

TITLE V

SOLID WASTE

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CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

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## GENERAL PROVISIONS

### 5.01.010 Definitions

For the purposes of this chapter unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "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; but excluding operations or functions such as Segregation that serve to support the primary Activity.

(b) "Agronomic application rate" has the meaning provided in OAR 340-093-0030(4).

(c) "Chief Operating Officer" means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

(d) "Cleanup Material Contaminated By Hazardous Substances" means solid waste resulting from the cleanup of releases of hazardous substances into the environment, including petroleum contaminated soils and sandbags from chemical spills. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(e) "Closure" means the restoration of a Solid Waste Facility or a Disposal Site to its condition prior to the commencement of licensed or franchised Solid Waste activities at the site. Closure includes, but is not limited to, the removal of all accumulations of Solid Waste and Recyclable Materials from the site.

(f) "Code" means the Metro Code.

(g) "Compost" means the stabilized product of composting.

(h) "Composting" means the controlled biological decomposition of organic material.

(i) "Composting Facility" means a site or facility which utilizes organic material to produce a useful product through the process of composting.

(j) "Council" means the Metro Council.

(k) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(l) "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 this chapter.

(m) "Disposal site" means the land and facilities used for the disposal of Solid Wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(n) "District" has the same meaning as in Code Section 1.01.040.

(o) "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 other forms of energy, of or from the material.

(p) "Franchise" means the grant of authority or privilege given by the Council to operate a Disposal Site, Transfer Station, or an Energy Recovery facility, or to conduct any activity specified in Section 5.01.045(b) of this chapter.

(q) "Franchisee" means the person to whom a Franchise is granted by the Council under this chapter.

(r) "Franchise fee" means the fee charged by Metro to the Franchisee for the administration of the Franchise.

(s) "Hazardous waste" has the meaning provided in ORS 466.005.

(t) "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.

(u) "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.

(v) "License" means the permission given by the Council or Chief Operating Officer to operate a Solid Waste Facility not exempted or requiring a Franchise under this chapter that Transfers, and Processes Solid Waste, and may perform other authorized Activities.

(w) "Licensee" means the person to whom a License is granted by the Council or Chief Operating Officer under this chapter.

(x) "Local Transfer Station" means a Transfer Station that serves the demand for disposal of Putrescible Waste that is generated within a single Service Area, and may provide fewer disposal services than are provided by a Regional Transfer Station.

(y) "Material recovery" means a type of Resource Recovery that is limited to mechanical methods of obtaining from Solid Waste materials which still have useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material Recovery includes obtaining from Solid Waste materials used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

(z) "Metro Designated Facility" means a facility in the system of transfer stations, Metro Franchised facilities and landfills authorized under Chapter 5.05 of this Title to accept waste generated in the area within the jurisdiction of Metro.

(aa) "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 category includes construction waste and demolition waste but excludes Cleanup Materials Contaminated by Hazardous Substances, Source-Separated Recyclable Material, special waste, land clearing debris and yard debris.

(bb) "Person" has the same meaning as in Code Section 1.01.040.

(cc) "Petroleum contaminated soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

(dd) "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; but excluding incineration or mechanical volume reduction techniques such as baling and compaction.

(ee) "Processing facility" means a place or piece of equipment where or by which Solid Wastes are processed. This definition 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.

(ff) "Processing residual" means the Solid Waste destined for disposal which remains after Resource Recovery has taken place.

(gg) "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.

(hh) "Putrescible waste" means Waste containing Putrescible material.

(ii) "Rate" means the amount approved by Metro and charged by the Franchisee, excluding the Regional System Fee as established in Chapter 5.02 of this Title and franchise fee.

(jj) "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).

(kk) "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.

(ll) "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.

(mm) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

(nn) "Regional Transfer Station" means a Transfer Station that may serve the disposal needs of more than one Service Area and is required to accept solid waste from any person who delivers authorized solid waste to the Regional Transfer Station.

(oo) "Reload" or "Reload facility" means a facility that performs only Transfer and delivers all solid waste received at the facility to another Solid Waste facility after it receives such solid waste, generally within 24 hours of receipt.

(pp) "Resource recovery" means a process by which useful material or energy resources are obtained from Solid Waste.

(qq) "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.

(rr) "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.

(ss) "Service Area" means the geographic locale around a solid waste facility that is defined by the characteristic that every point within such area is closer in distance to the solid waste facility contained in such area than to any other solid waste facility or disposal site. As used in this definition,

"distance" shall be measured over improved roads in public rights-of-way.

(tt) "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 as defined in ORS 459.386; and other such wastes, including without limitation cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (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.

(uu) "Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

(vv) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

(ww) "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.

(xx) "Special waste" means any waste (even though it may be part of a delivered load of waste) which one or more of the following categories describes:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below.
- (2) Waste transported in a bulk tanker.
- (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) which once held commercial products or chemicals, unless the containers (or drums) are empty. A container is empty when:
  - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
  - (B) One end has been removed (for containers in excess of 25 gallons); and
    - (i) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
    - (ii) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or

(iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

- (C) Containers that once held acutely hazardous wastes must be triple-rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple-rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured and be dry and free of contamination to be accepted as refuse.
- (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 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) Radioactive waste.

- (14) Medical waste.

(yy) "Transfer" means the Activity of receiving Solid Waste for purposes of transferring the Solid Waste 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, but does not include Resource Recovery or other Processing of Solid Waste.

(zz) "Transfer station" means a Solid Waste Facility whose primary Activities include, but are not limited to, the Transfer of Solid Waste.

(aaa) "Useful material" means material that still has or retains 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). Types of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover. For purposes of this Code, Cleanup Material Contaminated By Hazardous Substances are not Useful Materials.

(bbb) "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.

(ccc) "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.

(ddd) "Waste hauler" means any person who is franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul Solid Waste.

(eee) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other vegetative waste having similar properties, but does not include demolition debris, painted or treated wood.

(fff) "Yard debris facility" means a yard debris processing facility or a yard debris reload facility.

