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Ordinance No. 19-1432

**TITLE V**

**SOLID WASTE**

- 5.00 Solid Waste Definitions
- 5.01 Solid Waste Facility Regulation<sup>1</sup>
- 5.02 Disposal Charges and User Fees
- 5.04 Recycling Business Assistance Program<sup>2</sup>
- 5.05 Solid Waste Flow Control
- 5.06 Community Enhancement Programs
- 5.07 Recycling Credits
- 5.09 Illegal Disposal<sup>3</sup>
- 5.10 ~~Regional Solid Waste Management Plan~~Regional Waste Plan

**Repealed**

- 5.03 Disposal Site Franchise Fees  
[Repealed Ord. 14-1332, Sec. 2]
- 5.08 Rate Review Committee  
[Repealed Ord. 00-860A, Sec. 2]

<sup>1</sup> Formerly "Disposal Site Franchising." Renamed by Ord. 95-621A, Sec 1.

<sup>2</sup> Formerly "One Percent for Recycling Program." Renamed by Ord. 02-937A, Sec 2.

<sup>3</sup> Formerly "Illegal Dumping." Renamed by Ord. 13-1311, Sec. 1.

## 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.

**Cleanup material** means solid waste resulting from the excavation or cleanup of releases of hazardous substances into the environment, including street sweeping waste, non-

**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).

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

**Regional system fee** means a fee that 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~~~~RWP~~-requirement** means the portions of the ~~Regional Solid Waste Management Plan~~ ~~Regional Waste 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.

**Significant disruption** means an event that disrupts access to a transfer station, creates increased risk to human health or the environment, or impacts the normal operations, transportation routes or established system of a waste hauler or a transfer station. A significant disruption event may be caused by system disruptions (such as long term road

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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 RSWMPRWP, and accepted and approved by the DEQ as part of the RSWMPRWP.

**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. 86-210, 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; Ord. 17-1410; Ord. 18-1426.]

## **CHAPTER 5.01**

### **SOLID WASTE FACILITY REGULATION**

#### **GENERAL PROVISIONS**

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

#### **APPLICATIONS FOR SOLID WASTE FACILITY LICENSES**

- 5.01.050 License Requirements and Fees
- 5.01.060 Pre-Application Conference for Licenses
- 5.01.070 Applications for Licenses
- 5.01.080 License Issuance
- 5.01.090 License Contents
- 5.01.100 Record-keeping and Reporting for Licenses
- 5.01.110 License Renewal
- 5.01.120 Transfer of Ownership or Control of Licenses
- 5.01.130 Change of Authorizations for Licenses
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#### **APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES**

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

#### **OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES**

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

#### **REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES**

- 5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms
- 5.01.290 Inspections, Audits and other Investigations of Solid Waste Facilities
- 5.01.300 Regional System Fees
- 5.01.310 Determination of Rates

## GENERAL PROVISIONS

### 5.01.010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to:
- (1) Protect and preserve the health, safety and welfare of Metro's residents;
  - (2) Implement the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan cooperatively with federal, state and local agencies;
  - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and
  - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes. [Ord. 81-111, Sec. 3; Ord. 95-621A, Sec. 2; Ord. 98-762C, Secs. 2-3; Ord. 02-974; Ord. 16-1387.]

### 5.01.020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is derived from the Oregon Constitution, ORS Chapter 268 for solid waste and the Metro Charter. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. [Ord. 98-762C, Secs. 4-5; Ord. 02-974; Ord. 16-1387.]

### 5.01.030 Prohibited Activities

Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it is unlawful for:

- (a) Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) Any person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.
- (c) A licensee or franchisee to receive, process or dispose of any solid waste unless authorized by the license or franchise.

- (6) Any current permit and a list of anticipated permits that any other governmental agency may require. If the applicant has previously applied for other permits, the applicant must provide a copy of the permit application and any permit that another governmental agency granted as a result.
- (d) An analysis of the factors described in Section 5.01.180(f) must accompany an application for a franchise. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

### **5.01.180 Franchise Issuance**

- (a) The Chief Operating Officer will review franchise applications filed under Section 5.01.170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officer considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer will make a recommendation regarding whether the:
  - (1) Applicant is qualified;
  - (2) Proposed franchise complies with the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan;
  - (3) Proposed franchise meets the requirements of Section 5.01.170; and
  - (4) Applicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer will provide the recommendations required by subsection (c) to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application. If the Chief Operating Officer recommends that Council grant the application, the Chief Operating Officer may also recommend specific conditions of the franchise.
- (e) After Council receives the Chief Operating Officer's recommendation, the Council will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, the order is effective immediately.
- (f) The Council will consider the following factors when determining whether to issue a franchise:
  - (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan;

