

Proposed Metro Code Chapter 5.01 - REVISED DRAFT 07/06/2016
Revisions made in response to comments received from the public.

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

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- All of the proposed revisions to this chapter are marked in red with "strikethrough" text showing deletions and "underlined" text showing additions to the chapter.
- All of the proposed revisions highlighted in blue are changes that were made in response to comments received from the public. The public review and comment period for the initially proposed draft began on March 1 and ended on April 29, 2016.

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GENERAL PROVISIONS

5.01.020-010 Purpose

(a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to ~~protect~~:

- (1) ~~Protect~~ and preserve the health, safety and welfare of Metro's residents; ~~to~~
- (2) ~~Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies; the Regional Solid Waste Management Plan;~~ ~~to~~
- (3) ~~Provide~~ a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; ~~and to~~
- (4) ~~Reduce~~ the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.

(b) The provisions of this chapter shall be liberally construed to accomplish these purposes.

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 Repealed by Ordinance No. 98-762C, Sec. 2; replaced by Ordinance No. 98-762C, Sec. 3; and Ordinance No. 02-974, Sec. 1.)

5.01.025-020 Authority and Jurisdiction

(a) Metro's solid waste regulatory authority is ~~established under derived from the Oregon Constitution of the State of Oregon,~~ ORS Chapter 268 for solid waste and the Metro Charter ~~and~~. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.

(b) All solid waste regulation ~~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; and Ordinance No. 02-974, Sec. 1.)

Comment [A1]: Revision made in response to comments. Refer to Exhibit A.

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5.01.030 -Prohibited Activities

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

(a) ~~For a~~Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.

(b) ~~For a~~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~~A licensee or franchisee to receive, process or dispose of any solid waste ~~not unless~~ authorized underby the ~~recipient's~~license or franchise.

(d) ~~For a~~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 licenselicensee or franchisee or is otherwise exempt under Section 5.01.040 ~~of this chapter~~.

(e) ~~For a holder of a license~~A licensee or franchisee to ~~fail to comply with the administrative procedures~~violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to Section 5.01. ~~132 of this chapter~~280.

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

(g) Any person to store electronic device waste uncovered and outside of a roofed structure.

Comment [A2]: Revision made in response to comments. Refer to Exhibit A.

(Ordinance No. 81-111, Sec. 4; 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; and Ordinance No. 06-1102, Sec. 1.)

5.01.040 -Exemptions to Prohibited Activities

(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~~The provisions of this chapter ~~shall do~~not apply to:

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- (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, except that Metro must pay regional system fees per Section 5.01.300.
- (3) Facilities that (A) exclusively receive non-putrescible source-separated recyclable materials, and (B) reuse or recycle ~~such those~~ materials, or transfer, transport or deliver ~~such those~~ materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of inert waste.
- ~~(5) The following operations, which do not constitute yard debris facilities:~~
- ~~(A)~~ (5) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- ~~(B)~~ (6) Residences, parks, community gardens and homeowner associations.
- ~~(C)~~ (7) 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.
- (8) ~~(D)~~ An operations or facilityies that chip or grind processes wood wastes, unless:
 - (i) Thesuch chipped or ground wood wastes are processed for composting; or
 - (ii) Thesuch operations or facilityies isare other-wise regulated under Metro Code Section 5.01.05045this chapter.
- ~~(6)~~ (9) 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, provided that~~ Metro finds an emergency situation exists.
- ~~(7) Any reload facility that:~~

Comment [A3]: Revision made in response to comments. Refer to Exhibit A.

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- ~~(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 waste 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)(109) 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.

Comment [A4]: Revision made in response to comments. Refer to Exhibit A.

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

~~(c) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shall~~must comply with Section 5.01.150 of this chapter300.

~~(cd) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the~~ The provisions of Section 5.01.135 of this chapter ~~shall~~290 apply to ~~operation~~the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a) ~~(8) of this chapter.~~109.

Comment [A5]: Revision made in response to comments. Refer to Exhibit A.

(Ordinance No. 81-111, Sec. 5; 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; and Ordinance No. 07-1147B, Sec. 2.)

~~(5.01.045 License and Franchise Requirements. Repealed Ord. 14-1332.)~~

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LICENSING REQUIREMENTS

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 -License Requirements and Fees

(a) A Metro solid waste license ~~shall be~~ required of ~~the~~ person owning or controlling a facility at which the person performs 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~~ or yard debris facility ~~may enter into an intergovernmental agreement~~ mixed with Metro under which the local government will administer and enforce yard debris standards at the facility in lieu of compliance with this chapter ~~residential food waste~~.
- (4) ~~Operating a reload~~ Reloading solid waste.
- (5) ~~Chipping or grinding~~ Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under ~~this Section 5.01.045 of this chapter~~.

(b) The annual fee for a solid waste license ~~shall not exceed three hundred dollars (\$300.00). The Council may revise these fees upon 90 days written notice to each licensee and an opportunity to be heard may not exceed \$300.00.~~

(c) ~~Upon the filing of an~~ The application, ~~every applicant fee~~ for a license, new or for renewal of an existing license, shall submit an is \$300.00. The application fee of three hundred dollars (\$300.00) is due at the time of filing.

(d) The annual solid waste license fee ~~shall be~~ in addition to any other fee, tax or charge imposed upon a licensee.

(e) The licensee ~~shall~~ must pay the license fee in the manner and at the time required by the Chief Operating Officer.

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

(Ordinance No. 98-762C, Secs. 8-9; Ordinance No. 00-866, Sec. 3; Ordinance No. 02-933, Sec. 2; Ordinance No. 03-1018A, Sec. 4; and Ordinance No. 14-1332, Sec. 1.)

Comment [A6]: Revision made in response to comments. Refer to Exhibit A.

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~~(5.01.050 Administration. Repealed Ord. 98-762C §10.)~~

~~APPLICATIONS FOR SOLID WASTE FACILITY LICENSES~~

~~5.01.051-060 Pre-Application Conference for Licenses~~

(a) ~~All prospective~~ An applicant ~~s~~ for a new license ~~shall participate in~~ must attend a pre-application conference. The purpose of ~~such~~ the conference ~~shall be~~ is to provide the ~~prospective~~ applicant with information regarding the applicable requirements for the proposed facility and to ~~obtain from~~ have the ~~prospective~~ applicant a description of ~~describe~~ the proposed facility's location, site conditions and operations ~~of the proposed facility.~~

(b) If ~~a prospective~~ an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, ~~such~~ the applicant ~~shall participate in~~ must attend a subsequent pre-application conference ~~prior to~~ before filing another application.

