

Solid Waste

Administrative Rules

AR – FS – 5.10

Business Food Waste Requirement

REVISED DRAFT October 27, 2017

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Purpose

1. The purpose of these rules is to implement the provisions of the business food waste requirement in Metro Code Section 5.10.410-5.10.470.
2. The purpose of the business food waste requirement is to provide a region-wide standard for the separation and collection of ~~inedible~~ food waste from food-waste-generating businesses. For the purposes of these rules, Covered Businesses are defined as organizations that cook, assemble, process, serve, or sell food or do so as service providers for other enterprises.
3. Food is identified as a primary material for recovery within the Regional Solid Waste Management Plan because of its prevalence in the region's waste stream and the negative environmental impacts of disposing food in a landfill.
4. The prevention of food waste, ~~and~~ the donation of edible food for human consumption and the use of food waste to feed animals are the region's preferred methods for managing surplus food. Food that has been stored properly, is fit for human consumption, ~~and~~ is accepted for donation and food

Comment [jke1]: Redundant.

Comment [jke2]: Change requested by Northwest Food Processors Association.

that has been set aside and is destined for animal consumption in compliance with applicable regulations is not subject to this administrative rule.

Comment [jke3]: Change requested by Northwest Food Processors Association.

REVISED DRAFT

FS – 5.10 – 002

Policy

Metro Code Chapter 5.10 requires local governments to establish mandatory programs to separate and collect ~~inedible~~ food waste from certain food-waste generating businesses referred to in these rules as “Covered Businesses.”

Comment [jke4]: Redundant.

FS – 5.10 – 003

Legal Authority

These administrative rules are issued under the authority of Metro Code Section 5.10.080. These rules are in addition to all other requirements and provisions in Metro Code Chapter 5.10.

FS—5.10—004

Definitions

Unless otherwise specifically defined, all terms used are as defined in Metro Code Chapter 5.00.

“**Covered Businesses**” means organizations that cook, assemble, process, serve, or sell food or do so as service providers for other enterprises.

“**Business Groups**” means groups of covered businesses subject to the business food waste requirement by certain effective dates as delineated in the Applicability section of these rules.

“**Food waste**” means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. Food waste includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food waste does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization, and any food collected to feed animals in compliance with applicable regulations.

Comment [jke5]: Requested by Washington County.

Comment [jke6]: Added for clarity

Comment [jke7]: Revised for consistency.

Comment [jke8]: Requested by the Northwest Food Processors Association.

FS—5.10—005

Applicability of Rules

1. The business food waste requirement applies to all local governments within the Metro boundary.
2. ~~Covered Business Entities~~ Covered Businesses subject to the business food waste- requirement include, but are not limited to:

Comment [jke9]: Revised for consistency of terminology.

Cafeterias & buffets
Caterers

Grocery retail
Grocery wholesale

Colleges & universities*	Hospitals*
Correctional facilities	Hotels*
Drinking places*	Limited service restaurants
Elementary and secondary schools*	Nursing & residential care*
Food product manufacturing	Retirement & assisted living*
Food service contractors	Specialty food markets
Full service restaurants	Warehouse clubs

*Only those with full-service restaurants or on-site food preparation or service.

3. Covered ~~Businesses~~ Entities shall meet the food waste requirement according to a schedule determined by the quantity of food waste they generate on average, in three phases as listed below. Implementation will begin with Business Group 1 and progress to the other groups according to the Effective Dates described in Rule 006. ~~Covered Business Entities~~ Covered Businesses that demonstrate they generate ~~de minimis quantities of~~ less than 250 pounds of food scraps per week of food waste are not subject to this requirement.

Comment [jke10]: Added for clarity

Business Group 1	Business Group 2	Business Group 3
≥0.5 ton (1,000 pounds) per week food waste generated	≥0.25 ton (500 pounds) per week food waste generated	≥0.125 ton (250 pounds) per week food waste generated

4. A person that provides space to a covered business must allow, facilitate or provide a food waste collection service for the covered business.