**CHAPTER 5.02**

**DISPOSAL CHARGES AND USER FEES**

5.02.010	Purpose
5.02.020	Scale Weights Required
5.02.030	Establishment of Disposal Fees and Charges; Procedures
5.02.040	Disposal Charges at Metro South & Metro Central Station
5.02.050	Source-Separated Standard Recyclable Materials Disposal Charge Credit
5.02.060	Charges for Management of Household Hazardous Wastes
5.02.070	Charges for Conditionally Exempt Generator Waste
5.02.080	Charges for Recoverable Solid Waste
5.02.090	Charges for Direct-Haul Disposal
5.02.100	Special Waste Surcharge and Special Waste Permit Application Fees
5.02.110	Litter Control Surcharge
5.02.120	Regional System Fees
5.02.130	Regional System Fees on Cleanup Material
5.02.140	Payment to Metro
5.02.150	Account Policy at Metro Solid Waste Disposal Facilities
5.02.160	Special Exemption from Disposal Fees
5.02.170	Authority of Chief Operating Officer to Adopt and Amend, Rules, Standards, and Forms

**Repealed**

5.02.015	Definitions [Repealed Ord. 14-1331]
5.02.037	Disposal Charge for Compostable Organic Waste [Repealed Ord. 12-1277, Sec. 6]
5.02.040	Disposal Fees [Repealed Ord. 94-531, Sec. 5]
5.02.046	Special Findings for Regional System Fee Credits [Repealed Ord. 07-1147B]
5.02.050	Regional Transfer Charge [Repealed Ord. 94-531, Sec. 7]
5.02.065	Special Waste Surcharge and Special Waste Permit Application Fees; Conditionally Exempt Generator Waste [Repealed Ord. 98-720A, Sec. 25]
5.02.070	Source Separated Yard Debris Disposal Charge [Repealed Ord. 98-720A, Sec 25]
5.02.085	Out of District Waste [Repealed Ord. 98-720A, Sec 25]



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originated, or collected inside the Metro region, then the person transporting the waste has the burden of proving that the person communicated this to the operator.

- (c) Regional system fees do not apply to:
- (1) Solid waste accepted at licensed or franchised solid waste facilities, or otherwise exempt from regulation under Chapter 5.01;
  - (2) Cleanup material accepted at facilities that treat the cleanup material to applicable DEQ standards;
  - (3) Useful material that is accepted at a disposal site that is listed as a Metro designated facility in 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: (A) is intended to be used, and is in fact used, productively in the operation of the disposal site (such as for roadbeds or alternative daily cover); and (B) is accepted at the disposal site at no charge; or
  - (4) 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 the Metro license or franchise.
- (d) Designated facility operators must collect and pay to Metro the regional system fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries. There is no 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. Regional system fees are not uncollectible unless the underlying account is also uncollectible. If the operator has paid the fees previously, then the operator may take a deduction from the next payment due to Metro for the 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 fees with the return.
- (e) All regional system fees must be paid in the form of a remittance to Metro. Metro must deposit all regional system fees in the solid waste operating fund and use them only for the administration, implementation, operation and enforcement of the Regional Solid Waste Management Plan~~Regional Waste Plan~~.
- (f) If solid waste loads in the same vehicle or container contain a mixture of waste generated both inside and outside of Metro's boundaries, then the load in its entirety is considered to be generated within Metro's boundary. In such cases, the generator or waste hauler must report it and pay regional system fees on the entire load, unless the hauler or generator can provide documentation regarding the total

## **CHAPTER 5.05**

### **SOLID WASTE FLOW CONTROL**

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

### **Repealed**

- 5.05.010 Definitions  
[Repealed Ord. 14-1331]

#### **5.05.010 Purpose**

- (a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro regional boundary. The purposes of this chapter are to:
  - (1) Protect and preserve the health, safety and welfare of Metro's residents;
  - (2) Implement the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan cooperatively with federal, state and local agencies;
  - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro;
  - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and
  - (5) Protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes. [Ord. 16-1389.]