(ggg) "Yard debris reload facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

(Ordinance No. 81-111, Sec. 2. Amended by Ordinance No. 91-422B, Sec. 1; Ordinance No. 95-621A, Sec. 2; Ordinance No. 98-762C, Sec. 1; Ordinance No. 00-866, Sec. 1; Ordinance No. 01-914, Sec. 1; Ordinance No. 01-916C, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 1; Ordinance No. 06-1101; Ordinance No. 07-1147B, Sec. 1.)

#### 5.01.020 Purpose

This chapter governs the regulation of Solid Waste Disposal Sites and Solid Waste Facilities within Metro. The purposes of this chapter are to protect and preserve the health, safety and welfare of Metro's residents; to implement cooperatively with federal, state and local agencies the Regional Solid Waste Management Plan; to provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and to reduce the volume of Solid Waste disposal through source reduction, recycling, reuse and resource recovery. The provisions of this chapter shall be liberally construed to accomplish these purposes.

(Ordinance No. 81-111, Sec. 3. Amended by Ordinance No. 95-621A, Sec. 2. Repealed by Ordinance No. 98-762C, Sec. 2; replaced by Ordinance No. 98-762C, Sec. 3. Amended by Ordinance No. 02-974, Sec. 1.)

#### 5.01.025 Authority and Jurisdiction

(a) Metro's Solid Waste regulatory authority is established under the Constitution of the State of Oregon, ORS Chapter 268 for Solid Waste and the Metro Charter and includes authority to regulate Solid Waste generated or disposed within Metro and all Solid Waste Facilities located within Metro.

(b) All Solid Waste regulation shall be 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.

(Ordinance No. 98-762C, Secs. 4-5. Amended by Ordinance No. 02-974, Sec. 1.)

#### 5.01.030 Prohibited Activities

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

(a) For 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) For 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) For a recipient of a License or Franchise to receive, process or dispose of any Solid Waste not authorized under the recipient's License or Franchise.

(d) For any person to deliver or transport any Solid Waste to or to dispose of any Solid Waste at any place other than a Solid Waste Facility or Disposal Site that is operated by a holder of a License or Franchise or is exempt under Section 5.01.040 of this chapter.

(e) For a holder of a License or Franchise to fail to comply with the administrative procedures or fail to meet the performance standards adopted pursuant to Section 5.01.132 of this chapter.

(f) For any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.

(Ordinance No. 81-111, Sec. 4. Amended by Ordinance No. 87-217, Sec. 1; Ordinance No. 95-621A, Sec. 3; Ordinance No. 98-762C, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 2; Ordinance No. 06-1102, Sec. 1.)

#### 5.01.040 Exemptions

(a) In furtherance of the purposes set forth in this chapter, except as provided in Sections 5.01.040(b) through (d) below, the Metro Council declares the provisions of this chapter shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by Metro.
- (3) Facilities that (A) exclusively receive non-Putrescible Source-Separated Recyclable Materials, and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes.
- (5) The following operations, which do not constitute Yard Debris Facilities:

- (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
  - (B) Residences, parks, community gardens and homeowner associations.
  - (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
  - (D) Operations or facilities that chip or grind wood wastes, unless:
    - (i) such chipped or ground wood wastes are processed for composting; or
    - (ii) such operations or facilities are otherwise regulated under Metro Code Section 5.01.045.
- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if Metro finds an emergency situation exists.
- (7) Any Reload facility that:
- (A) Accepts Solid Waste collected under the authority of a single solid waste collection franchise granted by a local government unit, or from multiple solid waste collection franchises so long as the area encompassed by the franchises is geographically contiguous; and
  - (B) Is owned or controlled by the same person granted franchise authority ascribed in subsection (A); and
  - (C) Delivers any Putrescible Waste accepted at the operation or facility to a Transfer

Station owned, operated, Licensed or Franchised by Metro; and

(D) Delivers all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another solid waste facility under authority of a Metro Non-System License issued pursuant to Chapter 5.05.

(8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding Section 5.01.040(a), all persons shall comply with Sections 5.01.030(a), (b), (d) and (f).

(c) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shall comply with Section 5.01.150 of this chapter.

(d) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the provisions of Section 5.01.135 of this chapter shall apply to operations and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter.

(Ordinance No. 81-111, Sec. 5. Amended by Ordinance No. 82-136, Sec. 1; Ordinance No. 91-422B, Sec. 2; Ordinance No. 95-621A, Sec. 4; Ordinance No. 98-762C, Sec. 7; Ordinance No. 00-866, Sec. 2; Ordinance No. 02-933, Sec. 1; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 3; Ordinance No. 06-1102, Sec. 2; Ordinance No. 07-1147B, Sec. 2.)

#### 5.01.045 License and Franchise Requirements

(a) A Metro Solid Waste License shall be required of the Person owning or controlling a facility at which any of the following Activities are performed:

- (1) Processing of Non-Putrescible Waste.
- (2) Processing of Petroleum Contaminated Soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.

- (3) Processing or Reloading of Yard Debris. A local government that owns or operates a Yard Debris Facility may enter into an intergovernmental agreement with Metro under which the local government will administer and enforce yard debris standards at the facility in lieu of compliance with this chapter.
- (4) Operating a Reload.
- (5) Chipping or grinding wood waste for use as an industrial fuel if such facility is otherwise regulated under this Section 5.01.045 of this chapter.

(b) A Metro Solid Waste Franchise shall be required for the Person owning or controlling a facility at which any of the following Activities are performed:

- (1) Processing of Putrescible Waste other than Yard Debris.
- (2) Operating a Transfer Station.
- (3) Operating a Disposal Site or an Energy Recovery Facility.
- (4) Any process using chemical or biological methods whose primary purpose is reduction of Solid Waste weight or volumes.
- (5) Any other Activity not listed in this section or exempted by Metro Code Section 5.01.040.

(Ordinance No. 98-762C, Secs. 8-9. Amended by Ordinance No. 00-866, Sec. 3; Ordinance No. 02-933, Sec. 2; Ordinance No. 03-1018A, Sec 4.)

