address changing market conditions when those conditions may affect the circumstances applicable to those fees. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency and to conform to other proposed code amendments. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1439 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

## IDENTIFIED POLICY OUTCOMES

The proposed ordinance will establish a new Chapter 5.03 to govern Metro transfer station fees to update and improve Metro's solid waste code. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1439 that collectively remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

## **POLICY QUESTION(S)**

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

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

1. Approve the ordinance as proposed to establish Metro Code Chapter 5.03 and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.
2. Amend the ordinance to adopt other changes to Metro's solid waste code that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the extent of the alternate proposal. In addition, such revisions may require similar changes to the code chapters proposed in Ordinance Nos. 19-1438 and 19-1439 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. If the Council does not approve this ordinance, then the decision may require a similar action for the code changes proposed in Ordinance No. 19-1439 for consistency. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1440 to establish Metro Code Chapter 5.03 and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. Staff also recommends moving certain sections of code into administrative rules and making other housekeeping improvements as described in this staff report.

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

Approval of this ordinance would result in establishing a new Metro Code Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) and moving the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. The proposed ordinance also includes moving certain sections of code into administrative rules and making other housekeeping improvements to improve clarity and consistency as described below and provided in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1438 and 19-1439.

Staff recommends establishing Metro Code Chapter 5.03 and other housekeeping improvements as described below:

1. Remove all provisions related to Metro transfer station fees from current Metro Code Chapter 5.02 and move to new Chapter 5.03.
2. Authorize Metro's Chief Operating Officer to temporarily establish or change Metro transfer station fees when necessary for a new waste stream or when emergency circumstances exist.
3. Update language throughout the chapter to remove legalese, passive voice, nominalizations and lengthy sentences.
4. Break up lengthy code sections into shorter, separate sections for ease of reading.
5. Establish the uniform term "fee" to describe all of Metro's fees, user fees, charges, surcharges and rates.
6. Remove the requirement that Metro transfer station fees be set by ordinance. If approved, the Council could establish Metro transfer station fees by resolution and it could take effect 30 days after adoption. This avoids the need to wait 90 days for fees to take effect and allows the Metro Council to be more responsive to changing conditions.
7. Remove transfer station fee amounts from Metro Code and establish an annual fee schedule.
8. Move the "Account Policies at Metro Transfer Stations" code section into administrative rule to better reflect that *internal* account policies for Metro's transfer stations should not be housed in the Metro Code.
9. Move code sections that are applicable to certain Metro transfer station fees to administrative rules so that Metro can be more nimble in establishing the circumstances for when these fees should apply. These include:
  - a. Litter Control Fee
  - b. Household Hazardous Waste Management Fee
  - c. Recoverable Solid Waste Fee
  - d. Special Waste Fee
  - e. Christmas Tree Fee

In addition to the above, this staff report includes a draft set of administrative rules to illustrate which code sections would be moved to rule under the proposed ordinance (Attachment 2, AR 5.03-1000 through 1080). If Metro Council adopts Ordinance No. 19-1440, then the Chief Operating Officer will consider whether to adopt a final version of these administrative rules as provided in code. Metro Code requires a 30-day public comment period and an oral hearing before any proposed rule can be adopted by the Chief Operating Officer.

## **KNOWN OPPOSITION**

There is no known opposition to establishing a new Metro Code Chapter 5.03 and moving the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. However, Metro received several comments expressing concern about changing the timing of Metro's transfer station fee-setting process. Staff understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted written comments about Metro's longstanding practice of charging a "blended" rate for putrescible and non-putrescible waste at its transfer stations. Another commenter requested that Metro establish rate-setting requirements for privately-owned transfer stations. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.03 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

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

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

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

## **LEGAL ANTECEDENTS**

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

## **ANTICIPATED EFFECTS**

Approval of this ordinance would establish Metro Code Chapter 5.03 to govern Metro transfer station fees as provided in Exhibit A to improve clarity and consistency and to conform to other proposed code amendments.