(Ordinance No. 98-762C, Secs. 11-12; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

~~5.01.052-070 Applications for Licenses~~

(a) ~~Applications~~ An applicant for a license ~~new~~ or ~~for~~ renewal ~~of an existing~~ license ~~shall be filed~~ must file the application on forms or in the format ~~provided~~ required 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~~ The applicant must include a description of the activities ~~proposed~~ the applicant proposes to ~~be conducted~~ conduct and a description of ~~wastes sought~~ the waste it seeks to ~~be accepted.~~ accept.

(c) ~~In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a license shall~~ A license application must also 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~~ license term;
- (2) A ~~duplicate~~ copy of all applications for necessary DEQ permits ~~and~~, any other information required by or submitted to DEQ, and a copy of any DEQ permits;

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- (3) A ~~duplicate~~ copy of any closure plan ~~required to be submitted to DEQ, or if that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide~~ 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 5.01.052(e)(3). If an application is approved, the license shall require that financial assurance is in place prior to beginning any activities authorized by the license. 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 5.01.052(e)(3) will be less than \$10,000.00;~~
- ~~(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, the duration of that interest and shall~~(4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must 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 chapter320(f) if Metro revokes the license is ~~revoked or refuses~~ any license renewal ~~is refused~~;
- (65) Proof that the applicant has received proper land use approval; or, if ~~the applicant has not obtained land use approval, has not been obtained, then~~ a written recommendation of the planning director of

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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~~The 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~~ 6) Any current permit and a list of anticipated permits required from any other that a governmental agency may require. If ~~application for such other permits~~ the applicant has been previously made, applied for a permit, the applicant must provide a copy of ~~such that~~ that permit application and any permit that ~~has been any other government agency granted~~ shall be provided.

(Ordinance No. 81-111, Sec. 7; 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; and Ordinance No. 14-1332, Sec. 1.)

5.01.053-080 License Issuance and Contents of Licenses

(a) ~~Applications for licenses filed in accordance with Section 5.01.052 shall be subject to approval or denial by the~~ The Chief Operating Officer, with such may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer may deem ~~considers~~ considers appropriate.

(b) The Chief Operating Officer ~~shall~~ may make ~~such any~~ any investigation ~~concerning~~ regarding the application ~~information as the Chief Operating Officer deems~~ Officers considers appropriate, ~~including.~~ This includes the right of entry onto the applicant's proposed site.

(c) ~~Prior to determining whether to approve or deny each~~ Before approving or denying a license application, the Chief Operating Officer ~~shall~~ must provide public notice and ~~the an~~ an opportunity for ~~the public to~~ comment on the license application.

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~~(d) On the basis of~~The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:

~~(1) the Submitted application submitted,~~

~~(2) the Chief Operating Officer's investigation concerning~~regarding the application information, and

~~(3) public~~Public comments., the Chief Operating Officer shall determine whether the proposed license meets the requirements of Section 5.01.052 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)~~(e) If the Chief Operating Officer does not ~~act to grant~~ approve or deny a new license application within 180~~20~~ days after the filing of applicant files a complete application, the license ~~shall is be~~ deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then ~~and the Chief Operating Officer~~

Comment [A7]: Revision made in response to comments. Refer to Exhibit A.

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~~shall issue a~~ the license will contain 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. At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:~~

- ~~(1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or~~
- ~~(2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.~~

~~(g) An applicant may withdraw its application at any time prior to before~~ the Chief Operating Officer's decision and may submit a new application at any time thereafter.

~~(h) If a request for the Chief Operating Officer denies a license is denied, no request, the applicant may not file a new application for this the same or substantially similar license shall be filed by the applicant for at least six (6) months from the date of denial date.~~

Comment [A8]: Revision made in response to comments. Refer to Exhibit A.

~~(i) Licenses shall~~ 5.01.090 License Contents

~~(a) A license will specify the activities authorized to be performed activities, the types and amounts of wastes authorized to be accepted at the solid waste facility may accept, and any other limitations or conditions attached by the Chief Operating Officer imposes.~~

~~(b) In addition to all other this section's requirements of this section, if a license authorizes the licensee to accept approving acceptance of mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be, the license is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted as administrative procedures pursuant to Section 5.01.132, and shall 280.~~

~~(c) The license must~~ require that the facility operate in a manner that meets the following general performance goals:

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- (1) Environment. ~~(1) Environment. Facilities shall beIt is~~ designed and operated to ~~preclude the creation of~~avoid 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 beIt is~~ designed and operated to ~~preclude the creation of~~avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. ~~Facilities shall beIt is~~ designed and operated to ~~preclude the creation of~~avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities ~~conducting that~~ conduct material recovery on non-putrescible waste ~~shall must~~ be designed and operated to ~~assure recover~~ materials ~~are recovered~~ in a timely manner, to meet standards in Section 5.01.260125, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities ~~conducting reloading of that~~ reload non-putrescible waste ~~shall must~~ be designed and operated to ~~assure that the reloading rapidly and efficiently~~ reload and transfer ~~of non-putrescible that~~ waste to a 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. ~~(6) Record keeping. Facilities shall~~ A licensee must ~~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 that it receives, recycles, reloads or renewed disposes.~~

~~(h) A license shall be term may not more than exceed five (5) years, except that the Chief Operating Officer may extend the license term for up to one year.~~

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

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Ordinance No. 07-1138, Sec. 1; Ordinance No. 07-1139, Sec. 2; and Ordinance No. 14-1332, Sec. 1.)

5.01.054-100 Record-keeping and Reporting for Licenses

(a) ~~Licenses shall~~ A licensee must maintain accurate records of the information ~~required by that~~ the Chief Operating Officer ~~and shall require.~~ A licensee must report ~~such the~~ required information on the forms ~~or,~~ in the format and within the reporting periods and deadlines ~~established by that~~ the Chief Operating Officer. ~~Reports shall be signed and certified as accurate by an~~ establishes. The licensee or its authorized representative ~~of the licensee or franchisee~~ must sign the report and certify it as accurate.

