

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1411 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO ESTABLISH LICENSING REQUIREMENTS FOR CERTAIN FACILITIES THAT RECEIVE AND PROCESS SOURCE-SEPARATED RECYCLABLE MATERIALS AND MAKE HOUSEKEEPING CHANGES

September 22, 2017

Prepared by: Dan Blue
503-797-1863

Adoption of Ordinance No. 17-1411 will amend Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing. This ordinance will also make various other non-substantive technical amendments to the chapter to improve clarity and ease of understanding.

This ordinance is a companion to Ordinance 17-1410 which proposes adding two new definitions to Metro Code Chapter 5.00 (Solid Waste Definitions) which are related to implementing the Code amendments proposed under this ordinance. The Metro Council will consider both of these ordinances collectively at its meetings on October 5 and October 26, 2017.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improve sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region's solid waste system for the next several years. Concurrently with this effort, staff seeks to provide a more consistent, transparent, and equitable regulatory framework for the regional solid waste system. Metro will further support this effort by developing the Regional Solid Waste Management Plan during 2017 and 2018.

In August 2015, Metro staff proposed a wide range of changes to Metro's solid waste code (Metro Code Title V). Metro received feedback from the public requesting a more thorough and transparent process for considering the proposed code changes. In October 2015, Metro Council directed staff to implement an improved and more rigorous process for developing and soliciting feedback on proposed changes to Metro's solid waste code. As directed by Metro Council, staff implemented a thorough public engagement process for soliciting input on the proposed code changes.

Because Metro is the agency tasked with planning, management, and oversight of the region's solid waste system, it has an obligation to the public to ensure the waste intended for reuse,

recycling and other purposes is handled properly and sent to appropriate markets and that all other waste is safely managed and disposed.

Metro Code currently exempts from licensing certain material recovery and conversion technology facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program. However, collection methods, material composition, and market conditions for source-separated recyclable materials have changed significantly since Metro initially established that regulatory exemption. These significant changes over the years have resulted in greater potential for material degradation at recovery facilities and adverse impacts on neighboring communities.

In December 2015, Metro's Solid Waste Alternatives Advisory Committee (SWAAC) commissioned a subcommittee to consider whether material recovery and conversion technology facilities that receive source-separated recyclable materials should be subject to Metro's licensing and inspection requirements similar to that of other solid waste facilities. Also, if so, the subcommittee was with charged identifying which licensing requirements were appropriate for such material recovery and conversion technology facilities.

The 15-member subcommittee, comprised of industry, local government, nonprofit, and general public representatives, held a series of meetings throughout 2016 and recommended that Metro establish regulatory requirements for certain material recovery and conversion technology facilities that receive and process source-separated recyclable materials. The subcommittee's recommendation was subsequently endorsed by SWAAC. The proposed code amendments described in this ordinance, as well as the companion Ordinance No. 17-1410, reflect SWAAC and the subcommittee's recommendations.

On May 10, 2017, SWAAC recommended that Metro solicit input from the public on the proposed changes and open a 60-day review and comment period. A formal public comment period was open from May 12 through July 14, 2017. The comments received and staff's response to those comments is provided as Attachment 1.

Staff presented the comments received and responses to those comments to SWAAC at its meeting on August 9, 2017. Staff then reviewed the proposed code changes with Metro Council at its work session meeting on September 19 and Council directed staff to bring the proposed code changes forward for formal consideration.

PUBLIC OUTREACH AND ENGAGEMENT:

As directed by Metro Council in October 2015, staff conducted extensive public outreach and solicited input on the proposed changes to Chapter 5.01. The public outreach for the proposed code changes included:

1. SWAAC review and SWAAC Subcommittee review :
 - (a) December 2015 – SWAAC commissioned a 15-member subcommittee to consider regulation of material recovery and conversion technology facilities. The subcommittee held seven meetings (between January and October 2016) and recommended that Metro establish authorization requirements for material recovery and conversion technology facilities.
 - (b) October 2016 – SWAAC endorsed the subcommittee’s recommendations.
 - (c) May 2017- SWAAC endorsed staff’s draft code changes and the opening of a 60- public review period.
 - (d) August 2017– SWAAC reviewed the public comments received by Metro, staff’s responses, and proposed revisions. SWAAC endorsed presenting the final proposal to Metro Council.