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

### 5.01.055 Pre-Application Conference

(a) All prospective applicants for a Franchise or License shall participate in a pre-application conference. The purpose of such conference shall be to provide the prospective applicant with information regarding the applicable requirements for the proposed facility and to obtain from the prospective applicant a description of the location, site conditions and operations of the proposed facility.

(b) If a prospective applicant for a License or Franchise does not file an application for a License or Franchise within one year from the date of the pre-application conference, such applicant shall participate in a subsequent pre-application conference prior to filing any License or Franchise application.

(Ordinance No. 98-762C, Secs. 11-12. Amended by Ordinance No. 02-974, Sec. 1.)

### 5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (3) A duplicate copy of any Closure plan required to be submitted to DEQ, or if DEQ does not require a

Closure plan, a Closure document describing Closure protocol for the Solid Waste Facility at any point in its active life;

- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of Closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit a proposal for providing financial assurance prior to the commencement of Metro-regulated activities for the costs of Closure of the facility. The proposal shall include an estimate of the cost to implement the Closure plan required in Section 5.01.060(c)(3). If an application is approved, the license or franchise shall require that financial assurance is in place prior to beginning any activities authorized by the license or franchise. However, regarding applications for licenses, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the Closure plan required in Section 5.01.060(e)(3) will be less than \$10,000.
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;
- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of

compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and

- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

(e) Notwithstanding any other provision in this section, the Chief Operating Officer shall not accept for filing any application for authority to operate a new Transfer Station until December 31, 2008.

(Ordinance No. 81-111, Sec. 7. Amended by Ordinance No. 82-136, Sec. 2; Ordinance No. 91-422B, Sec. 3; Ordinance No. 95-621A, Sec. 5; Ordinance No. 98-762C, Sec. 13; Ordinance No. 00-866, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 5; Ordinance No. 04-1056, Sec. 1; Ordinance No. 05-1093, Sec. 1; Ordinance No. 06-1098B, Sec. 1; Ordinance No. 06-1101; Ordinance No. 07-1139, Sec. 1; Ordinance No. 07-1161, Sec. 1.)

#### 5.01.062 Application Fees

(a) Upon the filing of an application, every applicant for a License or Franchise, or for renewal of an existing License or Franchise, shall submit an application fee as provided in this section.

(b) Application fees shall be as follows:

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- (1) For a Solid Waste Facility License, three hundred dollars (\$300).
- (2) For a Solid Waste Facility Franchise, five hundred dollars (\$500).

(Ordinance No. 98-767, Secs. 1-2. Amended by Ordinance No. 03-1018A, Sec 6.)

5.01.067 Issuance and Contents of Licenses

(a) Applications for Licenses filed in accordance with Section 5.01.060 shall be subject to approval or denial by the Chief Operating Officer, with such conditions as the Chief Operating Officer may deem appropriate.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed site.

(c) Prior to determining whether to approve or deny each License application, the Chief Operating Officer shall provide public notice and the opportunity for the public to comment on the License application.

(d) On the basis of the application submitted, the Chief Operating Officer's investigation concerning the application, and public comments, the Chief Operating Officer shall determine whether the proposed License meets the requirements of Section 5.01.060 and whether to approve or deny the application.

(e) Notwithstanding the authority to approve or deny any application for a solid waste license set forth in subsection (d), if the Chief Operating Officer (i) decides to approve an application for a new license for any facility whose operations will have a substantial effect on any adjacent residential neighborhood, or (ii) decides to approve an amendment to an existing solid waste license to allow for a substantial change in the configuration used at a site for processing solid waste or to allow for a substantial change in the type or quantity of solid waste processed at the facility, the Chief Operating Officer shall inform the Council President in writing no fewer than ten (10) days before the Chief Operating Officer approves any such solid waste license application. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. Thereafter, the majority of the Council may determine whether to review and consider the license application within ten (10) days of receipt of the notice from the Chief Operating Officer. If the Council determines to review and consider the application for the license, execution by the Chief Operating Officer shall be subject to the Council's authorization. If the Council determines not to review and

consider the application, the Chief Operating Officer may execute the license. For the purpose of this subsection (e), a "substantial effect" shall include any occurrence that arises from the solid waste operation conditions that are regulated under the license and affects the residents' quiet enjoyment of the property on which they reside.

(f) If the Chief Operating Officer does not act to grant or deny a License application within 120 days after the filing of a complete application, the License shall be deemed granted for the Solid Waste Facility or Activity requested in the application, and the Chief Operating Officer shall issue a License containing the standard terms and conditions included in other comparable licenses issued by Metro.

(g) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall be restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. An applicant may withdraw its application at any time prior to the Chief Operating Officer's decision and may submit a new application at any time thereafter.

(h) If a request for a License is denied, no new application for this same or substantially similar License shall be filed by the applicant for at least six months from the date of denial.

(i) Licenses shall specify the Activities authorized to be performed, the types and amounts of Wastes authorized to be accepted at the Solid Waste Facility, and any other limitations or conditions attached by the Chief Operating Officer. In addition to all other requirements of this section, a license approving acceptance of mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be subject to the performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Section 5.01.132, and shall require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. Facilities shall be designed and operated to preclude the creation of undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper

acceptance and management of hazardous waste asbestos and other prohibited wastes.

- (2) Health and safety. Facilities shall be designed and operated to preclude the creation of conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. Facilities shall be designed and operated to preclude the creation of nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material recovery. Facilities conducting material recovery on non-putrescible waste shall be designed and operated to assure materials are recovered in a timely manner, to meet standards in Section 5.01.125, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities conducting reloading of non-putrescible waste shall be designed and operated to assure that the reloading and transfer of non-putrescible waste to Metro authorized processing facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record keeping. Facilities shall keep and maintain complete and accurate records of the amount of all solid waste and recyclable materials received, recycled, reloaded and disposed.

(j) The term of a new or renewed License shall be not more than five years.