(b) ~~Licenses shall maintain evidence of all financial assurance mechanisms unless or until the licensee is released from the financial assurance requirements as specified in this chapter.~~

~~(c) Licenses shall~~ A licensee must provide copies of any correspondence ~~or information received from or provided to~~ with any federal, state or local government agency related to the regulation of a solid waste facility within five ~~(5)~~ days of the ~~receipt or provision of the~~ correspondence or information.

~~(d) Licenses shall~~ (c) A licensee must maintain records of any written complaints received from the public or a customer, ~~including and retain them for not less than one year. This includes,~~ but is not limited to, information ~~or regarding~~ the nature of the complaint, the complainant's name, address and phone number ~~of,~~ the complainant, ~~date the licensee received the complaint was received,~~ and any action taken to respond ~~response~~ by the licensee to the complaint.

~~(e) All (d)~~ A licensee must retain all records required by this chapter ~~shall be retained by the licensee, or its operator for for three (3) years and shall be~~ (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.

~~(f) All~~ Any information ~~submitted by~~ the licensee ~~shall be~~ submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except ~~such that~~ portion of the information that ~~records and reports for which~~ the licensee requests exception from disclosure consistent with Oregon Law.

(Ordinance No. 98-762C, Secs. 38-39; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

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Revisions made in response to comments received from the public.

5.01.055-110 License Renewal of Licenses

(a) The Chief Operating Officer shall renew a solid waste facility license is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.

Comment [A9]: Revision made in response to comments. Refer to Exhibit A.

(b) A licensee must request a renewal license not less than 120 days before the license's expiration date. The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.

(c) A licensee requesting a license renewal must:

- (1) File a completed application for renewal;
- (2) Pay a \$300.00 application fee; and
- (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.

(d) The Chief Operating Officer must approve a solid waste facility license renewal 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 (\$300.00) 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.

(Ordinance No. 98-762C, Secs. 22-23; Ordinance No. 98-767, Sec. 3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.11; and Ordinance No. 14-1332, Sec. 1.)

5.01.056-120 Transfer of Ownership or Control of Licenses

(a) Any person in control of a license may not lease, assign, mortgage, sell. A licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfer, either in whole or in part, transfers control of the license to another person unless an application therefore has been filed in accordance with Section 5.01.050 and has been granted. The proposed, whether whole or in part. The transferee of a license must meet the requirements of this chapter.

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(b) ~~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.~~

~~(c) The term for any transferred license shall be~~ is 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; Ordinance No. 98-762C, Sec. 24; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 12; and Ordinance No. 14-1332, Sec. 1.)

5.01.057-130 Change of Authorizations for Licenses

(a) ~~A person holding a license shall~~ licensee must submit an application pursuant to Section 5.01.052070 when ~~said person seeks authorization~~ the licensee requests authority to:

- (1) ~~Accept wastes other than those authorized by the applicant's license~~ authorizes, or
- (2) ~~Perform activities other than those authorized by the applicant's license~~ authorizes, or
- (3) ~~Modify other limiting conditions of the applicant's license.~~

(b) ~~Applications~~ The licensee must file an application 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 ~~shall~~ does not substitute for an application that Metro would otherwise ~~be required~~ require under Section 5.01.050 ~~of this chapter.~~

(d) ~~A person holding a license shall~~ licensee must notify Metro in writing when ~~said person~~ the licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.

(e) The application fee for ~~applications for~~ changes of authorizations or limits ~~shall be one hundred dollars~~ (is \$100.00).

(Ordinance No. 98-762C, Secs. 25-26; Ordinance No. 98-767, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 13; and Ordinance No. 14-1332, Sec. 1.)

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5.01.058-140 Variances for Licenses

(a) The Chief Operating Officer, may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees ~~upon such conditions as is necessary~~ to protect public health, safety and welfare, ~~if.~~

~~(b) In order to grant a variance,~~ the Chief Operating Officer ~~finds~~must find that the licensee or applicant can achieve the purpose and intent of the particular license 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, or licensee requesting the variance~~applicant's or licensee's control; or
- (2) ~~Due to special physical conditions or causes,~~will~~be~~ rendered extremely burdensome or highly impractical due to special physical conditions or causes.

~~(bc) A variance must be requested by a licensee or applicant, or must request a licensee variance~~ in writing and must concisely state in a concise manner facts to show cause why such variance the Chief Operating Officer should be granted grant the variance. The Chief Operating Officer may ~~make such investigation~~investigate the request as the Chief Operating Officer ~~deems~~considers necessary ~~and shall.~~

~~(d) The Chief Operating Officer must approve or deny the variance coincident with any recommendation made on approval or denial of any license application; or, upon a request for variance from an existing licensee, request~~ within 60 days ~~after receipt of the variance request.~~

~~(ee) A request for a variance shall~~does not substitute for an application that Metro would otherwise ~~be required~~require under Section 5.01.050 ~~of this chapter.~~

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

~~(eg) If the Chief Operating Officer denies a request for a variance is denied, no, the requesting party may not file a new application for this~~the same or substantially similar variance ~~shall be filed~~ for at least six ~~(6)~~ months from the date of denial.

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(Ordinance No. 81-111, Sec. 12; Ordinance No. 98-762C, Sec. 27;
Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

~~FRANCHISING REQUIREMENTS~~

5.01.070-150 Franchise Requirements and Fees

(a) A Metro solid waste franchise shall beis required for
~~theof any person owning or controlling a facility at which the~~
person performs any of the following activities-are performed:

- (1) Processing of-putrescible waste other than yard
debris and yard debris mixed with residential food
waste.
- (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.

(b) The annual fee for a solid waste franchise shall not
~~exceed five hundred dollars (\$is \$500.00). The Council may revise~~
~~these fees upon 90 days written notice to each franchisee and an~~
~~opportunity to be heard..~~

(c) The franchise fee shall beis in addition to any other
fee, tax or charge imposed upon a franchisee.

(d) The franchisee shall must pay the franchise fee in the
manner and at the time required by the Chief Operating Officer.

(e) Upon the filing of anThe application, every applicant
~~fee for a franchise, new or for renewal of an existing franchise,~~
~~shall submit an is \$500.00. The application fee of five hundred~~
~~dollars (\$500)-is due at the time of filing.~~

(Ordinance No. 98-762C, Secs. 8-9. Ordinance No. 00-866, Sec. 3;
Ordinance No. 02-933, Sec. 2; Ordinance No. 03-1018A, Sec.4; and
Ordinance No. 14-1332, Sec. 1.)