## **BUDGET IMPACTS**

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

## **BACKGROUND**

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials. Metro staff seeks to continue these efforts by establishing a new Metro Code Chapter 5.03 to make the code easier to read and understand.

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

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

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

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

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

## **ATTACHMENTS**

- Exhibit A
- Attachment 1
- Attachment 2

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

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

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

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

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

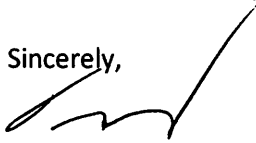
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from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

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

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

Terrell Garrett

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren –

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

Thanks!

Bruce

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

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

Bruce

---

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

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

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

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

CITY OF  
GRESHAM

---

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

**CAUTION:** External Email

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

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

**Theresa Koppang | Manager**

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

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

[Website](#) | [Facebook](#) | [Sign Up](#) for e-news and alerts

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

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

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

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

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

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

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

## Warren Johnson

---

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

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

Warren,

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

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

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

---

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

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

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

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

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

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

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

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

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

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association

**Solid Waste  
Administrative Rule**

**AR 5.03-1000 through 1080**

Administrative Rule of Metro Code Chapter 5.03  
Administrative Rule Adoption Record and Findings

**AR 5.03-1000 through 1080  
Solid Waste Rates at Metro Stations Administrative Rules**

These administrative rules are adopted under the authority of Metro Code Chapter 5.08, which authorizes the Chief Operating Officer (COO) to adopt and amend administrative rules. In accordance with Metro Code, the COO provided an opportunity for public comment and held a public hearing on these rules before their adoption.

The COO finds that these administrative rules are necessary to implement certain provisions of Metro Code Chapter 5.03 and adopts Administrative Rules Nos. 5.03-1000 through 1080. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 5.03. These rules have the same force and effect as any other provision of Metro Code Chapter 5.03.

It is so ordered:

---

Andrew Scott  
Interim Metro Chief Operating Officer

---

Date

## SOLID WASTE

### ADMINISTRATIVE RULES

AR 5.03-1000 through 1080

#### Solid Waste Rates at Metro Stations

Effective: XXX, 2020

---

##### Table of Contents

5.03 - 1000	Purpose
5.03 - 1005	Legal Authority
5.03 - 1010	Definitions
5.03 - 1015	Applicability of Rules
5.03 - 1020	Effective Date
5.03 - 1025	Metro Transfer Station Fee Setting
5.03 - 1030	Source-Separated Recyclable Materials Credit
5.03 - 1035	Household Hazardous Waste Management Fee
5.03 - 1040	Conditionally Exempt Generator Waste Fee
5.03 - 1045	Recoverable Solid Waste Fee
5.03 - 1050	Special Waste Fee and Permit Application Fee
5.03 - 1055	Litter Control Fee
5.03 - 1060	Transaction Fee During Automated Scale Malfunction
5.03 - 1065	Rounded Fees for Cash Payments
5.03 - 1070	Christmas Tree Fee
5.03 - 1075	Account Policy at Metro Transfer Stations
5.03 - 1080	Finance Charges and Past Due Accounts

##### 5.03 – 1000 Purpose

The purpose of these rules is to implement Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations); to ensure that the Metro' transfer station fees are consistent, predicable and transparent; and to establish appropriate account policy requirements to diminish Metro's risk of loss due to non-payment.

##### 5.03 – 1005 Legal Authority

These administrative rules are issued under the authority of Metro Code Chapters 5.03 and 5.08. These rules are in addition to all other requirements and provisions in Metro Code Chapter 5.03.

##### 5.03 – 1010 Definitions

Unless otherwise specifically defined, all terms used are as defined in Metro Code Chapter 5.00.

##### 5.03 – 1015 Applicability of Rules

The Metro transfer station fees apply to Metro South Station and Metro Central Station.