(Ordinance No. 98-762C, Secs. 16-17. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 8; Ordinance No. 06-1098B, Sec. 2; Ordinance No. 07-1138, Sec. 1; Ordinance No. 07-1139, Sec. 2.)

#### 5.01.070 Issuance of Franchise

(a) Applications for Franchises filed in accordance with Section 5.01.060 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed Franchise site.

(c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed Franchise complies with the Regional Solid Waste Management Plan, whether the proposed Franchise meets the requirements of Section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(d) The Chief Operating Officer shall provide the recommendations required by subsection (c) of this section to the Council, together with the Chief Operating Officer's recommendation regarding whether the application should be granted or denied. If the Chief Operating Officer recommends that the application be granted, the Chief Operating Officer shall recommend to the Council specific conditions of the Franchise.

(e) Subsequent to receiving the recommendation of the Chief Operating Officer, the Council shall 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, such order shall be effective immediately.

(f) In determining whether to authorize the issuance of a Franchise, the Council shall consider, but not be limited by, the following factors:

- (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;

- (2) The effect that granting a Franchise to the applicant will have on the cost of solid waste disposal and recycling services for the citizens of the region;
- (3) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents;
- (4) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;
- (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise.

(g) The Council shall act to grant or deny a Franchise application within 120 days after the filing of a complete application. The deadline for the Council to act to grant or deny an application may be extended as provided in this section. If the Council does not act to grant or deny an application by the deadline for such action, the Franchise shall be deemed granted for the Solid Waste Facility or Disposal Site requested in the application, and the Chief Operating Officer shall issue a Franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.

(h) At any time after the filing of a complete Franchise application the deadline for the Council to act to grant or deny the application shall be extended if:

- (1) The Council acts to extend the deadline for up to an additional 60 days, which the Council may do one time for any single application;
- (2) The applicant substantially modifies the application during the course of the review, in

which case the 120 days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or

- (3) The applicant and the Chief Operating Officer agree to extend the deadline for the Council to act for a specified period of time.

(i) An applicant may withdraw its application at any time prior to the Council's decision and may submit a new application at any time thereafter.

(j) If a request for a Franchise is denied, no new application for this same or substantially similar Franchise shall be filed by the applicant for at least six months from the date of denial.

(k) The term of a new or renewed Franchise shall be not more than five years.

(l) Notwithstanding any other provision in this section, no application for authority to operate a Transfer Station that was received after August 19, 2004, shall be granted during the period commencing August 19, 2004, and continuing until December 31, 2007.

(Ordinance No. 81-111, Sec. 8. Amended by Ordinance No. 82-136, Sec. 3; Ordinance No. 98-762C, Sec. 18; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 9; Ordinance No. 04-1056, Sec. 2; Ordinance No. 05-1093, Sec. 2.)

#### 5.01.075 Contents of Franchise

(a) The Franchise shall constitute a grant of authority from the Council to accept the Waste(s) and perform the Activity(s) described therein, the conditions under which these Activities may take place and the conditions under which the authority may be revoked.

(b) Franchises approved by the Council shall be in writing and shall include the following:

- (1) The term of the Franchise;
- (2) The specific Activities authorized to be performed and the types and amounts of Wastes

authorized to be accepted at the Solid Waste Facility;

- (3) Such other conditions as the Council deems necessary to insure that the intent and purpose of this chapter will in all respects be observed; and
- (4) Indemnification of Metro in a form acceptable to the Metro Attorney.

(c) In addition to all other requirements of this section, a franchise approving acceptance of mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be subject to the performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Section 5.01.132, and shall require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. Facilities shall be designed and operated to preclude the creation of undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
- (2) Health and safety. Facilities shall be designed and operated to preclude the creation of conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. Facilities shall be designed and operated to preclude the creation of nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material recovery. Facilities conducting material recovery on non-putrescible waste shall be designed and operated to assure materials are recovered in a timely manner, to meet standards in Section 5.01.125, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.

- (5) Reloading. Facilities conducting reloading of non-putrescible waste shall be designed and operated to assure that the reloading and transfer of non-putrescible waste to Metro authorized processing facility is conducted rapidly and efficiently while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record keeping. Facilities shall keep and maintain complete and accurate records of the amount of all solid waste and recyclable materials received, recycled, reloaded and disposed.

(Ordinance No. 98-762C, Secs. 19-20. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 10; Ordinance No. 07-1138, Sec. 2.)

#### 5.01.087 Renewal of Licenses and Franchises

(a) The Chief Operating Officer shall renew a Solid Waste Facility License unless the Chief Operating Officer determines that the proposed renewal is not in the public interest, provided that the Licensee files a completed application for renewal accompanied by payment of an application fee of three hundred dollars (\$300) not less than 120 days prior to the expiration of the License term, together with a statement of proposed material changes from its initial application for the License and any other information required by the Chief Operating Officer. The Chief Operating Officer may attach conditions or limitations to any renewed License.

(b) The Council shall approve or deny renewals of Solid Waste Facility Franchises. A Franchisee seeking renewal of a Franchise shall file a completed application for renewal accompanied by payment of an application fee of five hundred dollars (\$500) not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the Franchise and any other information required by the Chief Operating Officer or by the Council. The Chief Operating Officer shall formulate recommendations regarding whether the renewal meets the criteria in Section 5.01.070 of this chapter. The Council shall approve renewal of a Solid Waste Facility Franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria contained in

Section 5.01.070. The Council may attach conditions or limitations to the renewed Franchise.

(Ordinance No. 98-762C, Secs. 22-23. Amended by Ordinance No. 98-767, Sec. 3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 11.)

#### 5.01.090 Transfer of Ownership or Control

(a) Any Person in control of a License or Franchise may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, control of the License or Franchise to another person unless an application therefor has been filed in accordance with Section 5.01.060 and has been granted. The proposed transferee of a License or Franchise must meet the requirements of this chapter.