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~~APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES~~

5.01.071-160 Pre-Application Conference for Franchises

(a) ~~All prospective~~ An applicants for a new franchise ~~shall participate in~~ must attend a pre-application conference. The purpose of ~~such~~ the conference ~~shall be~~ is to provide the ~~prospective~~ applicant with information regarding the applicable requirements for the proposed facility and to ~~obtain from~~ have the ~~prospective~~ applicant ~~a description of~~ describe the proposed facility's location, site conditions and operations ~~of the proposed facility.~~

(b) If ~~a prospective~~ an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, ~~such~~ the applicant ~~shall participate in~~ must attend a subsequent pre-application conference ~~prior to~~ before filing any application.

(Ordinance No. 98-762C, Secs. 11-12; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

5.01.072-170 Applications for Franchises

(a) ~~Applications~~ An applicant for a ~~franchise~~ new or ~~for renewal of an existing franchise~~ shall be filed must file the application on forms or in the format ~~provided~~ required 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~~ The applicant must include a description of the activities proposed the applicant proposes to be conducted conduct and a description of ~~Wastes sought~~ the waste it seeks to be accepted accept.

(c) ~~In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications~~ An application for a franchise ~~shall~~ must 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~~ term;
- (2) A ~~duplicate~~ copy of all applications for necessary DEQ permits ~~and~~, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
- (3) A ~~duplicate~~ copy of any closure plan ~~required to be submitted to DEQ, or if~~ that DEQ requires, including

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documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide 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 5.01.072(e)(3). If an application is approved, the franchise shall require that financial assurance is in place prior to beginning any activities authorized by the franchise. However, regarding applications for franchises, 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 5.01.072(e)(3) will be less than \$10,000.00;~~

~~(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 franchisee, the duration of that interest and shall(4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must 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 chapter320(f) if Metro revokes the franchise is revoked or refuses any franchise renewal is refused;~~

~~(6) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval has not been obtained, then a written recommendation of the planning director of the local governmental unit having land use~~

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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~~The 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 (6) Any current permit and a list of anticipated permits required from that any other governmental agency may require. If application for such other permits the applicant has been previously made, applied for other permits, the applicant must provide a copy of such permit application and any the permit that has been application and any permit that another governmental agency granted shall be provided as a result.~~

(d) An ~~application for a franchise shall be accompanied by an analysis of the factors described in Section 5.01.073180(f) of this chapter.~~

~~(c) Notwithstanding any other provision in this section, Metro shall not accept must accompany an application for a new franchise for authority to operate a transfer station until January 1, 2016.~~

(Ordinance No. 81-111, Sec. 7; 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; and Ordinance No. 14-1332, Sec. 1.)

5.01.073 ~~Issuance and Contents of~~180 Franchise Issuance

(a) ~~Applications for franchises The Chief Operating Officer will review franchise applications filed in accordance with under Section 5.01.072 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro170. Council may approve or deny the franchise application.~~

(b) The Chief Operating Officer ~~shall~~may make ~~such any~~ investigation ~~concerning regarding~~ the application information as

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the Chief Operating Officer ~~deems~~considers appropriate. ~~including~~This includes 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~~will make a recommendation regarding whether the ~~applicant is qualified, whether:~~

- (1) Applicant is qualified,
- (2) the pProposed franchise complies with the Regional Solid Waste Management Plan, ~~whether~~
- (3) the pProposed franchise meets the requirements of Section 5.01.072170, and ~~whether or not~~
- (4) the aApplicant has complied or can comply with all other applicable regulatory requirements.

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

(e) ~~Subsequent to receiving the recommendation of~~After Council receives the Chief Operating ~~Officer's~~Officer's recommendation, the Council ~~shall~~will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, ~~such~~the order ~~shall be~~is effective immediately.

(f) ~~In determining whether to authorize the issuance of a franchise, the~~The Council ~~shall~~will consider, ~~but not be limited by,~~ the following factors when determining whether to issue a franchise:

- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Solid Waste Management Plan;
- (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;

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- (3) Whether granting a franchise ~~to the applicant would be unlikely to unreasonably~~ is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
- (4) Whether granting a franchise ~~to the applicant would be unlikely to unreasonably~~ is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
- (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~~ 280 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.

(g) ~~If the Council shall act to does not grant approve~~ or deny a new franchise application within ~~121~~ 180 days after the ~~applicant files filing of~~ a complete application the franchise is be deemed granted for the solid waste facility or disposal site requested in the application. ~~The deadline for the Council to act to grant approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro. 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 an applicant files~~ a complete franchise application, the deadline for the Council to ~~act to grant approve~~ or deny the application ~~shall be is~~ extended if:

- (1) The Council ~~acts to extend~~ extends the deadline for up to an additional 60 days, which the Council may do ~~one time only once~~ for any single application;
- (2) The applicant substantially modifies the application during the ~~course of the review period~~, in which case the ~~120-180~~ days review period for the Council to act ~~shall be is~~ restarted as of the

Comment [A10]: Revision made in response to comments. Refer to Exhibit A.

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date Metro receives the applicant's modifications;
or

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

Comment [A11]: Revision made in response to comments. Refer to Exhibit A.

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

(j) If ~~a the Council denies a franchise request for a franchise is denied, no~~, the applicant may not file a new application for this the same or substantially similar franchise shall be filed by the applicant for at least six (6) months from the date of denial date.

(k) ~~The term of a new or renewed~~ A franchise ~~shall be term may not more than exceed~~ five (5) years, except that the Chief Operating Officer may extend the term of a franchise for up to one year.

~~(15.01.190 Franchise Contents~~

(a) The franchise ~~shall constitute as the Council's grant of authority from the Council to accept the waste(s) and perform the activity(ies) or activities described therein in the franchise~~, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority may be revoked.

(~~mb~~) Franchises ~~approved by the Council shall must~~ be in writing and ~~shall include the following~~:

- (1) The term of the franchise;
- (2) The specific activities ~~authorized to be performed~~ the franchisee may perform and the types and amounts of waste ~~authorized to be accepted~~ the franchisee may accept at the solid waste facility;
- (3) ~~Such Any~~ other conditions ~~as the Council deems~~ considers necessary to insure that ensure the franchisee complies with 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.