##### 5.03 – 1020 Effective Date

These rules are effective on XXXX.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

### 5.03 – 1025 Metro Transfer Station Fee Setting

1. In accordance with Metro Code Chapter 5.03, each year the Chief Operating Officer will propose provisional Metro transfer station fee amounts for consideration by Metro Council. The provisional transfer station fees will include the following at Metro South Station and Metro Central Station:
  - a. Disposal fee
  - b. Transaction fee
  - c. Household hazardous waste management fee
  - d. Conditionally exempt generator waste fee
  - e. Recoverable solid waste fee
  - f. Special waste fee
  - g. Litter control fee
2. The Chief Operating Officer may establish an interim fee for an additional service or waste material not specifically listed in this section or may revise a fee amount if necessary to address a substantial change in market conditions. Any interim fee adopted pursuant to this section is only effective for not more than 120 days unless the Metro Council affirms or modifies it.

### 5.03 – 1030 Source-Separated Recyclable Materials Credit

1. A non-commercial customer at Metro Central Station or Metro South Station who disposes of source-separated standard recyclable materials (except yard debris) that are generated by a household will receive a disposal charge credit. The credit amount is based on whether the non-commercial customer is disposing of fewer than 100 pounds of recyclables or 100 pounds or more of recyclables.
2. Notwithstanding subsection (1), the Chief Operating Officer may designate source separated recyclable materials that Metro will accept from customers at no charge.

### 5.03 – 1035 Household Hazardous Waste Management Fee

1. Customers delivering household hazardous waste at a Metro hazardous waste facility must pay a “household hazardous waste management fee.” This fee is in lieu of any other base disposal fee, the regional system fee, and community enhancement fees that may be required under Chapters 5.02, 5.03, 5.06, and excise taxes required by Chapter 7.01.
2. The household hazardous waste management fee may differ depending on container size.
3. Depending on container size, the fee may not apply to post-consumer architectural paint under the Oregon paint stewardship system set forth in ORS 459A.820 et seq.
4. The Chief Operating Officer may waive the household hazard waste management fee in a specific instance upon a finding that a waiver is in the public interest.

### 5.03 – 1040 Conditionally Exempt Generator Waste Fee

1. For conditionally exempt generator (CEG) waste from non-household sources, a customer must pay the actual disposal costs of the waste calculated from the current Metro contractor price schedules, Metro and contractor labor costs (as applicable), all applicable excise taxes, and the cost of material used for managing the waste.
2. Notwithstanding subsection (1), Metro will not assess the conditionally exempt generator waste fee under this section for:
  - a. Post-consumer architectural paint under the Oregon paint stewardship system as set forth in ORS 459A.820 et seq; or
  - b. Hazardous waste generated at any facility operated by Metro.
3. The Chief Operating Officer may waive the conditionally exempt generator waste fee in a specific instance upon a finding that a waiver is in the public interest.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

### 5.03 – 1045 Recoverable Solid Waste Fee

1. Metro will collect a “recoverable solid waste fee” on different classes of recoverable solid wastes accepted at Metro Central Station or Metro South Station.
2. The recoverable solid waste fee is in addition to the transaction fee, community enhancement fee set forth in Metro Code Chapter 5.06, and the base disposal fee.
3. For purposes of this section, “managing” and “management” of recoverable solid waste means any of the following activities: acceptance, onsite handling and logistics, quality assurance, mixing of wastes to meet an engineering or market specification, processing such as grinding and shredding that may alter the form but does not substantially alter the content of the waste, residuals management, reloading, transport and delivery to a recycling site, and similar activities directly related to the handling and disposing of recoverable solid waste.
4. For purposes of this section, a class of recoverable solid waste is distinguished from other classes of wastes by a material difference in the management cost or by physical characteristics that require different practices to manage the waste.
5. The Chief Operating Officer may specify new classes of recoverable solid wastes, set tonnage fees for new classes of recoverable solid wastes, and change tonnage fees for existing classes of recoverable solid wastes.
6. The material management fee for each class of recoverable solid waste is equal to the sum of:
  - a. The contractual costs that Metro pays, if any, to a contract operator of Metro Central Station or Metro South Station for managing the class of recoverable solid waste, expressed on a per-ton basis;
  - b. Metro’s direct costs, if any, for personnel, materials, services and capital incurred directly by Metro for managing the class of recoverable solid waste, expressed on a per-ton basis; and
  - c. An allocation of Metro’s administrative, overhead, capital, and fixed contractual costs that is reasonably related to managing the class of recoverable solid waste, expressed on a per-ton basis.
7. Nothing in subsection (6) modifies Council’s authority to set recoverable solid waste fees at any time.
8. Notwithstanding subsections (2) and (5):
  - a. The Chief Operating Officer will establish fees for recoverable solid wastes that are typically accepted and managed on a unit or count basis rather than by scale weight. Metro will base these fees on its actual costs for managing the wastes.
  - b. The Chief Operating Officer will establish a minimum fee for loads of recoverable solid waste.
9. This section does not apply to any source-separated recyclable material that the Chief Operating Officer designates as exempt from fees.