#### **5.05.020 Special Findings for Solid Waste Flow Control**

The Council makes the following findings:

- (a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste, and it is the Council's responsibility to protect and judiciously utilize Metro's limited land and resources.
- (b) Metro has developed the system as a regional waste disposal and recovery system within the framework of a ~~regional solid waste management plan~~ Regional Waste Plan, and it has done so in cooperation with federal, state and local agencies for the benefit of all Metro citizens.
- (c) Pursuant to the authority granted to Metro under ORS 268, Metro may require any person or class of persons who generate solid or liquid waste to make use of:
  - (1) The system's disposal sites or solid waste facilities, or
  - (2) Metro's designated disposal sites or solid waste facilities.
- (d) ORS 268.317 and ORS 268.360 authorize Metro to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of:
  - (1) The system's disposal sites or solid waste facilities, or
  - (2) Metro's designated disposal sites or solid waste facilities.

- (e) Under the authority granted in ORS 268.317, ORS 268.360 and the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan, this chapter's provisions authorize Metro to require persons who generate, pickup, collect or transport solid or liquid waste to make use of:
  - (1) The system's disposal sites or solid waste facilities, or
  - (2) Metro's designated disposal sites or solid waste facilities. [Ord. 89-319; Ord. 01-917, Sec. 2; Ord. 02-974; Ord. 16-1389.]

#### **5.05.030 Authority, Jurisdiction, and Application**

- (a) Metro's solid waste flow control authority is derived from ORS Chapter 268 for solid waste and the Metro Charter. It includes the authority to regulate solid waste generated within Metro.
- (b) This chapter governs:
  - (1) The transportation, transfer, disposal and other processing of all solid waste generated within Metro as authorized by state law; and
  - (2) Any person who generates solid waste within Metro; and
  - (3) Any person who transports, transfers, disposes or otherwise deals with or processes solid waste generated within Metro.
- (c) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter abridges or alters the rights of action by the State or by a person that exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter should be liberally construed to accomplish these purposes. [Ord. 89-319; Ord. 01-917, Sec. 3; Ord. 02-974; Ord. 03-1019, Sec. 2; Ord. 16-1389.]

#### **5.05.040 Prohibited Activities**

- (a) Unless a person has a valid, Metro-issued non-system license, no person may transport, or cause to be transported, solid waste generated within Metro to any solid waste facility or disposal site.
- (b) No person may falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of Metro if the waste was actually generated inside of Metro.
- (c) No person may direct another person to falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of Metro if the waste was actually generated inside of Metro. A person is deemed to have directed another person to make false statements under this subsection if the person doing the directing knew or reasonably should have known that the person

## CHAPTER 5.09

### ILLEGAL DISPOSAL

5.09.005	Title
5.09.010	Purpose
5.09.030	Jurisdiction
5.09.040	Prohibitions
5.09.050	Civil Fines and Costs
5.09.060	Persons Authorized to Issue Citations
5.09.070	Procedure for Service of Citation
5.09.080	Issuance of Warnings
5.09.090	Citation Content
5.09.100	Representation at Hearing
5.09.110	Appearance by Cited Person
5.09.120	Prehearing Discovery
5.09.130	Procedures Before Hearings Officer
5.09.140	Failure to Appear by Cited Person
5.09.150	Review of Hearings Officer Decisions
5.09.160	Collection of Civil Fines and Costs
5.09.170	Administrative Policies and Procedures
5.09.180	Severability
5.09.190	Authority to Settle

### Repealed

5.09.020	Definitions [Repealed Ord. 14-1331]
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#### 5.09.005 Title

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

#### 5.09.010 Purpose

The purposes of this chapter are:

- (a) To carry out Metro's responsibility to manage the flow of solid waste in the Portland metropolitan area;
- (b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro region;
- (c) To carry out the provisions related to illegal disposal in the ~~Regional Solid Waste Management Plan~~ Regional Waste Plan; and

## CHAPTER 5.10

### ~~REGIONAL SOLID WASTE MANAGEMENT PLAN~~ REGIONAL WASTE PLAN

- 5.10.020 Authority, Jurisdiction, and Purpose
- 5.10.030 Adoption of ~~RSWMP~~RWP
- 5.10.040 Application of Chapter
- 5.10.050 ~~RSWMP~~RWP Requirements
- 5.10.060 ~~RSWMP~~RWP Amendments
- 5.10.070 Severability
- 5.10.080 Administrative Procedures

