

CHAPTER 5.10

REGIONAL SOLID WASTE MANAGEMENT PLAN

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(Ordinance No. 08-1183A; Ordinance No. 08-1200; and Ordinance No. 14-1331, Sec. 7.)

5.10.020 Authority, Jurisdiction, and Purpose

(a) Metro's Solid Waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.

(b) This chapter implements the RSWMP requirements. The RSWMP shall include the Regional Solid Waste Management Plan, including without limitation the Waste Reduction Program.

(c) This chapter does not abridge or alter the rights of action by the State or by a person that exist in equity, common law, or other statutes.

(Ordinance No. 08-1183A.)

#### 5.10.030 Adoption of RSWMP

Metro has adopted the RSWMP, copies of which are on file at Metro offices, and shall implement the RSWMP as required by this chapter.

(Ordinance No. 08-1183A.)

#### 5.10.040 Application of Chapter

This chapter shall apply to all portions of Clackamas, Washington, and Multnomah Counties within Metro's jurisdiction.

(Ordinance No. 08-1183A.)

#### 5.10.050 RSWMP Requirements

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

(Ordinance No. 08-1183A.)

#### 5.10.060 RSWMP Amendments

(a) The Chief Operating Officer shall submit all proposed amendments to the RSWMP to the Council by ordinance for adoption.

(b) Once the Council adopts an amendment to the RSWMP, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for approval. If the amendment is to the Waste Reduction Program, the Chief Operating Officer shall submit the amended RSWMP to the DEQ for acceptance and approval.

(c) The Chief Operating Officer may correct technical mistakes discovered in the RSWMP administratively without petition, notice, or hearing.

(Ordinance No. 08-1183A.)

#### 5.10.070 Severability

(a) The sections of this chapter shall be severable and any action by any state agency or judgment court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the RSWMP shall also be severable and shall be subject to the provisions of subsection (a) of this section.

(Ordinance No. 08-1183A.)

#### 5.10.080 Administrative Procedures

(a) The Chief Operating Officer may issue administrative procedures governing the obligations under this chapter, including but not limited to procedures for the suspension of a material from the definition of standard recyclable materials and for additional requirements of a recycling education and promotion program.

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

(c) The Chief Operating Officer shall issue or substantially amend the administrative procedures for this chapter only after providing public notice and the opportunity to comment on the proposed language.

(d) The Chief Operating Officer may hold a public hearing on any proposed new administrative procedure and performance standard or on any proposed amendment to any administrative procedure if the Chief Operating Officer determines that there is sufficient public interest in any such proposal.

(Ordinance No. 08-1183A.)

### **Compliance Procedures**

#### 5.10.110 Conformity to the RSWMP

Local governments shall not adopt any ordinance, order, regulation, or contract affecting solid waste management that conflicts with the RSWMP requirements implemented by this chapter.

(Ordinance No. 08-1183A.)

#### 5.10.120 Compliance with the RSWMP

(a) The purpose of this section is to establish a process for determining whether local government actions comply with the RSWMP requirements. The Council intends the process to be efficient and cost effective and to provide an opportunity for the Metro Council to interpret the requirements of the RSWMP. Where the terms "compliance" and "comply" appear in this chapter, the terms shall have the meaning given to "substantial compliance" in Section 5.10.010.

(b) Local government actions shall comply with the RSWMP requirements. The Chief Operating Officer shall notify local governments of the compliance date of all RSWMP requirements. On or before the compliance date, local governments shall certify in writing to the Chief Operating Officer that their local government actions comply with the RSWMP requirements.

(c) Commencing on November 1, 2010, and on November 1 each year thereafter, the Director shall submit a report to the Chief Operating Officer on local government action compliance with the RSWMP requirements for the Metro fiscal year ending the previous June 30. The report shall include an accounting of local government actions that do not comply with each requirement of the RSWMP. The report shall recommend action that would bring a local government into compliance with the RSWMP requirements and shall advise the local government whether it may seek an extension pursuant to Section 5.10.130 or an exception pursuant to Section 5.10.140. The report also shall include an evaluation of the implementation of this chapter and its effectiveness in helping achieve the RSWMP objectives.

(d) Commencing on or after November 1, 2010, and on or after November 1 each year thereafter, the Chief Operating Officer shall provide each local government with a letter

informing the local government whether its actions comply or do not comply with the RSWMP requirements. The Chief Operating Officer shall provide each local government that is not in compliance with the RSWMP requirements with the Director's report.