(~~n~~) ~~In addition to all other requirements of this section, a~~
c) A franchise ~~approving acceptance of that~~ authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading shall be is subject to the rules, procedures, performance standards, design requirements,

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and operating requirements adopted ~~as administrative procedures~~ pursuant to Section 5.01.132, ~~and shall~~280. The franchise must require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. ~~Facilities shall be~~ It is designed and operated to ~~preclude the creation of~~avoid 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~~It is designed and operated to ~~preclude the creation of~~avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. ~~Facilities shall be~~It is designed and operated to ~~preclude the creation of~~avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities ~~conducting that~~ conduct material recovery on non-putrescible waste ~~shall~~must be designed and operated to ~~assure~~recover materials ~~are recovered~~ in a timely manner, to meet standards in Section 5.01.125260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities ~~conducting reloading of that~~ reload non-putrescible waste ~~shall~~must be designed and operated to ~~assure that the reloading~~rapidly and efficiently reload and transfer ~~of non-putrescible that~~ waste to a 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~~ A franchisee must ~~keep and~~ maintain complete and accurate records of the amount of all solid waste and recyclable materials ~~received, recycled, reloaded and disposed~~that it receives, recycles, reloads or disposes.

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(Ordinance No. 98-762C, Secs. 19-20; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.10; Ordinance No. 07-1138, Sec. 2; and Ordinance No. 14-1332, Sec. 1.)

~~(5.01.080 Term of Franchise. Repealed Ord. 98-762C §21.)~~

~~(5.01.085 Franchises for Major Disposal System Components. Repealed Ord. 98-762C §21.)~~

5.01.074-200 Record-keeping and Reporting for Franchises

(a) ~~Franchisees shall~~A franchisee must maintain accurate records of the information ~~required by~~ the Chief Operating Officer requires and ~~shall report such required~~that information on the forms or in the format and within the reporting periods and deadlines ~~established by that~~ the Chief Operating Officer. ~~Reports shall be signed and certified as accurate by an~~ establishes. A franchisee's authorized representative ~~of~~must sign the ~~licensee or franchisee~~report and certify it as accurate.

(b) ~~Franchisees shall maintain evidence of all financial assurance mechanisms unless or until the franchisee is released from the financial assurance requirements as specified in this chapter.~~

~~(c) Franchisees shall~~A franchisee must provide copies of any correspondence ~~or information received from or provided to~~with any federal, state or local government agency related to the regulation of a solid waste facility within five ~~(5)~~ days of the ~~receipt or provision of the~~ correspondence ~~or information.~~

~~(d) Franchisees shall~~A franchisee must maintain records of any written complaints received from the public or a customer, ~~including and retain them for not less than one year. This includes,~~ but is not limited to, information ~~on~~regarding the nature of the complaint, the complainant's name, address and phone number ~~of,~~ the complainant, date the complaint was ~~franchisee~~ received the complaint, and any action taken to respond ~~response by the franchisee~~ to the complaint.

~~(e) All~~ (d) A franchisee must retain all records required by this chapter ~~shall be retained by the franchisee or its operator~~(except for the complaint records in subsection (c)) for three ~~(3)~~ years and ~~shall be available for inspection by~~allow the Chief Operating Officer to inspect them.

~~(e) All~~ information ~~submitted by that~~ the franchisee ~~shall~~ is public record and subject to disclosure pursuant to the Oregon Public Records Act, except ~~such that~~ portion of the information ~~records and reports for which that~~ the

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franchisee requests exception from disclosure consistent with Oregon Law.

(Ordinance No. 14-1332, Sec. 1.)

5.01.075-210 Franchise Renewal of Franchises

(a) The Council ~~shall approve~~ approves or ~~deny renewals~~ of denials solid waste facility ~~franchises~~ franchise renewals. A franchisee seeking renewal of a franchise ~~shall must~~ must:

- (1) File a completed application for renewal; accompanied by payment of an
- (2) Pay a \$500.00 application fee of five hundred dollars (\$500.00) not less than 120 days prior to the expiration of before the franchise term, together with expires; and
- (3) Provide a statement of proposed material changes from its initial application for the franchise and, along with any other information required by the Chief Operating Officer or by the Council, requires.

(b) The Chief Operating Officer ~~shall formulate recommendations~~ will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.073 ~~of this chapter-180~~. The Council ~~shall must~~ must 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~~ outlined in Section 5.01.073 ~~180~~. The Council may attach conditions or limitations to the renewed franchise.

(c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires.

(Ordinance No. 98-762C, Secs. 22-23. Ordinance No. 98-767, Sec. 3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 11; and Ordinance No. 14-1332, Sec. 1.)

5.01.076-220 Transfer of Ownership or Control of Franchises

~~(a) Any person in control of a franchise may not lease, assign, mortgage, sell~~ (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise ~~transfer, either in whole or in part,~~ transfers control of the franchise to another person ~~unless an application therefore has been filed in accordance with Section 5.01.072 and~~

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~~has been granted. The proposed, whether whole or in part. The~~ transferee of a 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 term for any transferred franchise shall be~~is 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.~~

(Ordinance No. 81-111, Sec. 10; Ordinance No. 98-762C, Sec. 24; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 12; and Ordinance No. 14-1332, Sec. 1.)

5.01.077-230 Change of Authorizations for Franchises

(a) A ~~person holding a franchise shall~~franchisee must submit an application pursuant to Section 5.01.072170 when ~~said person seeks authorization~~the franchisee requests authority to:

- (1) Accept wastes other than those ~~authorized by the applicant's franchise~~ authorizes, or
- (2) Perform activities other than those ~~authorized by the applicant's or franchise~~ authorizes, or
- (3) Modify other limiting conditions of the applicant's franchise.

(b) ~~Applications~~The franchisee must file an application 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~~authorization or limits to the applicant's franchise ~~shall does~~ not substitute for an application that Metro would otherwise ~~be required~~require under Section 5.01.070 of this ~~chapter~~150.

(d) A ~~person holding a franchise shall~~franchisee must notify Metro in writing when ~~said person~~the franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.

(e) The application fee for ~~applications for~~ changes of authorizations or limits ~~shall be one hundred dollars (\$100.00)~~ is \$100.00.

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(Ordinance No. 98-762C, Secs. 25-26; Ordinance No. 98-767, Sec. 4; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 13; and Ordinance No. 14-1332, Sec. 1.)