2. Public review and comment period:
 - (a) Metro opened a 60-day public review and comment period from May 15 through July 14, 2017.
 - (b) Metro also held two public workshops on May 31 and June 13, 2017 to review the proposal and answer questions.
 - (c) Metro received three written comments related to the proposed code changes (see Attachment 1).
 - (d) Staff prepared a detailed response to the written comments received during the public review period (see Attachment 1).

3. Other outreach:
 - (a) Metro established a dedicated web page that was used to post the proposed code change information and related documents at <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>
 - (b) Staff sent routine status updates and other correspondence to interested parties via email.

PROPOSED AMENDMENTS TO CHAPTER 5.01

Metro Code Chapter 5.01 (Solid Waste Facility Regulation) governs the regulation of solid waste facilities and disposal sites within the region. The Chief Operating Officer (COO) recommends the proposed changes to Chapter 5.01 as described below and further detailed in Exhibit A.

1. Establish Licensing Requirements for Material Recovery Facilities that Receive Source-Separated Recyclables.

Currently, facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program are exempted from Metro’s licensing and franchising requirements. However,

there have been significant changes in the solid waste system over the years such as an increased practice of “commingled” collection (mixing most recyclables together in a cart or container which has increased contamination), the consistently changing composition of materials placed out at the curb for recovery, and the volatile nature of recycling markets locally, nationally, and globally. These significant changes over the years have increased the potential for material degradation and adverse impacts from facilities on neighboring communities. The COO finds that it is in the public’s interest for Metro to implement greater regulatory oversight of the facilities that receive and process source-separated recyclable materials. The COO recommends removing the current licensing exemption for this class of facilities and requiring that these facilities be subject to Metro’s licensing, inspection, and reporting requirements similar to other solid waste facilities.

2. Create Exemption for Specific Material Recyclers.

The COO recommends that facilities that exclusively receive and process a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets be exempted from the requirement to obtain a solid waste license. For purposes of Metro Code, specific material recyclers are defined as facilities that receive and process materials that include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. Specific material recyclers do not include facilities that processes commingled source-separated recyclables collected through curbside residential or commercial collection programs.

3. Create Exemption for Certain Conversion Technology Facilities.

The COO recommends that conversion technology facilities that exclusively receive non-putrescible waste for use as feedstock that has been (A) extracted from other solid waste and (B) processed to meet prescribed specifications for direct introduction into a conversion technology process be exempted from the requirement to obtain a solid waste license.

4. General Housekeeping Changes (Non-Substantive).

In addition to the changes described above, the COO recommends amending Metro Code Chapter 5.01 with several non-substantive housekeeping changes which include deleting a reference to a requirement that is no longer effective, correcting a misnumbered cross-reference, and clarifying when certain documents and payments are due.

ANALYSIS / INFORMATION

1. Known Opposition

One operator of a material recovery facility within the region is known to oppose the proposed code amendments and licensing requirements for material recovery facilities

that receive and process source-separated recyclable material (see Attachment 1). A representative of the facility operator participated on the SWAAC subcommittee which considered this issue and the operator also had the opportunity to provide further input throughout the subsequent public engagement process.

The SWAAC subcommittee and SWAAC subsequently endorsed the proposed code amendments to establish additional regulatory oversight for material recovery and conversion technology facilities that receive and process source-separated recyclable materials.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 states that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapter 5.01 to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing as provided in Exhibit A. If Council adopts this ordinance, then material recovery and conversion technology facilities that receive non-putrescible source-separated recyclable materials would be required to apply for and obtain a solid waste license by January 1, 2019.

4. Budget Impacts

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

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 17-1411