### 5.03 – 1050 Special Waste Fee and Permit Application Fee

1. A special waste fee applies to all special wastes disposed of at a Metro transfer station. A special waste permit application fee applies to all special waste permit applications. This fee is in lieu of any other base disposal fee, the regional system fee, and community enhancement fees that may be required under Chapters 5.02, 5.03, 5.06, and excise taxes required by Chapter 7.01. The purpose of the special waste fee and permit application fee is to require a person that disposes of special waste to pay the cost of services provided by Metro to manage special wastes. These fees apply to all special wastes.
2. The special waste fee is the amount equal to Metro’s actual costs in managing special waste. These costs comprise of special handling costs, cleanup costs, and lab or testing costs. The special waste fee applies to all permitted special wastes and to all non-permitted special wastes that Metro

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

discovers at a Metro-operated facility that result in additional management costs not otherwise covered by, or incorporated within, any other Metro transfer station fee.

3. The special waste permit application fee is \$25.00. Metro will collect this fee at the time it receives a special waste permit application.
4. The special waste fee and special waste permit application fee do not apply to household hazardous waste accepted at Metro hazardous waste facilities or Metro household hazardous waste collection events.

### 5.03 – 1055 Litter Control Fee

1. A customer must pay a “litter control fee” if the customer enters Metro Central Station or Metro South Station and any portion of the customer’s solid waste or recoverable solid waste is unsecured and visible to Metro scalehouse personnel.
2. The amount of the litter control fee may vary depending on the load weight.
3. Metro will not impose the litter control fee if the solid waste or recoverable solid waste is only visible through a secure covering.
4. Metro will collect the litter control fee in the same manner that Metro collects all other transfer station fees at the facility.

### 5.03 – 1060 Transaction Fee During Automated Scale Malfunction

If a customer must use the staffed scales because the automated scales are unavailable due to a physical site limitation, a limit or restriction of the computer operating system, or a malfunction of the automated scales, then the transaction fee is the amount authorized for automated scales.

### 5.03 – 1065 Rounded Fees for Cash Payments

When a non-account customer pays in cash, Metro will round total fees at the Metro South Station and the Metro Central Station to the nearest whole dollar amount, with any \$0.50 fee rounded down.

### 5.03 – 1070 Christmas Tree Fee

The fee for accepting up to three Christmas trees in one transaction will be the amount equal to the transaction fee at the Metro transfer station.