5.01.078-240 Variances for Franchises

~~_____ (a) The Council, upon recommendation of~~ (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon ~~such~~ conditions ~~as~~ the Council ~~may deem~~ considers necessary to protect public health, safety and welfare, ~~if.~~

(b) In order to grant a variance, the Council ~~finds~~ must find that the franchisee can achieve the purpose and intent of the particular 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, or franchisee requesting the variance~~ applicant's or franchisee's control; or
- (2) ~~Due to special physical conditions or causes, will~~ Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.

~~(bc) A variance must be requested by a franchisee or applicant, or must request a franchisee, variance in writing and must concisely state in a concise manner facts to show cause why such Council should grant the variance should be granted.~~ The Chief Operating Officer may make ~~such an~~ such an investigation as the Chief Operating Officer ~~deems~~ considers necessary ~~and shall make a recommendation.~~

(d) ~~The Chief Operating Officer must recommend to the Council whether to approve or deny the variance coincident with any recommendation made on approval or denial of any franchise application; or, upon a request for variance from an existing franchisee, within 120 days after receipt of~~ Metro receives the variance request.

(c) A request for a variance ~~shall~~ does not substitute for an application that Metro would otherwise ~~be required~~ require under Section 5.01. ~~070 of this chapter~~ 150.

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

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(e) If the Council denies a request for a variance ~~is denied, no, the requesting party may not file a new application for this~~ the same or substantially similar variance ~~shall be filed~~ for at least six ~~(6)~~ months from the denial date ~~of denial~~.

(Ordinance No. 81-111, Sec. 12; Ordinance No. 98-762C, Sec. 27; Ordinance No. 02-974, Sec. 1; and Ordinance No. 14-1332, Sec. 1.)

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; Ordinance No. 95-621A, Sec. 6; Ordinance No. 02-974, Sec. 1; and Ordinance No. 03-1018A, Sec. 14.)~~

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.120-250 General Obligations of All Regulated Parties

All persons regulated by this chapter ~~shall~~must:

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(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~~rules adopted pursuant to Section 5.01. ~~132 of this chapter~~280.

(b) Ensure that solid waste transferred from the facility goes to the appropriate destination under Section 5.01. ~~132(a) of this chapter~~280, under Metro Code Chapter 5.05, and under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.

(c) Maintain insurance during the ~~term of the~~ license or franchise ~~the types of insurance term~~ in the amounts specified in the license or franchise or ~~such any~~ other amounts as ~~may be required by~~ state law may require for public contracts, and ~~shall to~~ 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~~Indemnify and save harmless Metro, the Council, the Chief Operating Officer, ~~and any of their~~Metro employees ~~or and Metro 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~~ Agree to no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:

(1) ~~a~~Any provision or requirement of the license or franchise; ~~or because of the~~

(2) Metro's enforcement of the license or franchise; or

(3) Any determination that a ~~in the event the~~ license or franchise or any part thereof is ~~determined to be~~ invalid.

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

5.01. ~~125~~260 Obligations and Limits for Selected Types of Activities

(a) A ~~holder of a license or franchise for a~~ material recovery facility licensee or transfer station ~~shall franchisee~~ must perform material recovery from non-putrescible waste

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~~accepted~~ that it accepts at the facility as specified in this section or as otherwise specified in its license or franchise, or ~~shall it must~~ deliver ~~such the~~ 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 must~~ recover at least 25 percent 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~~ excludes 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 is~~ a violation enforceable under Metro Code Sections 5.01.~~180320~~ and 5.01.~~200330~~. After December 31, 2008, the requirements of this subsection ~~will are~~ not ~~be~~ applicable to licensees or franchisees unless ~~Metro the~~ Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.~~125260~~(c).

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

- (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. The Processing residual ~~from such a facility shall may~~ 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 ~~(8)~~ 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 the~~ sampling to Metro in the monthly report due the month following the end of that quarter.

~~(d3)~~ Based on observation, audits, inspections and reports, Metro inspectors ~~shall will~~ conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.~~135290~~(c). Failure to maintain the recovery level specified in ~~subsection Section 5.01.260(c)(1) of this section shall constitute is~~ a violation enforceable under Metro Code. ~~The Metro will not impose a civil penalty on the~~ first two violations of

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this subsection by a single licensee or franchisee ~~shall not result in the imposition of a civil penalty.~~

(~~e~~4) Failure to meet the reporting requirements in subsection (c)(2) ~~of this section shall constitute~~ is a violation enforceable under Metro Code.

(~~f~~d) A ~~holder of a franchise for a T~~transfer ~~S~~station franchisee:

- (1) ~~Shall~~Must 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~~Must not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.
- (3) ~~Shall be~~Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the ~~Metro~~Council in approving the transfer station franchise application.
- (4) ~~Shall~~Must 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.

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

(~~h~~f) A ~~holder of a license or franchise for a~~solid waste facility ~~shall not~~licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste ~~except when such~~unless the:

- (1) ~~s~~Size reduction ~~constitutes~~is a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and ~~such~~
- (2) Licensee or franchisee described the size reduction ~~is described and in a Metro-approved by Metro in an~~ operating plan.

(Ordinance No. 98-762C, Secs. 30-31; 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; Ordinance No. 12-1272, Sec. 3; and Ordinance No. 13-1306, Sec. 3.)

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5.01.~~127-270~~ Direct Haul of Putrescible Waste

~~Franchisees~~—A franchisee authorized by Metro to deliver putrescible waste directly to a disposal site ~~shall~~ must:

(a) Deliver ~~said~~ the 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~~ 280; and

(c) Provide transportation or arrange for transportation by a transportation service provider ~~complying that~~ complies 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~~ is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
- (2) All equipment ~~shall fulfill~~ satisfies all federal, state, and local regulations. In addition, the use of exhaust brakes ~~shall be~~ is prohibited ~~altogether~~.
- (3) All solid waste ~~shall be~~ is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and ~~shall be~~ is 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~~ is not less than 25 tons.
- (5) Any staging areas used ~~shall be~~ is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles ~~shall use~~ is 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~~ is limited to cases of emergency.
- (8) Transportation ~~shall not be conducted~~ is prohibited in the Columbia River Gorge NSA during the following times:

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- (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~~ presents an acceptable appearance.
- (11) A franchisee representative ~~of franchisee~~ and its transportation carrier ~~shall~~ must 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~~ must report to Metro any accidents, citations, and vehicle inspections involving vehicles of ~~their~~ the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A franchisee representative ~~of franchisee~~ and its transportation carrier ~~shall~~ must meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee ~~shall~~ must immediately report any violations of this subsection to Metro.