(b) The Council shall not unreasonably deny an application for transfer of a Franchise. If the Council does not act on the application for transfer within 120 days after filing of a complete application, the application shall be deemed granted.

(c) The Chief Operating Officer shall not unreasonably deny an application for transfer of a License. If the Chief Operating Officer does not act on the application for transfer within 120 days after filing of a complete application, the application shall be deemed granted.

(d) The term for any transferred Franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

(e) The term for any transferred License shall be for the remainder of the original term unless the Chief Operating Officer establishes a different term based on the facts and circumstances at the time of transfer.

(Ordinance No. 81-111, Sec. 10. Amended by Ordinance No. 98-762C, Sec. 24; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 12.)

#### 5.01.095 Change of Authorizations

(a) A Person holding a License or Franchise shall submit an application pursuant to Section 5.01.060 when said Person seeks authorization to:

- (1) Accept Wastes other than those authorized by the applicant's License or Franchise, or
- (2) Perform Activities other than those authorized by the applicant's License or Franchise, or
- (3) Modify other limiting conditions of the applicant's License or Franchise.

(b) Applications for a change in authorization or limits shall be filed on forms or in the format provided by the Chief Operating Officer.

(c) An application for a change in authorizations or limits to the applicant's License or Franchise shall not substitute for an application that would otherwise be required under Section 5.01.045 of this chapter.

(d) A Person holding a License or Franchise shall notify Metro in writing when said Person proposes to cease accepting authorized Wastes or cease performing authorized Activities at the Solid Waste Facility or Disposal Site.

(e) The fee for applications for changes of authorizations or limits shall be one hundred dollars (\$100).

(Ordinance No. 98-762C, Secs. 25-26. Amended by Ordinance No. 98-767, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 13.)

#### 5.01.100 Appeals

Any applicant, Franchisee or Licensee is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a Franchise or License or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, refusal to renew a Franchise or License by the Council or Chief Operating Officer, as appropriate, shall not become effective until the Franchisee or Licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(b) The refusal by the Council or Chief Operating Officer, as appropriate, to grant a variance, or to issue, modify or transfer a Franchise or License shall be effective immediately. The Franchisee, Licensee or applicant may request a hearing on such refusal within 30 days of notice of such refusal.

(c) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a Franchise or License or the Council or Chief Operating Officer, as appropriate, may refuse to renew a Franchise or License and such action shall be effective immediately. If a Franchise or License renewal is refused effective immediately, the Franchisee or Licensee shall have 30 days from the date of such action to request a contested case hearing.

(Ordinance No. 81-111, Sec. 11. Amended by Ordinance No. 95-621A, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 14.)

#### 5.01.110 Variances

(a) The Council, upon recommendation of the Chief Operating Officer, may grant specific variances from particular requirements of this chapter to applicants for Licenses or Franchises or to Licensees or Franchisees upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular License or Franchise requirement can be achieved without compliance and that compliance with the particular requirement:

- (1) Is inappropriate because of conditions beyond the control of the applicant, Licensee, or Franchisee requesting the variance; or
- (2) Due to special physical conditions or causes, will be rendered extremely burdensome or highly impractical.

(b) A variance must be requested by a License or Franchise applicant, or a Licensee or Franchisee, in writing and state in a concise manner facts to show cause why such variance should be granted. The Chief Operating Officer may make such investigation as the Chief Operating Officer deems necessary and shall make a recommendation to the Council to approve or deny the variance coincident with any recommendation made on approval or denial of any License or Franchise application; or, upon a

request for variance from an existing Licensee or Franchisee, within 60 days after receipt of the variance request.

(c) A request for a variance shall not substitute for an application that would otherwise be required under Section 5.01.045 of this chapter.

(d) If the Council denies a variance request, the Chief Operating Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(e) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six months from the date of denial.

(Ordinance No. 81-111, Sec. 12. Amended by Ordinance No. 98-762C, Sec. 27; Ordinance No. 02-974, Sec. 1.)

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

### 5.01.120 General Obligations of All Regulated Parties

All Persons regulated by this chapter shall:

(a) Allow the Chief Operating Officer to have reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the License or Franchise, and the performance standards and administrative procedures adopted pursuant to Section 5.01.132 of this chapter.

(b) Ensure that Solid Waste transferred from the facility goes to the appropriate destination under Section 5.01.132(a) of this chapter, under Metro Code Chapter 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.

(c) Maintain during the term of the License or Franchise the types of insurance in the amounts specified in the License or Franchise or such other amounts as may be required by state law for public contracts and shall give 30 days written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(d) Shall indemnify Metro, the Council, the Chief Operating Officer, and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the Licensee's or Franchisee's performance of or failure to perform any of its obligations under the License or Franchise or this chapter.

(e) Shall have no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the License or Franchise or because of the enforcement of the License or Franchise or in the event the License or Franchise or any part thereof is determined to be invalid.

(Ordinance No. 81-111, Sec. 13. Amended by Ordinance No. 98-762C, Sec. 28; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 15.)

5.01.125 Obligations and Limits for Selected Types of Activities

(a) A holder of a License or Franchise for a Material Recovery facility or Transfer Station issued after July 1, 2000, shall perform Material Recovery from Non-Putrescible Waste accepted at the facility as specified in this section or as otherwise specified in its license or franchise, or shall deliver such Non-Putrescible Waste to a Solid Waste facility authorized by Metro to recover useful materials from Solid Waste.

(b) A licensee or franchisee subject to subsection (a) of this section shall recover at least 25% by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code Sections 5.01.180 and 5.01.200. After December 31, 2008, the requirements of this subsection will not be applicable to licensees or franchisees unless Metro Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.125(c).

(c) Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shall:

- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. Processing residual from such a facility shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension.
- (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of such sampling to Metro in the monthly report due the month following the end of that quarter.
- (3) Based on observation, audits, inspections and reports, Metro inspectors shall conduct or require additional

analysis of waste residual at the facility in accordance with Section 5.01.135(c). Failure to maintain the recovery level specified in subsection (c)(1) of this section shall constitute a violation enforceable under Metro Code. The first two violations of this subsection by a single licensee or franchisee shall not result in the imposition of a civil penalty.