(e) A local government provided with a report shall respond to the report within 60 days from the date of the report. The response shall contain:

- (1) An agreement to comply with the report recommendations;
- (2) A request for an extension under Section 5.10.130; or
- (3) A request for an exception under Section 5.10.140.

(f) Within 30 days of receiving the local government's response, the Chief Operating Officer shall:

- (1) If the local government agrees to comply with the report recommendations, provide a letter to the local government describing the details of the actions required of the local government for compliance; or
- (2) If the local government seeks an extension or exception, direct the local government to follow the procedures set forth in Section 5.10.130 or Section 5.10.140.

(g) If the local government fails to file a response or refuses to comply with the report recommendations, the Chief Operating Officer may proceed to Council review under Section 5.10.150. A local government may seek Council review under Section 5.10.150 of a report of noncompliance under this section.

(Ordinance No. 08-1183A.)

#### 5.10.130 Extension of Compliance Deadline

(a) A local government may seek an extension of time for compliance with a RSWMP requirement by filing a written request for an extension with the Director.

(b) The Director may grant an extension of the compliance deadline if the local government's written request demonstrates that: (1) the local government is making progress toward accomplishment of its compliance with the RSWMP requirement; or (2) the local government has good cause for failure to meet the deadline for compliance.

(c) The Director may establish terms and conditions for the extension to ensure that compliance is achieved in a timely and orderly fashion and that local government actions during the extension do not undermine the ability of the region to implement the RSWMP. A term or condition shall relate to the requirement of the RSWMP to which the Director grants the extension. The Director shall incorporate the terms and conditions into the decision on the request for extension. The Director shall not grant more than two extensions of time and shall not extend the deadline for compliance for more than one year.

(d) The Director shall grant or deny the request for extension within 30 days of the date of the request and shall provide a copy of the decision to the local government.

(e) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(f) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(g) The Chief Operating Officer's order regarding an extension is a final order and shall not be subject to Metro Code Chapter 2.05, Procedure for Contested Cases. A local government may appeal the order by filing a petition for writ of review.

(Ordinance No. 08-1183A.)

#### 5.10.140 Exception from Compliance

(a) A local government may seek an exception from compliance with a RSWMP requirement by filing a written request for an exception with the Chief Operating Officer.

(b) The Chief Operating Officer shall prepare a report on the written request. The report shall recommend whether to grant or deny the exception and shall analyze whether:

- (1) The exception and any similar exceptions will prevent the Metro region from achieving the RSWMP goals;
- (2) The exception will reduce the ability of another local government to comply with the requirement; and
- (3) The local government has adopted other measures more appropriate for the local government to achieve the intended result of the requirement.

(c) The Chief Operating Officer's report may establish terms and conditions for the exception to ensure that it does not undermine the ability of Metro to implement its responsibilities under the RSWMP. Any term or condition shall relate to the requirement of the RSWMP from which the local government seeks exception.

(d) The Chief Operating Officer shall issue the report within 60 days of the date of the request. The Chief Operating Officer shall provide a copy to the local government and shall file a written request for review and public hearing with the Council President.

(e) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer's report. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing and shall publish the report at least 14 days before the public hearing.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) The Council shall issue its order, with analysis and conclusions, not later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for an analysis of the factors listed in subsection(b). The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(h) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

(Ordinance No. 08-1183A.)

#### 5.10.150 Review by Metro Council

(a) A local government may seek review of (1) the letter and report of noncompliance provided by the Chief Operating Officer under Section 5.10.120; and (2) a decision that a local government does not meet a performance standard by filing a written request for review and public hearing with the Council President.

(b) The Chief Operating Officer may seek review by the Council of any local government action that does not comply with the RSWMP requirements, this chapter, or both by filing a written request for review and public hearing with the Council President. The Chief Operating Officer shall provide a copy of the request to the local government.

(c) The Chief Operating Officer shall consult with the local government and the Director before the Chief Operating Officer determines there is good cause for a public hearing under subsection (d).

(d) The Council President shall set the matter for a public hearing before the Council within 30 days of the date of the Chief Operating Officer or local government's request for review. The Chief Operating Officer shall provide notice to the local government that includes the date and location of the hearing.

(e) The Chief Operating Officer shall prepare a report and recommendation on the matter for consideration by the Metro Council. The Chief Operating Officer shall publish the report

at least 14 days before the public hearing and provide a copy to the local government.

(f) During the hearing the Council shall receive testimony on the Chief Operating Officer's report and shall allow any person to testify orally or in writing.