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

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

- ~~(5.01.130 Administrative Procedures for franchisees. Repealed Ord. 98-762C Sec. 29)~~
- ~~(5.01.131 Designation and Review of Service Areas and of Demand. Ordinance No. 01-916C, Secs. 2-3; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 17; and repealed Ord. 12-1272, Sec. 4.)~~

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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.~~

5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms

(a) The Chief Operating Officer may adopt or amend rules, performance standards, and forms to implement any provision of this chapter. Any rule, performance standard, or form adopted or amended under this section has the same force and effect as any other chapter provision.

(b) Before the Chief Operating Officer adopts or amends a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule, performance standard or form; the location at which a person may obtain a copy of the full text of the proposed rule, performance standard or form; the method for submitting public comments; and the deadline for submitting public comments.

(c) In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. The public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.

Comment [A12]: Revision made in response to comments. Refer to Exhibit A.

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(d) During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period.

(e) After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.

(f) Any rule or performance standard adopted under this section takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.

(g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.

(h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.

(i) Any form, performance standard, or administrative rule (formerly known as an "administrative procedure") that is in effect on the date of this ordinance's adoption remains in effect unless otherwise repealed or amended.

Comment [A13]: Revision made in response to comments. Refer to Exhibit A.

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(j) For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision.

~~(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; Ordinance No. 01-916C, Sec. 5; Ordinance No. 02-974, Sec. 1; Ordinance No. 07-1138, Sec. 3; and Ordinance No. 12-1272, Sec. 5.)~~

5.01.135-290 Inspections and, Audits, and other Investigations of Solid Waste Facilities

(a) The Chief Operating Officer ~~shall be~~ authorized to make such inspection ~~or, audit, or other investigation~~ as the Chief Operating Officer ~~deems~~ considers appropriate to ensure compliance with this chapter, the Code, the franchise or license, and ~~shall be permitted~~ administrative rules and performance standards adopted pursuant to Section 5.01.280. Licensed or franchised facilities must allow access to the facility 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,~~ and during non-business hours with 24 hours notice.

(b) Inspections ~~or, audits, or other investigations~~ authorized under subsection (a) ~~of this section shall~~ will occur regularly and as ~~determined necessary by~~ the Chief Operating Officer. ~~Results determines necessary. The Chief Operating Officer will report the results of each inspection shall be reported on a standard form specified,~~ audit, or other investigation in the format approved by the Chief Operating Officer.

Comment [A14]: Revision made in response to comments. Refer to Exhibit A.

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(c) The Chief Operating Officer ~~shall have~~may access ~~to~~ and ~~may~~ examine any records during ~~such~~the inspections ~~or~~, audits ~~any records~~, or other investigations if the Chief Operating Officer considers the records pertinent ~~in the opinion of the Chief Operating Officer~~ to the license or franchise, or to the provisions of this chapter, ~~including~~. These records include but are not limited to the licensee's, franchisee's or solid waste facility operator's 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~~. As part of the inspections ~~or~~, audits, or other investigations, the Chief Operating Officer may ~~include taking~~take samples and ~~conducting~~conduct 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~~will coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to ~~prevent the imposition of~~avoid redundant requirements on operations.

(d) Any ~~violations~~violation discovered by ~~the~~an inspection ~~or~~, audit ~~shall be~~, or other investigation is subject to the penalties provided in Section 5.01.200330.

(Ordinance No. 98-762C, Secs. 36-37; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 18; and 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 (5) 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~~

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~~complaint, name, address and phone number of the complainant, date the complaint was received and any action taken to respond to the complaint.~~

~~(c) All records required by this chapter shall be retained by the licensee, franchisee or its operator for three (3) 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; and 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 (\$300.00), and the annual fee for a solid waste franchise shall not exceed five hundred dollars (\$500.00). 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; Ordinance No. 98-762C, Sec. 40; Ordinance No. 98-767, Sec. 5; and Ordinance No. 02-974, Sec. 1.)~~

5.01.150 Regional System Fees

~~(a) In accordance with Pursuant to Chapter 5.02 of this title, regional system fees shall apply to solid waste facilities and disposal sites which are owned, operated, licensed or franchised by that Metro owns, operates, licenses or franchises, or which are liable for payment of such the fees pursuant to a special agreement with Metro.~~

~~(b) Regional system fees shall beare in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.~~

~~(c) Regional system fees shall must be separately stated upon records of the solid waste facility or disposal site.~~

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(d) Regional system fees and finance charges on ~~such~~those fees ~~shall~~must be paid as specified in ~~Section~~Metro Code Chapter 5.02-055 of this Title.

(Ordinance No. 81-111, Sec. 16; 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; and Ordinance No. 14-1332, Sec. 1.)

~~(5.01.160 Reports from Collection Services. Repealed Ord. 98-762C §42)~~

5.01.170-310 Determination of Rates

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

(b) Notwithstanding any other provision of this section,

- (1) Licensees ~~shall beare~~ exempt from all rate setting; and
- (2) Franchisees ~~shall beare~~ exempt from rate setting unless Metro requires rate setting ~~is required~~ as a franchise condition ~~of their franchise~~.

(Ordinance No. 81-111, Sec. 19; 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; and Ordinance No. 03-1018A, Sec. 20.)

ENFORCEMENT AND APPEALS

5.01.180-320 Enforcement of Franchise or License Provisions

(a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.

(b) ~~The Chief Operating Officer may, at any time, make an investigation to determine if investigate whether~~ 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~~will notify the franchisee or licensee in writing of the alleged violation, and the ~~steps necessary to be taken~~steps the violator must take to correct the violation. ~~Upon a finding that violation exists and that~~ If the

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franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after ~~receiving written~~ Metro sends notice ~~thereof~~, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.200 ~~of this chapter shall be imposed~~330 or that Metro will suspend, modify or revoke the franchise or license ~~is suspended, modified or revoked~~.