FS—5.10—006

Effective Dates for Implementation

Local governments must meet the following deadlines:

1. Local Government Adoption of Requirement: July 31, 2018
2. Begin Implementation of Requirement for Business Group 1: March 31, 2019
3. Begin Implementation of Requirement for Business Group 2: March 31, 2020
4. Begin Implementation of Requirement for Business Group 3: September 30, 2021

FS—5.10—007

Exemptions – Governments Outside Metro Boundary

Local governments outside of the Metro Boundary are exempt from this business food waste requirement.

FS—5.10—008

Compliance Waivers

Metro may grant compliance waivers to local governments that meet the standards below.

1. Business quantity minimum threshold: Metro will waive application of the business food waste requirement for a local government with five or fewer covered businesses within its boundary. Metro will review the number of covered businesses in each government annually. If Metro determines that a local government exceeds the minimum number of covered businesses during the review, Metro will inform the local government in writing and will require the local government to comply within 12 months of Metro notification.

2. Distance: Metro may waive temporarily application to a local government based on proximity to transfer or processing ~~facilities~~ services. Metro will not require a local government that qualifies for a temporary distance waiver to implement the requirement until such time as transfer or processing services are available within a reasonable distance. For purposes of this waiver, “reasonable distance” means (XXX miles) one way from the government’s geographical center to the nearest approved food waste transfer or processing facility. Metro will grant a waiver only under the following conditions:

- a. A local government adopts a legally-enforceable mechanism that meets the business food waste requirement and performance standard by the July 31, 2018 deadline.
- b. Metro will develop the list of waived governments and the associated map when the location of the food waste processing facility transfer or processing services and available transfer locations are determined.
- c. A qualified local government sends a request letter to Metro stating a the intent to utilize a temporary distance waiver from Metro.
- d. The local government’s temporary waivers will expire once transfer or processing services become available within a reasonable distance as determined by Metro. Metro will provide waived governments with a 90-day notice of waiver expiration.
- e. A local government must implement a mandatory program within 90 days after waiver expiration date.
- f. Metro will re-evaluate waivers annually and will automatically renew them if conditions have not changed. No action is required by waived governments in order to renew a granted waiver.
- g. Metro will develop the list of waived governments and the associated map when the location of the food waste processing facility and available transfer locations are determined.

Comment [jke11]: Change made for consistency

Comment [jke12]: Added for clarity.

Comment [jke13]: The definition of “reasonable distance” is still under development. A definition grounded in actual data that is suitable for policy-making and can be adjusted over time as more data becomes available is still being refined. After “reasonable distance” has been defined and added to the draft Rules, a second public comment period will be opened for Rule review.

Comment [jke14]: Change made for consistency.

Comment [jke15]: Revised for clarity and to address comments from Hillsboro.

FS—5.10—009

Local Government Requirements

1. Local Governments must implement one of the following:
 - a. Adopt a legally-enforceable mechanism that meets the performance standard in rule 011. A legally-enforceable mechanism includes but is not limited to local code, regulation, ordinance or law.
 - b. Adopt the Business Food Waste Requirement Model Ordinance and require business food waste be delivered to a solid waste facility authorized by Metro.
2. Local Governments must require ~~Covered Business Entities~~ Covered Businesses to:
 - a. Separate food waste from all other solid waste for collection.
 - b. Recover food waste that is controlled by the business, agents, and employees. This requirement does not apply to food wastes controlled by customers or public. At its

discretion, a Covered Business Entity may collect food waste from customers or public but must ensure that food wastes are free of non-food items.

Comment [jke16]: Added for clarity.

3. Local governments must require persons or entities that lease or provide space to a Covered Business Entity to allow or provide food waste collection service to those Covered Business Entities~~Covered Businesses~~.
4. Local governments must submit annual implementation plans to Metro according to the procedures set forth in these Administrative Rules.
5. Local governments may:
 - a. Implement the program in the manner that is most efficient and effective for local conditions, local solid waste system considerations, geography and that which best suits the covered businesses as long as the local government complies with the performance standard and deadlines.
 - b. Grant temporary waivers to a covered business according to the procedures set forth in these Administrative Rules.