#### COMPLIANCE PROCEDURES

- 5.10.110 Conformity to the ~~RSWMP~~RWP
- 5.10.120 Compliance with the ~~RSWMP~~RWP
- 5.10.130 Extension of Compliance Deadline
- 5.10.140 Exception from Compliance
- 5.10.150 Review by Metro Council
- 5.10.160 Technical Assistance

#### THE REGIONAL SERVICE STANDARD

- 5.10.210 Purpose and Intent
- 5.10.220 Regional Service Standard
- 5.10.230 Regional Service Standard Elements
- 5.10.240 Alternative Program and Performance Standard

#### BUSINESS RECYCLING REQUIREMENT

- 5.10.310 Purpose and Intent
- 5.10.320 Implementation Alternatives for Local Governments
- 5.10.330 Business Recycling Requirement Performance Standard
- 5.10.340 Metro Enforcement of Business Recycling Requirement
- 5.10.350 Metro Model Ordinance Required

#### BUSINESS FOOD WASTE REQUIREMENT

- 5.10.410 Purpose and Intent
- 5.10.420 Business Food Waste and Covered Businesses
- 5.10.430 Business Food Waste Requirement
- 5.10.440 Business Food Waste Requirement Performance Standards
- 5.10.450 Temporary Waiver
- 5.10.460 Metro Enforcement of Business Food Waste Requirement
- 5.10.470 Metro Model Ordinance

### Repealed

- 5.10.010 Definitions  
[Repealed Ord. 14-1331]

#### **5.10.020 Authority, Jurisdiction, and Purpose**

- (a) Metro's solid waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.
- (b) This chapter implements the ~~RSWMP~~RWP requirements. The ~~RSWMP~~RWP shall include the ~~Regional Solid Waste Management Plan~~Regional Waste Plan, including without limitation the waste reduction program.
- (c) This chapter does not abridge or alter the rights of action by the State or by a person that exist in equity, common law, or other statutes. [Ord. 08-1183A.]

#### **5.10.030 Adoption of ~~RSWMP~~RWP**

Metro has adopted the ~~RSWMP~~RWP, copies of which are on file at Metro offices, and shall implement the ~~RSWMP~~RWP as required by this chapter. [Ord. 08-1183A.]

#### **5.10.040 Application of Chapter**

This chapter shall apply to all portions of Clackamas, Washington, and Multnomah Counties within Metro's jurisdiction. [Ord. 08-1183A.]

#### **5.10.050 ~~RSWMP~~RWP Requirements**

The ~~RSWMP~~RWP is a regional plan that contains requirements that are binding on local governments of the region as well as recommendations that are not binding. The ~~RSWMP~~RWP requirements are set forth in this chapter. This chapter ensures that local governments have a significant amount of flexibility as to how they meet requirements. Standard methods of compliance are included in the chapter, but these standard methods are not the only way a local government may show compliance. Performance standards also are included in most sections. If local governments demonstrate to Metro that they meet the performance standard, they have met the requirement of that section. [Ord. 08-1183A.]

#### **5.10.060 ~~RSWMP~~RWP Amendments**

- (a) The Chief Operating Officer shall submit all proposed amendments to the ~~RSWMP~~RWP to the Council by ordinance for adoption.
- (b) Once the Council adopts an amendment to the ~~RSWMP~~RWP, the Chief Operating Officer shall submit the amended ~~RSWMP~~RWP to the DEQ for approval. If the amendment is to the waste reduction program, the Chief Operating Officer shall submit the amended ~~RSWMP~~RWP to the DEQ for acceptance and approval.
- (c) The Chief Operating Officer may correct technical mistakes discovered in the ~~RSWMP~~RWP administratively without petition, notice, or hearing. [Ord. 08-1183A.]

#### **5.10.070 Severability**

- (a) The sections of this chapter shall be severable and any action by any state agency or judgment court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.
- (b) The sections of the RSWMP-RWP shall also be severable and shall be subject to the provisions of subsection (a) of this section. [Ord. 08-1183A.]

#### **5.10.080 Administrative Procedures**

- (a) The Chief Operating Officer may issue administrative procedures governing the obligations under this chapter, including but not limited to procedures for the suspension of a material from the definition of standard recyclable materials and for additional requirements of a recycling education and promotion program.
- (b) The Chief Operating Officer may issue administrative procedures to implement all provisions of this chapter.
- (c) The Chief Operating Officer shall issue or substantially amend the administrative procedures for this chapter only after providing public notice and the opportunity to comment on the proposed language.
- (d) The Chief Operating Officer may hold a public hearing on any proposed new administrative procedure and performance standard or on any proposed amendment to any administrative procedure if the Chief Operating Officer determines that there is sufficient public interest in any such proposal. [Ord. 08-1183A.]