(4) Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute a violation enforceable under Metro Code after June 30, 2009.

(d) A holder of a Franchise for a Local Transfer Station:

(1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.

(2) Shall not accept hazardous waste.

(3) Shall be limited in accepting Putrescible Waste during any fiscal year to an amount of Putrescible Waste equal to the demand for disposal of Putrescible Waste generated within a Service Area as specified in accordance with this chapter.

(4) Shall accept Solid Waste from any Waste Hauler who operates to serve a substantial portion of the demand for disposal of Solid Waste within the Service Area of the Local Transfer Station.

(e) A holder of a Franchise for a Regional Transfer Station, in accordance with its franchise:

(1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility, on the days and at the times established by Metro in approving the Franchise application.

(2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid

Waste Facility, on the days and at the times established by Metro in approving the Franchise application.

- (3) Shall provide an area for collecting source-separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.

(f) A holder of a license for a reload facility shall deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.

(g) A holder of a license or franchise for a solid waste facility shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by Metro in an operating plan.

(Ordinance No. 98-762C, Secs. 30-31. Amended by Ordinance No. 00-866, Sec. 5; Ordinance No. 01-916C, Sec. 4; Ordinance No. 02-952A, Sec. 1; Ordinance No. 03-1018A, Sec 16; Ordinance No. 07-1147B, Sec. 3.)

#### 5.01.127 Direct Haul of Putrescible Waste

Franchisees authorized by Metro to deliver Putrescible Waste directly to a Disposal Site shall:

(a) Deliver said Putrescible Waste to Metro's contract operator for disposal of Putrescible Waste; and

(b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to Section 5.01.132 of this chapter; and

(c) Provide transportation or arrange for transportation by a transportation service provider complying with the following performance standards for long-haul transportation by highway:

- (1) All solid waste transported through the city limits of Arlington, Oregon, shall be subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
- (2) All equipment shall fulfill all federal, state, and local regulations. In addition, the use of exhaust brakes shall be prohibited altogether.
- (3) All solid waste shall be transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and shall be capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.
- (4) The average weight of solid waste payloads transported during each calendar month shall be no less than 25 tons.
- (5) Any staging areas used shall be located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles shall use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- (7) Use of rest areas, turnouts, scenic vista points, and state parks shall be limited to cases of emergency.
- (8) Transportation shall not be conducted in the Columbia River Gorge NSA during the following times:
  - (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
  - (B) Daylight hours on Saturdays in June, July, August, and September.

- (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste shall be transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste shall be transported by use of vehicles and equipment that shall be suitably painted and present an acceptable appearance.
- (11) A representative of Franchisee and its transportation carrier shall annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The Franchisee shall report to Metro any accidents, citations, and vehicle inspections involving vehicles of their transportation carrier during the transporting of solid waste on behalf of the Franchisee.
- (13) A representative of Franchisee and its transportation carrier shall meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The Franchisee shall immediately report any violations of this subsection to Metro.

(Ordinance No. 98-762C, Secs. 32-33. Amended by Ordinance No. 02-974, Sec. 1.)

## REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

### 5.01.131 Designation and Review of Service Areas and of Demand

(a) The Chief Operating Officer shall designate Service Areas and shall calculate demand for disposal of Putrescible Waste generated within each Service Area. Demand shall be determined by calculating the approximate tonnage of putrescible waste for each service area.

(b) By March 15 of each even-numbered year, the Chief Operating Officer shall provide a written report to the Metro Council that includes:

- (1) A quantitative review of the demand for disposal of Putrescible Waste within all Service Areas;
- (2) A review of the performance of the obligations and limits authorized pursuant to Section 5.01.125(c) of this chapter in achieving the policies stated by Council in adopting this chapter; and
- (3) A recommendation on any revisions of Service Area boundaries, change in the need for disposal capacity within any Service Area, or changes of obligations or limits imposed on any Local Transfer Station.
- (4) The Chief Operating Officer shall consider the relationship between demand and disposal capacity located within each Service Area to insure that all Service Areas are treated equally and equitably concerning the availability of disposal capacity to meet the calculated demand.

(c) Notwithstanding subsection (b), the Chief Operating Officer may authorize an increase in a tonnage authorization established pursuant to subsection 5.01.125(c)(3) of this chapter upon the Chief Operating Officer's finding that growth or other conditions affecting demand for disposal of Putrescible Waste within the Service Area cannot be served by said tonnage authorization. Any such increase in tonnage authorized pursuant to this subsection shall be limited to a maximum of five percent (5%) of any tonnage authorization or disposal limit approved by the Council, and shall be valid for a period not exceeding 24 months.

(Ordinance No. 01-916C, Secs. 2-3. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 17.)

5.01.132 Adoption & Amendment of Administrative Procedures and Performance Standards

(a) The Chief Operating Officer may issue administrative procedures and performance standards governing the obligations of Licensees and Franchisees under this chapter, including but not limited to procedures and performance standards for nuisance control, public notification of facility operations, management of unacceptable wastes, facility record keeping and reporting, yard debris composting operations, non-putrescible waste material recovery, non-putrescible waste reloading, transportation of Putrescible Waste, and designation and review of Service Areas and demand pursuant to Section 5.01.131 of this chapter.

(b) The Chief Operating Officer may issue administrative procedures and performance standards to implement all provisions of this chapter.

(c) The Chief Operating Officer shall substantially amend the administrative procedures and performance standards issued under subsections (a) or (b) of this section only after providing public notice and the opportunity to comment on the proposed amendment.

(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 and performance standard, if the Chief Operating Officer determines that there is sufficient public interest in any such proposal.

(Ordinance No. 98-762C, Secs. 34-35. Amended by Ordinance No. 01-916C, Sec. 5; Ordinance No. 02-974, Sec. 1; Ordinance No. 07-1138, Sec. 3.)