FS—5.10—010

Local Government Annual Implementation Plan

Local governments are required to submit to Metro an annual implementation plan regarding the business food waste requirement. A local government may develop and implement its plan individually or through cooperative or partnership agreements between governments. A local government may implement the business food waste requirement in a manner that best suits local conditions as long as the local government meets or exceeds the performance standard. An implementation plan must meet the performance standard set forth in these Administrative Rules.

FS—5.10—011

Local Government Performance Standard

1. Business Notice of Requirement: After a local government adopts the business food waste requirement and according to the implementation schedule, the local government must send notice to covered businesses that outlines the requirement and how to comply and receive assistance. Local governments must establish a mechanism to notify new businesses of the business food waste requirement.
2. Local governments must require that businesses comply with the business food waste requirement including, but not limited to:
 - a. Adherence with the implementation schedule.
 - b. Correctly-labeled and easily-identifiable collection receptacles.
 - c. Arrange for food waste collection service as necessary.
 - d. Ensuring building owners or managers of multi-tenant buildings containing covered businesses allow or otherwise enable the provision of food waste collection service to lessees or occupants subject to the business food waste requirement.

3. Local governments must ensure appropriate collection receptacles and service is made available.
4. Local governments must require that franchised or otherwise licensed waste haulers deliver food waste to a facility that complies with federal, state, regional and local laws and regulations.

FS – 5.10 – 012

Business Assistance

Local governments must provide educational materials and offer technical assistance to covered businesses to ~~encourage food waste prevention and donation of edible food and~~ assist with program set-up, understanding program requirements and separation standards.

- a. Educational materials must include, at a minimum:
 - i. Labels for collection containers that clearly communicate what is allowed and not allowed in the food waste collection system.
 - ii. Signs and/or posters that provide clear and simple instructions.
 - iii. All signs and program materials must be ~~understandable to non-English speakers designed to be understood by people with limited English proficiency.~~
 - iv. Program contact phone number for businesses to call for program assistance.
- b. Technical assistance offered must include, at a minimum:
 - i. Education and assistance with food waste prevention techniques and edible food donation programs.
 - ii. Assistance with food waste collection program set up and training on-site at the business.
 - iii. Assistance with mitigating issues arising from program participation such as odors or vectors.
 - iv. Ensure correct labeling of all food waste collection receptacles.
 - v. Serve as a liaison/facilitator between the business and solid waste hauler as needed to ensure assist with the provision of appropriate collection receptacles and service frequency.

Comment [jke17]: Removed for clarity. Waste prevention and donation are covered under section b. below.

Comment [jke18]: Revised for clarity

Comment [jke19]: Added for clarity

Comment [jke20]: Revised for clarity

Comment [jke21]: Revised per City of Portland request

FS—5.10—013

Local Government Enforcement of the Business Food Waste Requirement

Local governments must establish a method for ensuring compliance with the business food waste requirement ~~that meets the following minimum standards:~~

- ~~1. Provide written notice to covered businesses not in compliance with the business food waste requirement. Written notice must describe the violation, provide an opportunity to remedy within a specified time, and offer assistance with compliance.~~
- ~~2. Issue a citation or other penalty to a covered business that does not remedy a violation within the specified time frame. The citation should provide an additional opportunity to remedy the violation within a specified time and notify the covered business that they may be subject to a fine or other penalty for non-compliance.~~
- ~~3. Assess fine or established penalty if the covered business does not remedy within the time specified in the citation.~~

Comment [jke22]: Amended to be consistent with the enforcement requirements for the Business Recycling Requirement as requested by Hillsboro.

FS—5.10—014

Local Government Temporary Compliance Waivers to Covered Businesses

1. A local government may establish a method for granting temporary waivers to covered businesses.
A local government must seek Metro approval of the waiver method and conditions.