### **COMPLIANCE PROCEDURES**

#### **5.10.110 Conformity to the RSWMPRWP**

Local governments shall not adopt any ordinance, order, regulation, or contract affecting solid waste management that conflicts with the RSWMPRWP requirements implemented by this chapter. [Ord. 08-1183A.]

#### **5.10.120 Compliance with the RSWMPRWP**

- (a) The purpose of this section is to establish a process for determining whether local government actions comply with the RSWMPRWP requirements. The Council intends the process to be efficient and cost effective and to provide an opportunity for the Metro Council to interpret the requirements of the RSWMPRWP. Where the terms "compliance" and "comply" appear in this chapter, the terms shall have the meaning given to "substantial compliance" in Section 5.~~1000~~.010.
- (b) Local government actions shall comply with the RSWMPRWP requirements. The Chief Operating Officer shall notify local governments of the compliance date of all



RSWMPRWP requirements. On or before the compliance date, local governments shall certify in writing to the Chief Operating Officer that their local government actions comply with the RSWMPRWP requirements.

- (c) Commencing on November 1, 2010, and on November 1 each year thereafter, the Director shall submit a report to the Chief Operating Officer on local government action compliance with the RSWMPRWP requirements for the Metro fiscal year ending the previous June 30. The report shall include an accounting of local government actions that do not comply with each requirement of the RSWMPRWP. The report shall recommend action that would bring a local government into compliance with the RSWMPRWP requirements and shall advise the local government whether it may seek an extension pursuant to Section 5.10.130 or an exception pursuant to Section 5.10.140. The report also shall include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the RSWMPRWP objectivesgoals and actions.
- (d) Commencing on or after November 1, 2010, and on or after November 1 each year thereafter, the Chief Operating Officer shall provide each local government with a letter informing the local government whether its actions comply or do not comply with the RSWMPRWP requirements. The Chief Operating Officer shall provide each local government that is not in compliance with the RSWMPRWP requirements with the Director's report.
- (e) A local government provided with a report shall respond to the report within 60 days from the date of the report. The response shall contain:
  - (1) An agreement to comply with the report recommendations;
  - (2) A request for an extension under Section 5.10.130; or
  - (3) A request for an exception under Section 5.10.140.
- (f) Within 30 days of receiving the local government's response, the Chief Operating Officer shall:
  - (1) If the local government agrees to comply with the report recommendations, provide a letter to the local government describing the details of the actions required of the local government for compliance; or
  - (2) If the local government seeks an extension or exception, direct the local government to follow the procedures set forth in Section 5.10.130 or Section 5.10.140.
- (g) If the local government fails to file a response or refuses to comply with the report recommendations, the Chief Operating Officer may proceed to Council review under Section 5.10.150. A local government may seek Council review under Section 5.10.150 of a report of noncompliance under this section. [Ord. 08-1183A.]

#### **5.10.130 Extension of Compliance Deadline**

- (a) A local government may seek an extension of time for compliance with a RSWMPRWP-requirement by filing a written request for an extension with the Director.
- (b) The Director may grant an extension of the compliance deadline if the local government's written request demonstrates that: (1) the local government is making progress toward accomplishment of its compliance with the RSWMPRWP requirement; or (2) the local government has good cause for failure to meet the deadline for compliance.
- (c) The Director may establish terms and conditions for the extension to ensure that compliance is achieved in a timely and orderly fashion and that local government actions during the extension do not undermine the ability of the region to implement the RSWMPRWP. A term or condition shall relate to the requirement of the RSWMPRWP to which the Director grants the extension. The Director shall incorporate the terms and conditions into the decision on the request for extension. The Director shall not grant more than two extensions of time and shall not extend the deadline for compliance for more than one year.
- (d) The Director shall grant or deny the request for extension within 30 days of the date of the request and shall provide a copy of the decision to the local government.
- (e) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.
- (f) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.
- (g) The Chief Operating Officer's order regarding an extension is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review. [Ord. 08-1183A.]