5.01.135 Inspections and Audits of Solid Waste Facilities

(a) The Chief Operating Officer shall be authorized to make such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of a licensed or franchised facility, and all other Solid Waste Facilities, at all reasonable times during business hours with

or without notice or at such other times with 24 hours notice after the Franchise or License is granted to assure compliance with this chapter, the Code, the Franchise or License, and administrative procedures and performance standards adopted pursuant to Section 5.01.132 of this chapter.

(b) Inspections or audits authorized under subsection (a) of this section shall occur regularly and as determined necessary by the Chief Operating Officer. Results of each inspection shall be reported on a standard form specified by the Chief Operating Officer.

(c) The Chief Operating Officer shall have access to and may examine during such inspections or audits any records pertinent in the opinion of the Chief Operating Officer to the License or Franchise, or to the provisions of this chapter, including but not limited to the books, papers, records, equipment, blueprints, operation and maintenance records and logs and operating rules and procedures of the Licensee, Franchisee or Solid Waste Facility operator. Such inspections or audits may include taking samples and conducting analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer shall coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to prevent the imposition of redundant requirements on operations.

(d) Any violations discovered by the inspection or audit shall be subject to the penalties provided in Section 5.01.200.

(Ordinance No. 98-762C, Secs. 36-37. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 18; Ordinance No. 07-1147B, Sec. 4.)

#### 5.01.137 Record-keeping and Reporting

(a) Franchisees and licensees shall maintain accurate records of the information required by the Chief Operating Officer and shall report such required information on the forms or in the format and within the reporting periods and deadlines established by the Chief Operating Officer. Reports shall be signed and certified as accurate by an authorized representative of the Licensee or Franchisee.

(b) Licensees or Franchisees shall maintain evidence of all financial assurance mechanisms unless or until the Licensee

or Franchisee is released from the financial assurance requirements as specified in this chapter.

(c) Licensees or Franchisees shall provide copies of any correspondence or information received from or provided to any federal, state or local government agency related to the regulation of a Solid Waste facility within five days of the receipt or provision of the correspondence or information.

(d) Licensees or Franchisees shall maintain records of any written complaints received from the public or a customer, including but not limited to, information on the nature of the complaint, name, address and phone number of the complainant, date the complaint was received and any action taken to respond to the complaint.

(e) All records required by this chapter shall be retained by the Licensee, Franchisee or its operator for three years and shall be available for inspection by the Chief Operating Officer.

(f) All information submitted by the Licensee or Franchisee shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portion of the records and reports for which the Licensee or Franchisee requests exception from disclosure consistent with Oregon Law.

(Ordinance No. 98-762C, Secs. 38-39. Amended by Ordinance No. 02-974, Sec. 1.)

#### 5.01.140 License and Franchise Fees

(a) The annual fee for a solid waste License shall not exceed three hundred dollars (\$300), and the annual fee for a solid waste Franchise shall not exceed five hundred dollars (\$500). The Council may revise these fees upon 90 days written notice to each Licensee or Franchisee and an opportunity to be heard.

(b) The License or Franchise fee shall be in addition to any other fee, tax or charge imposed upon a Licensee or Franchisee.

(c) The Licensee or Franchisee shall pay the License or Franchise fee in the manner and at the time required by the Chief Operating Officer.

(Ordinance No. 81-111, Sec. 15. Amended by Ordinance No. 98-762C, Sec. 40; Ordinance No. 98-767, Sec. 5; Ordinance No. 02-974, Sec. 1.)

#### 5.01.150 User Fees

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council shall set user fees annually, and more frequently if necessary, which fees shall apply to Solid Waste Facilities and Disposal Sites which are owned, operated, licensed or franchised by Metro or which are liable for payment of user fees pursuant to a special agreement with Metro.

(b) User fees shall not apply to:

- (1) Solid waste received at facilities that are licensed, franchised or exempt from regulation under this Chapter, other than any Disposal Sites or Transfer Stations that are not subject to the requirements of Section 5.01.125(a);
- (2) Cleanup Material Contaminated By Hazardous Substances accepted at facilities that treat said Cleanup Material Contaminated By Hazardous Substances 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 this chapter and that sorts, classifies or processes used tires into fuel or other products, provided said Processing Residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro license or franchise.

(c) Notwithstanding any other provisions of this Code, user fees shall apply to Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System Facility authorized to accept such substances. Such Cleanup Materials Contaminated By Hazardous Substances may be subject to credits against user fees pursuant to Section 5.02.047 of this Title.

(d) User fees shall be in addition to any other fee, tax or charge imposed upon a Solid Waste Facility or Disposal Site.

(e) User fees shall be separately stated upon records of the Solid Waste Facility or Disposal Site.

(f) User fees and finance charges on user fees shall be paid as specified in Section 5.02.055 of this Title.

(g) There is no liability for user fees on charge accounts that are worthless and charged off as uncollectible, provided that an affidavit is filed with Metro stating the name and amount of each uncollectible charge account and documenting good faith efforts that have been made to collect the accounts. User fees may not be deemed uncollectible unless the underlying account is also uncollectible. If the fees have previously been paid, a deduction may be taken from the next payment due to Metro for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(h) All user fees shall be paid in the form of a remittance payable to Metro. All user fees received by Metro shall be deposited in the solid waste operating fund and used only for the administration, implementation, operation and enforcement of the Regional Solid Waste Management Plan.

(i) License or Franchise holders are eligible to apply for and receive Regional System Fee Credits pursuant to Section 5.02.047 of this Title.

(Ordinance No. 81-111, Sec. 16. Amended by Ordinance No. 86-214, Sec. 1; Ordinance No. 91-422B, Sec. 4; Ordinance No. 93-509, Sec. 2; Ordinance No. 95-621A, Sec. 7; Ordinance No.

98-762C, Sec. 41; Ordinance No. 00-866, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 19.)

5.01.170 Determination of Rates

(a) The Council may establish facility Rates upon finding that setting such rates is in the public interest as a matter of metropolitan concern.