### 5.03 – 1075 Account Policy at Metro Transfer Stations

1. A person may pay Metro transfer station fees and all taxes using cash, credit card, check, or under Metro’s credit policy. Metro will not grant credit to any person before it approves a credit application in a manner or on forms as required.
2. The Chief Operating Officer will establish appropriate account requirements designed to diminish Metro’s risk of loss due to non-payment for new and existing accounts. Metro may require existing account holders to reapply for credit or provide additional guarantees as the Chief Operating Officer considers necessary.
3. Account charges accrue on a monthly basis. Metro will mail statements on or about the 10th day of the month for disposal services rendered in the prior month. An account holder must pay the statement no later than the last business day of the month in which Metro mails the statement. The statement is past due thereafter. A statement is not “received” unless the account holder personally delivers it to the Metro Department of Finance and Regulatory Services during business hours or unless Metro’s mail room receives it on or before the due date.
4. An account customer must immediately notify Metro if the customer sells, terminates, or makes a substantial change in the scope of its business after Metro approves its application for credit. Metro may terminate the customer’s credit if the customer does not provide the required notice.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

5. The Chief Operating Officer may adjust accounts receivable and reverse finance charges in accordance with prudent credit practices. The Chief Operating Officer will report adjustments over \$1,000.00 to the Council in writing on a monthly basis.
6. Consistent with prudent credit practices, the Chief Operating Officer may end pursuit of an account receivable when the likelihood of collecting does not justify further collection costs. The Chief Operating Officer will provide Council with a written report, at least monthly, of all accounts receivable over \$1000.00 for which Metro has ended collection efforts. Only Council may approve ending collection efforts on an account over \$10,000.00.

### 5.03 – 1080 Finance Charges and Past Due Accounts

1. Metro will assess a finance charge in the amount of the greater of \$25.00 or 1.5 percent of the sum of all past due fees on all unpaid, past due fees beginning on the 15th day of the month following the month in which Metro mails a statement, and continuing on the 15th day of each month thereafter until paid. Finance charges accrue only on unpaid past due balances, and not on previously assessed finance charges. Metro will continue to assess finance charges on negotiated repayment schedules. Metro will first apply payments to finance charges and then to the oldest amount past due. In addition to any other finance charge or fee, Metro will also assess a 30 percent collection fee on the past-due balance owing on any account that Metro forwards to a collection agency.
2. If an account is 15 days past due, then Metro may place an account on a cash only basis until the account holder pays all past due disposal and finance charges. Metro may close an account if Metro has placed it on a cash only basis more than twice during any 12 month period. Metro may deny facility access to a person whose account is past due for 30 days or more. The Chief Operating Officer has discretion to place an account on a cash only basis or deny facility access.

Agenda Item Number 6.4

**Ordinance No. 19-1441**, For the Purpose of Establishing a New  
Metro Code Chapter 5.08 that Governs Administrative  
Rulemaking Authority for Metro Code Title V

*Ordinances (First Reading and Public Hearing)*

Metro Council Meeting  
Thursday, November 7, 2019  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A	)	ORDINANCE NO. 19-1441
NEW METRO CODE CHAPTER 5.08 THAT	)	
GOVERNS ADMINISTRATIVE RULEMAKING	)	Introduced by Acting Chief Operating Officer
AUTHORITY FOR METRO CODE TITLE V	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

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

WHEREAS, Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10 in Title V each have their own sections that govern administrative rulemaking procedures for those specific code chapters; and

WHEREAS, consolidating those multiple administrative rulemaking sections into a new “Administrative Rulemaking” chapter that governs the entire Metro Code Title V would ensure that the procedures are uniform throughout Metro Code Title V; and

WHEREAS, in the current administrative rulemaking procedures the timing of the oral hearing in relation to the general public comment period is confusing, thus requiring a revision to clarify the timing; and

WHEREAS, staff solicited input from the public on establishing new Metro Code Chapter 5.08 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, the Metro Council finds that establishing a new Metro Code Chapter 5.08 to govern administrative rulemaking procedures for the entire solid waste code will provide greater clarity for the public and create consistent, transparent and objective procedures for adopting administrative rules that further implement the requirements of Metro Code Title V; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Title V, Solid Waste, is amended to add a new Metro Code Chapter 5.08, (“Administrative Rulemaking Authority for Title V”), as set forth in the attached Exhibit A.
2. Metro Code Section 5.01.280 is repealed.
3. Metro Code Section 5.02.170 is repealed.
4. Metro Code Section 5.05.260 is repealed.
5. Metro Code Section 5.06.100 is repealed.
6. Metro Code Section 5.09.170 is repealed.
7. Metro Code Section 5.10.080 is repealed.