#### **5.10.140 Exception from Compliance**

- (a) A local government may seek an exception from compliance with a RSWMPRWP requirement by filing a written request for an exception with the Chief Operating Officer.
- (b) The Chief Operating Officer shall prepare a report on the written request. The report shall recommend whether to grant or deny the exception and shall analyze whether:

- (1) The exception and any similar exceptions will prevent the Metro region from achieving the RSWMPRWP goals;
  - (2) The exception will reduce the ability of another local government to comply with the requirement; and
  - (3) The local government has adopted other measures more appropriate for the local government to achieve the intended result of the requirement.
- (c) The Chief Operating Officer's report may establish terms and conditions for the exception to ensure that it does not undermine the ability of Metro to implement its responsibilities under the RSWMPRWP. Any term or condition shall relate to the requirement of the RSWMPRWP from which the local government seeks exception.
  - (d) The Chief Operating Officer shall issue the report within 60 days of the date of the request. The Chief Operating Officer shall provide a copy to the local government and shall file a written request for review and public hearing with the Council President.
  - (e) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer's report. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing and shall publish the report at least 14 days before the public hearing.
  - (f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.
  - (g) The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for an analysis of the factors listed in subsection (b). The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.
  - (h) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review. [Ord. 08-1183A.]

#### **5.10.150 Review by Metro Council**

- (a) A local government may seek review of ( 1 ) the letter and report of noncompliance provided by the Chief Operating Officer under Section 5.10.120 ; and (2) a decision that a local government does not meet a performance standard by filing a written request for review and public hearing with the Council President.
- (b) The Chief Operating Officer may seek review by the Council of any local government action that does not comply with the RSWMPRWP requirements, this chapter, or both by filing a written request for review and public hearing with the Council

President. The Chief Operating Officer shall provide a copy of the request to the local government.

- (c) The Chief Operating Officer shall consult with the local government and the Director before the Chief Operating Officer determines there is good cause for a public hearing under subsection (d).
- (d) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer or local government's request for review. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing.
- (e) The Chief Operating Officer shall prepare a report and recommendation on the matter for consideration by the Metro Council. The Chief Operating Officer shall publish the report at least 14 days before the public hearing and provide a copy to the local government.
- (f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.
- (g) If the Metro Council concludes that the local government action does not violate the RSWMPRWP requirements or this chapter, the Council shall enter an order dismissing the matter. If the Council concludes that the local government action does violate the RSWMPRWP requirements, this chapter, or both, the Council shall issue an order that identifies the noncompliance and directs changes in the local government action.
- (h) The Council shall issue its order, with analysis and conclusions, no later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for its findings and conclusions related to compliance with this chapter. The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.
- (i) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review. [Ord. 08-1183A.]

#### **5.10.160 Technical Assistance**

The Chief Operating Officer shall encourage local governments to take advantage of the programs of technical and financial assistance provided by Metro to help achieve compliance with the requirements of this chapter. [Ord. 08-1183A.]

## **THE REGIONAL SERVICE STANDARD**

### **5.10.210 Purpose and Intent**

Local governments shall adopt and implement the regional service standard or alternative program as required by the RSWMPRWP and as specified in this chapter and the administrative procedures. The regional service standard ensures a comprehensive and consistent level of recycling service for the region and assists the region in meeting state recovery goals. [Ord. 08-1183A.]

### **5.10.220 Regional Service Standard**

- (a) By January 1, 2009, local governments shall implement the regional service standard either by:
  - (1) Adopting the provisions of Metro Code Section 5.10.230(a) through (d); or
  - (2) Adopting an alternative program that meets the performance standard and that is approved by Metro in accordance with Metro Code Section 5.10.240.
- (b) The local government shall provide information related to compliance with this requirement at the Director's request or as required by the administrative procedures. [Ord. 08-1183A.]

### **5.10.230 Regional Service Standard Elements**

The following shall constitute the regional service standard under the RSWMPRWP:

- (a) For single-family residences, including duplexes, triplexes, and fourplexes, the local government shall:
  - (1) Ensure provision of at least one (1) recycling container to each residential customer;
  - (2) Ensure provision of weekly collection of all standard recyclable materials; and
  - (3) Ensure provision of a residential yard debris collection program that includes weekly on-route collection of yard debris for production of compost from each residential customer or equivalent on-route collection of yard debris for production of compost if granted approval for an alternative program under Metro Code Section 5.10.240.
- (b) For multi-family residences, the local government shall ensure provision of regular collection of standard recyclable materials for each multi-family dwelling community having five (5) or more units.
- (c) For businesses, the local government shall ensure provision of regular collection of standard recyclable materials.