(b) Notwithstanding any other provision of this section,

- (1) Licensees shall be exempt from all rate setting; and
- (2) Franchisees shall be exempt from rate setting unless rate setting is required as a condition of their Franchise.

(Ordinance No. 81-111, Sec. 19. Amended by Ordinance No. 82-136, Sec. 4. Renumbered by Ordinance No. 91-436A, Sec. 2, which repealed former Section 5.01.170, "Rate Review Committee." Repealed by Ordinance No. 98-762C, Sec. 43; replaced by Ordinance No. 98-762C, Sec. 44; amended by Ordinance No. 03-1018A, Sec 20.)

## **ENFORCEMENT AND APPEALS**

### 5.01.180 Enforcement of Franchise or License Provisions

(a) The Chief Operating Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke a Franchise or License as provided in this section. If, in the opinion of the Chief Operating Officer, there is sufficient evidence to suspend, modify, or to revoke a Franchise or License, the Chief Operating Officer shall notify the Franchisee or Licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the Franchisee or Licensee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Chief Operating Officer may provide notice to the Franchisee or Licensee that penalties pursuant to Section 5.01.200 of this chapter shall be imposed or that the Franchise or License is suspended, modified or revoked.

(b) The notice authorized by this subsection shall be based upon the Chief Operating Officer's finding that the Franchisee or Licensee has:

- (1) Violated the Franchise or License agreement, the administrative procedures or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the Franchise or License application, or other information required to be submitted to Metro;
- (3) Refused to provide adequate service at a Licensed or Franchised site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the Licensed or Franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or

(6) Been found to be in violation of a city or county ordinance if such ordinances require Licensees or Franchisees to comply with the Metro solid waste facility regulation code.

(c) Except as provided in subsection (d) of this section, the Chief Operating Officer's revocation, modification or suspension of a Franchise shall not become effective until the Franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a Franchisee or Licensee under this chapter, the Chief Operating Officer may in accordance with Code Chapter 2.05 immediately suspend the Franchise or License and may take whatever steps may be necessary to abate the danger. In addition, in the case of a Franchise, the Chief Operating Officer may authorize another Franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected Franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a Franchise is immediately suspended, the Franchisee shall have 90 days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the Franchise or License, all rights of the Franchisee or Licensee in the Franchise or License shall immediately be divested.

(Ordinance No. 81-111, Sec. 20. Amended by Ordinance No. 82-136, Sec. 5; Ordinance No. 95-621A, Sec. 8. Renumbered by Ordinance No. 91-436A, Sec. 2. Amended by Ordinance No. 98-762C, Sec. 45; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 21.)

#### 5.01.200 Penalties

(a) Each violation of this chapter shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(b) Upon a finding that a Licensee or Franchisee is in violation of this chapter, the Code, the License or Franchise

agreement, or the administrative procedures or performance standards adopted pursuant to Section 5.01.132 of this chapter during an inspection or audit conducted pursuant to Section 5.01.135 of this chapter, the Chief Operating Officer shall provide written notice to the Licensee or Franchisee describing the violation at the time of the inspection, and requiring the Licensee or Franchisee to correct the violation within the time specified on the notice.

(c) Upon a finding that the Licensee or Franchisee has failed to abate the violation within the specified time period, the Chief Operating Officer shall issue a citation, indicating the continuing violation, the date of reinspection and imposing a fine as specified in subsection (a) of this section on Licensees or Franchisees.

(d) If after re-inspection, the Chief Operating Officer finds the Licensee or Franchisee has failed to abate the violation, such violation shall be punishable by a fine of \$1,000.00. Notice of a final deadline for abating the violation shall be given at the time of re-inspection.

(e) Upon a finding that the Licensee or Franchisee has failed to abate the violation after the final deadline, the Licensee or Franchisee shall be required to cease performing the Activity resulting in the violation.

(f) Further inspections shall be conducted to ensure suspension of the offending Activity. If the Licensee or Franchisee has failed to suspend the offending Activity, the Chief Operating Officer shall conduct an investigation which may result in the:

- (1) Imposition of a remedy suitable to Metro to be implemented by and at the expense of the Licensee or Franchisee;
- (2) Suspension of all solid waste Activities on site;
- (3) Imposition of a lien on the property for the amount of the fines; or
- (4) Suspension, modification or revocation of the License or Franchise pursuant to Section 5.01.180 of this chapter.

(g) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by Metro upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed \$500 per day for each day of violation.

(Ordinance No. 81-111, Sec. 22. Renumbered by Ordinance No. 91-436A, Sec. 2. Amended by Ordinance No. 98-762C, Sec. 47; Ordinance No. 98-767, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 22.)

## MISCELLANEOUS PROVISIONS

### 5.01.410 Miscellaneous Provisions

(a) The Chief Operating Officer shall be responsible for the administration and enforcement of this chapter.

(b) The granting of a License or Franchise shall not vest any right or privilege in the Licensee or Franchisee to receive specific quantities of Solid Waste during the term of the License or Franchise.

(c) The power and right to regulate, in the public interest, the exercise of the privileges granted by a License or Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority and to enforce all such requirements against holders of Licenses or Franchises.

(d) To be effective, a waiver of any term or condition of a License or Franchise must be in writing, signed by the Chief Operating Officer. Waiver of a term or conditions of a License or Franchise shall not waive nor prejudice Metro's right of Metro otherwise to require performance of the same term or conditions or any other term or condition.

(e) A License or Franchise shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

(f) If any provision of a License or Franchise is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions contained in the License or Franchise shall not be affected.

(g) Nothing in this chapter is intended to limit the power of a federal, state, or local agency to enforce any provision of law relating to any Solid Waste Facility or Disposal Site that it is authorized or required to enforce or administer.

(h) Nothing in this chapter shall be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities.

(i) Nothing in this chapter is intended to establish standards or other regulatory requirements for inadvertent composting resulting from the storage of organic materials.

(Ordinance No. 98-762C, Secs. 52-53. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec 24.)