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

---

Lynn Peterson, Council President

Attest:

Approved as to Form:

---

Sara Farrokhzadian, Recording Secretary

---

Carrie MacLaren, Metro Attorney

# **EXHIBIT A TO ORDINANCE NO. 19-1441**

## **CHAPTER 5.08**

### **ADMINISTRATIVE RULEMAKING AUTHORITY FOR TITLE V**

5.08.010	Purpose
5.08.020	Chief Operating Officer May Adopt Rules
5.08.030	Public Comment Opportunity Required
5.08.040	Oral Hearing; Requirements
5.08.050	Adoption of Administrative Rules
5.08.060	Effective Date of Administrative Rules
5.08.070	Temporary Rules; Adoption and Effective Date
5.08.080	Writ of Review; Final Decision
5.08.090	Prior Rules, Performance Standards and Forms Remain in Effect
5.08.100	Agency-wide Rulemaking Procedures Supersede this Chapter

#### **5.08.010 Purpose**

The purpose of this chapter is to set forth consistent, transparent and objective procedures for adopting administrative rules that further implement the obligations and requirements of Metro Code Title V.

#### **5.08.020 Chief Operating Officer May Adopt Rules**

The Chief Operating Officer may adopt or amend rules to implement any provision of Title V (Solid Waste). Any rule adopted or amended under this chapter has the same force and effect as any other chapter provision in Title V.

#### **5.08.030 Public Comment Opportunity Required**

Before the Chief Operating Officer adopts or amends a rule, the Chief Operating Officer must provide an opportunity for written public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule; the location at which a person may obtain a copy of the full text of the proposed rule; the method for submitting public comments; and the deadline for submitting public comments.

#### **5.08.040 Oral Hearing; Requirements**

- (a) In addition to written public comments, the Chief Operating Officer will also hold an oral hearing on any proposed rule or amendment to an existing rule during the written comment period. Metro will give notice of and schedule the oral hearing at the same time that it makes available the proposed rules, provided that the oral hearing cannot be scheduled less than 10 days from the notice date. The notice will include the time,

## **EXHIBIT A TO ORDINANCE NO. 19-1441**

place, and purpose of the oral hearing, a brief description of the proposed rule, and the location at which a person may obtain copies of the full text of the proposed rule.

- (b) During the oral hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, in addition to any written comments received during the written public comment period.

### **5.08.050 Adoption of Administrative Rules**

- (a) After the written public comment period is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule.
- (b) If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must provide a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has provided contact information and has either submitted written comments on the proposal, testified at the oral hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the notification date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.

### **5.08.060 Effective Date of Administrative Rules**

With the exception of a temporary rule, any rule adopted under this chapter takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.

### **5.08.070 Temporary Rules; Adoption and Effective Date**

Notwithstanding Sections 5.08.030 (Public Comment) and 5.08.040 (Oral Hearing), the Chief Operating Officer may adopt a temporary rule without prior public notice, written comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule adopted pursuant to this section expires no later than 180 days from its effective date.

### **5.08.080 Writ of Review; Final Decision**

For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this chapter is considered a final decision.

## **EXHIBIT A TO ORDINANCE NO. 19-1441**

### **5.08.090 Prior Rules, Performance Standards and Forms Remain in Effect**

Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is in effect on the date when this chapter is adopted continues to remain in effect unless otherwise repealed or amended.

### **5.08.100 Agency-wide Rulemaking Procedures Supersede this Chapter**

If the Metro Council establishes rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures.