(g) If the Metro Council concludes that the local government action does not violate the RSWMP requirements or this chapter, the Council shall enter an order dismissing the matter. If the Council concludes that the local government action does violate the RSWMP requirements, this chapter, or both, the Council shall issue an order that identifies the noncompliance and directs changes in the local government action.

(h) The Council shall issue its order, with analysis and conclusions, no later than 30 days following the public hearing on the matter. The order shall be based upon the Chief Operating Officer's report and upon testimony at the public hearing. The order may rely upon the report for its findings and conclusions related to compliance with this chapter. The order shall address any testimony during the public hearing that takes exception to the report. The Chief Operating Officer shall provide a copy of the order to the local government.

(i) The order of the Metro Council is a final order that a local government may appeal by filing a petition for writ of review.

(Ordinance No. 08-1183A.)

#### 5.10.160 Technical Assistance

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

(Ordinance No. 08-1183A.)

### **The Regional Service Standard**

#### 5.10.210 Purpose and Intent

Local governments shall adopt and implement the regional service standard or alternative program as required by the RSWMP and as specified in this chapter and the administrative procedures.

The regional service standard ensures a comprehensive and consistent level of recycling service for the region and assists the region in meeting state recovery goals.

(Ordinance No. 08-1183A.)

#### 5.10.220 Regional Service Standard

(a) By January 1, 2009, local governments shall implement the regional service standard either by:

- (1) Adopting the provisions of Metro Code Section 5.10.230(a) through (d); or
- (2) Adopting an alternative program that meets the performance standard and that is approved by Metro in accordance with Metro Code Section 5.10.240.

(b) The local government shall provide information related to compliance with this requirement at the Director's request or as required by the administrative procedures.

(Ordinance No. 08-1183A.)

#### 5.10.230 Regional Service Standard Elements

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

(a) For single-family residences, including duplexes, triplexes, and fourplexes, the local government shall:

- (1) Ensure provision of at least one (1) recycling container to each residential customer;
- (2) Ensure provision of weekly collection of all standard recyclable materials; and
- (3) Ensure provision of a residential yard debris collection program that includes weekly on-route collection of yard debris for production of compost from each residential customer or equivalent on-route collection of yard debris for production of compost if granted approval for an alternative program under Metro Code Section 5.10.240.

(b) For multi-family residences, the local government shall ensure provision of regular collection of standard recyclable materials for each multi-family dwelling community having five (5) or more units.

(c) For businesses, the local government shall ensure provision of regular collection of standard recyclable materials.

(d) For education and outreach, the local government shall ensure provision of a recycling education and promotion program to all waste generators that supports the management of solid waste according to the waste reduction hierarchy as follows:

(1) For all waste generators:

- A. Provide information regarding waste prevention, reusing, recycling, and composting; and
- B. Participate in one community or media event per year to promote waste prevention, reuse, recycling, or composting.

(2) For single-family residences and businesses:

- A. For existing customers, provide education information at least four (4) times a calendar year; and
- B. For new customers, provide a packet of educational materials that contains information listing the materials collected, the schedule for collection, the proper method of preparing materials for collection, and an explanation of the reasons to recycle.

(3) For multi-family residences:

- A. Provide waste reduction and recycling educational and promotional information designed for and directed toward the residents of multifamily dwellings as frequently as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle, including the types of materials

accepted and the proper preparation of the items; and

- B. Provide waste reduction and recycling educational and promotional information designed for and directed toward multifamily property owners and managers at least annually.

(Ordinance No. 08-1183A.)

5.10.240 Alternative Program and Performance Standard

(a) A local government seeking alternative program approval shall submit an application for an alternative program to the Director that contains:

- (1) A description of the existing program;
- (2) A description of the proposed alternative program; and
- (3) A comparison of the existing and alternative programs for type of materials collected, frequency of collection of material, and levels of recovery.

(b) A local government's alternative program shall perform at the same level or better as the regional service standard and shall meet the following performance standard:

- (1) The alternative program shall provide for as much or more recovery of standard recyclable materials as recovered under the regional service standard;
- (2) The alternative program shall ensure that the per capita use of recycling service is the same or more than the per capita use of recycling service under the regional service standard;
- (3) The alternative program shall prevent waste generation at the same level or better than the waste generation prevented under the regional service standard;
- (4) The alternative program shall provide education and outreach to promote the waste reduction

hierarchy and to encourage the separation of recyclables from waste; and

- (5) The alternative program shall ensure that any innovations in the provision of recycling service are technologically and economically feasible.

