

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

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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 This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1439 that collectively remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types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