IN CONSIDERATION OF ORDINANCE NO. 19-1441 FOR THE PURPOSE OF ESTABLISHING A  
NEW METRO CODE CHAPTER 5.08 THAT GOVERNS ADMINISTRATIVE RULEMAKING  
AUTHORITY FOR METRO CODE TITLE V

---

Date: October 24, 2019

Prepared by: Warren Johnson  
(503) 797-1836  
[warren.johnson@oregonmetro.gov](mailto:warren.johnson@oregonmetro.gov)

Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

---

## **ISSUE STATEMENT**

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

## **ACTION REQUESTED**

Adopt Ordinance No. 19-1441 to establish a new Metro Code Chapter 5.08 (Administrative Rulemaking Authority for Title V) to set forth consistent, transparent and objective procedures for adopting administrative rules that further implement the requirements of Metro Code Title V.

## **IDENTIFIED POLICY OUTCOMES**

The proposed ordinance will repeal all chapter-specific administrative rulemaking procedures throughout Metro Code Title V and establish a new Chapter 5.08 (Administrative Rulemaking Authority for Title V) that will govern administrative rulemaking for the entire solid waste code.

## **POLICY QUESTION(S)**

Should Metro Council repeal all chapter-specific administrative rulemaking procedures and establish a new Metro Code Chapter 5.08 that will govern administrative rulemaking for the entire solid waste code (Title V)?

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

1. Approve the ordinance as proposed to repeal all chapter-specific administrative rulemaking procedures and establish new Metro Code Chapter 5.08 as described in this staff report. This option will result in making the code easier to understand and

more consistent by establishing a uniform administrative rulemaking process for the entire solid waste code. There are no known financial implications associated with the option.

2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.08 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the scope of the alternate proposal.
3. Do not approve the ordinance. This option will result in maintaining status quo. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1441 to repeal all chapter-specific administrative rulemaking procedures throughout Metro Code Title V and establish a new Chapter 5.08 that will govern administrative rulemaking for the entire solid waste code.

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

Approval of this ordinance would result in changes to the Metro solid waste code that:

- 1) Establish a new Metro Code Chapter 5.08 that will govern the administrative rulemaking process for the entire solid waste code;
- 2) Update administrative rulemaking procedures to clarify the timing of an oral hearing during a public comment period; and
- 3) Repeal all chapter-specific administrative rulemaking procedures from Metro Code Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10.

## **KNOWN OPPOSITION**

There is no known opposition to establishing a new chapter to govern the administrative rulemaking process for the entire solid waste code. However, Metro received a comment requesting changes to Metro's current administrative rulemaking procedures. Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Metro's administrative rulemaking procedures other than those provided in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

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

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

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

## **LEGAL ANTECEDENTS**

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

## **ANTICIPATED EFFECTS**

Approval of this ordinance would result in repealing all chapter-specific administrative rulemaking procedures from Metro Code Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10 and establishing new Metro Code Chapter 5.08 that will govern the administrative rulemaking process for the entire solid waste code.

## **BUDGET IMPACTS**

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

## **BACKGROUND**

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

The proposed ordinance establishes a new chapter (Metro Code Chapter 5.08) for the purpose of standardizing and consolidating all of the administrative rulemaking procedures for Title V in a central location. The proposed ordinance also amends each of

the other chapters in Title V to remove all chapter-specific administrative rulemaking provisions.

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1441

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

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

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

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

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

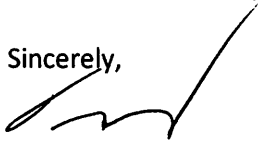
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from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

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

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

Terrell Garrett

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren –

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

Thanks!

Bruce

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

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

Bruce

---

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

Warren –

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

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

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

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

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

CITY OF  
GRESHAM

---

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

**CAUTION:** External Email

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

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

**Theresa Koppang | Manager**

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

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

[Website](#) | [Facebook](#) | [Sign Up](#) for e-news and alerts

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

## Warren Johnson

---

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

**Categories:** CODE COMMENTS

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

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

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

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

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

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

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

## Warren Johnson

---

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

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

Warren,

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

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

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

---

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

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

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

Warren Johnson  
Metro  
(503) 797-1836

---

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

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

---

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

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

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

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

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

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

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

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

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

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

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

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

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

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

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

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

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

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

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association