(c) If the Director determines that the alternative program meets the performance standard, the Director shall approve the application. The Director may condition the approval on completion of a successful pilot program. If the Director determines that the alternative program does not meet the performance standard, the Director shall deny the application. The Director shall decide whether to approve or deny the application within 60 days of the date the Director received the application or, if the Director conditions approval on successful completion of a pilot program, within 60 days of the conclusion of the pilot program. The Director shall provide a copy of the decision to the local government.

(d) A local government may seek review of the Director's decision by filing a written request for review with the Chief Operating Officer within 30 days of the date of the Director's decision.

(e) The Chief Operating Officer shall consider a request for review without a public hearing and shall issue an order within 30 days of receiving the request for review. The Chief Operating Officer shall provide a copy of the order to the local government.

(f) A local government may seek Council review under Section 5.10.150 of the Chief Operating Officer's order regarding an alternative program under this section.

(g) This section does not prevent a local government from seeking an exception under Section 5.10.140.

(Ordinance No. 08-1183A.)

### **Business Recycling Requirement**

#### 5.10.310 Purpose and Intent

The Business Recycling Requirement provides an opportunity for businesses to work with local governments to provide recycling education, to create a consistent standard throughout the Metro

region, and to increase recycling. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals.

(Ordinance No. 08-1200.)

#### 5.10.320 Implementation Alternatives for Local Governments

(a) By February 27, 2009, local governments shall comply with this title by implementing the Business Recycling Requirement as follows:

- (1) (a) Adopt the Business Recycling Requirement Model Ordinance; or  
  
(b) Demonstrate that existing local government ordinances comply with the performance standard in Section 5.10.330 and the intent of this title; and
- (2) (a) Establish compliance with the Business Recycling Requirement Model Ordinance or local government ordinance; or  
  
(b) Enter into an intergovernmental agreement with Metro that provides for Metro to establish compliance for the local government.

(b) The local government shall provide information related to the local government's implementation of the Business Recycling Requirement at the Director's request or as required by the administrative procedures.

(Ordinance No. 08-1200.)

#### 5.10.330 Business Recycling Requirement Performance Standard

(a) The following shall constitute the Business Recycling Requirement performance standard:

- (1) Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling;
- (2) Businesses and Business Recycling Service Customers shall ensure the provision of recycling

containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both; and

- (3) Businesses and Business Recycling Service Customers shall post accurate signs where recyclable materials are collected, stored, or both that identify the materials that the Business must source separate for reuse or recycling and that provide recycling instructions.

(b) Local governments shall establish a method for ensuring compliance with the Business Recycling Requirement.

(c) Local governments may exempt a Business from some or all of the Business Recycling Requirement if:

- (1) The Business provides access to the local government for a site visit; and
- (2) The local government determines during the site visit that the Business cannot comply with the Business Recycling Requirement.

(Ordinance No. 08-1200.)

#### 5.10.340 Metro Enforcement of Business Recycling Requirement

Upon a request by a local government under Section 5.10.320 to enter into an intergovernmental agreement, Metro shall perform the local government function to ensure compliance with the Business Recycling Requirement as follows:

(a) Provide written notice to a Business or Business Recycling Service Customer that does not comply with the recycling requirement. The notice of noncompliance shall describe the violation, provide an opportunity to cure the violation within the time specified in the notice, and offer assistance with compliance.

(b) Issue a citation to a Business or Business Recycling Service Customer that does not cure a violation within the time specified in the notice of noncompliance. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the Business

or Business Recycling Service Customer that it may be subject to a fine.

(c) Assess a fine to a Business or Business Recycling Service Customer that does not cure a violation within the time specified in the citation. The notice of assessment of fine shall include the information required by Metro Code Section 5.09.090. Metro shall serve the notice personally or by registered or certified mail. A Business or Business Recycling Service Customer may contest an assessment by following the procedures set forth in Metro Code Section 5.09.130 and 5.09.150.

(Ordinance No. 08-1200.)

#### 5.10.350 Metro Model Ordinance Required

Metro shall adopt a Business Recycling Requirement Model Ordinance that includes a compliance element. The Model Ordinance shall represent one method of complying with the Business Recycling Requirement. The Model Ordinance shall be advisory and local governments are not required to adopt the Model Ordinance, or any part thereof, to comply. Local governments that adopt the Model Ordinance in its entirety shall be deemed to have complied with the Business Recycling Requirement.

(Ordinance No. 08-1200.)

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