Comment [jke23]: Added for clarity

2. Temporary waivers must meet the following minimum standard:

- a. May not exceed 12 months, annual renewal allowed.
- b. In order to be renewed, a local government must annually review waivers to determine if conditions that warrant the waiver are still in place and cannot be remedied.

Comment [jke24]: Added for clarity

- c. Criteria for granting temporary waivers includes: Covered businesses seeking a temporary waiver must agree to periodic waiver verification site visits. Local governments are responsible for determining if one or more of the following criteria warrant a temporary waiver:

Comment [jke25]: Revised for clarity

- i. Minimal amounts less than 250 pounds per week of food in the disposed waste.

Comment [jke26]: Revised for clarity.

- ii. Food waste produced by the covered business is not suitable for inclusion in the program, or cannot be made suitable without considerable unreasonable expense.

- iii. Physical barriers to compliance exist and cannot be immediately remedied.

Comment [jke27]: Added for clarity.

- iv. Compliance results in unreasonable capital expense hardship.

Comment [jke28]: Added for clarity.

- v. Compliance results in a container in the right of way or violation of other government ordinance, health or safety code.

Comment [jke29]: Revised for clarity

- vi. Covered businesses agree to a waiver verification site visit.

Comment [jke30]: This requirement is now in c. above.

3. Local governments may not grant waivers in cases where collection containers are placed outside of enclosures if such placement does not constitute a safety or health risk. Short term waivers may be granted in situations where enclosures are in the process of being installed or expanded in order to accommodate food waste receptacles.

Comment [jke31]: Deletion requested by City of Portland. The restriction is too detailed and is covered under section v. above.

FS—5.10—015

Metro Enforcement of the Requirement

A local government may request that Metro assist with enforcement of the business food waste requirement. Metro will provide enforcement assistance after Metro and the local government establish an Intergovernmental Agreement.

FS—5.10—016

Self-Haul of Source-Separated Food Waste

The local government may allow a covered business to self-haul source-separated food waste generated by that business. The local government must require the covered business to comply with these rules, including without limitation delivery of the food waste to a facility authorized by Metro.

FS—5.10—017

Compliance Verification and Reporting

Local governments must collect and report data to Metro to demonstrate compliance and assist with program evaluation. Metro will determine reporting requirements and frequency, review data and make a determination of compliance as set forth in Annual Implementation Plans.

FS—5.10—018

Funding Guidelines

1. Metro will provide funding to support the implementation of the business food waste requirement to local governments upon adoption of the requirements by the Metro Council. Metro intends to provide ~~additional~~ funding for ~~the first (5) the first (XX)~~ fiscal years of the business food waste requirement, subject to Metro Council approval of funding amounts during the annual budget process.
2. Local governments may use funds for business assistance, infrastructure, compliance, and enforcement efforts to implement the business food waste requirement. Metro will review and approve the intended uses prior to distributing funds.
3. If a local government has designated another agency or partner to implement the program, Metro shall distribute funds to the designated ~~planning~~ agency. A designated ~~planning~~ agency is a county agency, city agency or contracted agent that is responsible for designing and implementing a waste reduction program including the business food waste requirement, on behalf of a local government.
4. In order to receive funding, a local government or its designated ~~planning~~ agency must submit documentation demonstrating compliance with the requirements of Metro Code 5.10.410-5.10.470 and these rules and enter into an Intergovernmental Agreement with Metro.
5. Metro will withhold funding associated with the implementation of the business food waste requirement ~~and the Recycle at Work Program~~ from governments that do not comply with the business food waste requirement. If governments remain out of compliance for more than two years, funding associated with the Recycle at Work program will also be withheld. Governments that are, in the sole opinion of Metro, actively making good faith efforts to adopt the business food waste requirement will remain eligible for associated funding. Metro will determine how any withheld funds will be utilized.

Comment [jke32]: Amended for clarity.

Comment [jke33]: Amended for clarity

Comment [jke34]: Amended for clarity.

Comment [jke35]: Amended to address concerns expressed by Hillsboro.