(bc) The ~~notice authorized by this subsection shall be based upon the~~ Chief Operating ~~Officer's~~ Officer will send the notice upon finding that the franchisee or licensee has:

- (1) Violated the franchise or license ~~agreement~~, the administrative ~~procedure~~rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated ~~thereunder~~there under 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~~that Metro requires the licensee or franchisee to submit;
- (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides 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~~Violated a city or county ordinance if ~~such ordinances require~~the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.

(ed) Except as provided in subsection (e)(d) ~~of this section, if~~ the Chief Operating ~~Officer's revocation, modification~~Officer revokes, modifies or ~~suspension of~~suspends a license or franchise ~~shall, it does~~ not become effective until ~~the~~Metro gives the licensee or franchisee ~~has been afforded~~an opportunity to request a contested case hearing ~~and an opportunity for~~under Metro Code 2.05.

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Revisions made in response to comments received from the public.

~~(e) If Metro finds 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 isMetro immediately suspendedsuspends a franchise, the franchisee shall have 90has 30 days from the suspension date of such action to request a contested case hearing in accordance withunder Code Chapter 2.05.~~

~~(e) Upon revocationf) If Metro revokes or refusalrefuses to renew thea franchise or license, all rights of the franchisee or licensee rights in the franchise or license shall immediately be divestedbecome void.~~

Comment [A15]: Revision made in response to comments. Refer to Exhibit A.

(Ordinance No. 81-111, Sec. 20; 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; and Ordinance No. 14-1332, Sec. 1.)

~~(5.01.190 Right to Purchase. Repealed Ord. 98-762C §46)~~

5.01.200-330 Penalties

(a) Each violation of this chapter shall beis punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. ~~SeparateMetro may join separate offenses may be joined in one indictment or complaint or informationNotice of Violation~~ in several counts.

~~(b) Upon a findingIf the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise agreement, or the administrative proceduresrules 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 chapter280, the Chief Operating Officer shallwill provide written notice to the licensee or franchiseevioliator describing the violation at the time of the inspection, and requiring the licensee or franchiseevioliator to correct the violation within the time specified onin the notice.~~

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Revisions made in response to comments received from the public.

(c) ~~Upon~~If a ~~finding that the~~ licensee or franchisee ~~has failed~~fails to correct the violation within the specified time period, the Chief Operating Officer ~~shall~~will issue a ~~citation~~Notice of Violation, indicating the continuing violation, the date of re-inspection and ~~imposing a~~ fine imposed 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 correct the violation, ~~such~~the violation ~~shall be~~ punishable by a fine ~~of \$1,000.00. Notice as specified in subsection (a). Metro will give notice of a final deadline for correcting the violation shall be given~~ at the time of re-inspection.

(e) ~~Upon a finding that~~If the licensee or franchisee ~~has failed~~fails to correct the violation after the final deadline, the licensee or franchisee ~~shall be required to~~must cease ~~performing~~ the activity resulting in the violation.

(f) ~~Further~~Metro will conduct further inspections ~~shall be conducted~~ to ensure ~~suspension of that the licensee or franchisee suspends~~ the offending activity. If the licensee or franchisee ~~has failed~~fails to suspend the offending activity, the Chief Operating Officer ~~may~~shall ~~conduct an investigation which may result in the~~.

- (1) ~~Imposition of~~Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
- (2) ~~Suspension of~~Suspend all solid waste activities on site;
- (3) ~~Imposition of~~Impose a lien on the property for the amount of the fines; or
- (4) ~~Suspension, modification~~Suspend, modify or ~~revocation of~~revoke the license or franchise pursuant to Section 5.01. ~~180 of this chapter~~320.

(g) In addition to subsection (a) ~~of this section,~~ Metro may ~~enjoin~~ any violation of this chapter ~~may be enjoined by Metro~~ upon suit in a court of competent jurisdiction, and ~~shall the violator may~~ also be subject to a civil penalty not to exceed \$500.00 per day for each day of violation.

(Ordinance No. 81-111, Sec. 22. Renumbered by Ordinance No. 91-436A, Sec. 2; Ordinance No. 98-762C, Sec. 47; Ordinance No. 98-767, Sec. 6; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec.22; and Ordinance No. 14-1332, Sec. 1.)

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Revisions made in response to comments received from the public.

~~(5.01.210 Acceptance of Tires at a Disposal Site. Repealed Ord. 98-762C §48)~~

~~(5.01.220 Additional Provisions Relating to Issuance of a franchise for a Facility Processing Petroleum Contaminated Soil. Repealed Ord. 98-762C §48)~~

~~(5.01.230-380 Additional Provisions Relating to the Licensing of Yard Debris Processing Facilities and Yard Debris Reload Facilities. Repealed Ord. 98-762C §49)~~

5.01.340 Appeals

(a) Any applicant, franchisee or licensee may request 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.

(b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.

(c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.

(d) 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 may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing.

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

MISCELLANEOUS PROVISIONS

~~(5.01.400 Treatment of Existing Licenses and franchises. Repealed Ord. 03-1018A §23)~~

5.01.410-350 Miscellaneous Provisions

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

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Revisions made in response to comments received from the public.

(b) ~~The Metro's~~ granting of a license or franchise ~~shall~~ does 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 term.

(c) ~~The Metro has the~~ power ~~and right~~ to regulate, in the public interest, the exercise of the privileges ~~granted~~ it grants by a license or franchise ~~shall at all times be vested in Metro.~~ Metro ~~reserves the right to~~ may establish or amend rules, regulations or standards regarding matters within Metro's authority and ~~to enforce all such~~ those requirements against ~~holders of licenses~~ licensees or ~~franchises~~ franchisees.

(d) ~~To be effective, a~~ No waiver of any ~~term~~ license or franchise condition ~~of a license or franchise must be~~ is effective unless it is in writing, and signed by the Chief Operating Officer. ~~Waiver of a term or conditions of~~ If Metro waives a license or franchise ~~shall~~ condition, that waiver does not waive ~~nor~~ or prejudice Metro's right ~~of Metro otherwise~~ to require performance of the same ~~term or conditions~~ condition or any other ~~term or~~ condition.

(e) ~~A license or franchise shall be construed, applied~~ Metro will construe, apply and ~~enforce~~ enforce a license or franchise 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~~ determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect 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~~ limits 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~~ should 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.

(Ordinance No. 98-762C, Secs. 52-53; Ordinance No. 02-974, Sec. 1; Ordinance No. 03-1018A, Sec. 24; and Ordinance No. 14-1332, Sec. 1.)
