Solid Waste
Administrative Rule

AR 5.10-4000

Administrative Rule of Metro Code Chapter 5.10
Administrative Rule Adoption Record and Findings

AR 5.10-4000 through 4085
Business Food Waste Requirement Administrative Rules

These administrative rules are adopted under the authority of Metro Code Chapter 5.10, which authorizes the Chief Operating Officer (COO) to adopt and amend administrative rules. In accordance with Metro Code, the COO provided an opportunity for public comment and held a public hearing on these rules before their adoption.

The COO finds that these administrative rules are necessary to implement certain provisions of Metro Code Chapter 5.10 and hereby adopts Administrative Rules Nos. 5.10-4000 through 4085. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 5.10. These rules have the same force and effect as any other provision of Metro Code Chapter 5.10.

It is so ordered:

Martha Bennett
Metro Chief Operating Officer

October 19, 2018
Date

SOLID WASTE
ADMINISTRATIVE RULES
AR 5.10-4000 through 4085

Business Food Waste Requirement

Effective: October 31, 2018

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5.10 – 4000 Purpose

1. The purpose of these rules is to implement the provisions of the business food waste requirement set forth in Metro Code Section 5.10.410-5.10.470.

2. The purpose of the business food waste requirement is to provide a region-wide standard for the separation and collection of food waste from food-waste-generating businesses. For the purposes of these rules, Covered Businesses are defined as organizations that cook, assemble, process, serve, or sell food or do so as service providers for other enterprises.

3. Food is identified as a primary material for recovery within the Regional Solid Waste Management Plan because of its prevalence in the region's waste stream and the negative environmental impacts of disposing food in a landfill.

4. The prevention of food waste, the donation of edible food for human consumption and the use of food waste to feed animals are the region's preferred methods for managing surplus food. Food that has been stored properly, is fit for human consumption and is accepted for donation and food that has been set aside and is destined for animal consumption in compliance with applicable regulations is not subject to this administrative rule.

5.10 – 4005 Policy and Legal Authority

1. Metro Code Chapter 5.10 requires local governments to establish mandatory programs to separate and collect food waste from certain food-waste generating businesses referred to in these rules as "Covered Businesses."

2. These administrative rules are issued under the authority of Metro Code Section 5.10.080. These rules are in addition to all other requirements and provisions in Metro Code Chapter 5.10.

5.10 – 4010 Definitions

Unless otherwise specifically defined, all terms used are as defined in Metro Code Chapter 5.00.

"**Covered Business**" means an organization that cooks, assembles, processes, serves, or sells food or does so as a service provider for other enterprises.

"**Business Groups**" means groups of Covered Businesses subject to the business food waste requirement by certain effective dates as delineated in the Applicability section of these rules.

"**Food waste**" means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. Food waste includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food waste does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations.

5.10 – 4015 Applicability of Rules and Effective Date

1. The business food waste requirement applies to all local governments within the Metro boundary.

2. Covered Businesses subject to the business food waste requirement include, but are not limited to:

Cafeterias & buffets	Grocery retail
Caterers	Grocery wholesale
Colleges & universities*	Hospitals*
Correctional facilities	Hotels*
Drinking places*	Limited service restaurants
Elementary and secondary schools*	Nursing & residential care*
Food product manufacturing	Retirement & assisted living*
Food service contractors	Specialty food markets
Full service restaurants	Warehouse clubs

*Only those businesses with full-service restaurants or on-site food preparation or service are subject to these rules.

3. Covered Businesses must meet the food waste requirement according to a schedule determined by the quantity of food waste they generate on average, in three phases as listed below. Implementation will begin with Business Group 1 and progress to the other groups according to the Effective Dates described in Rule 4020. Covered Businesses that demonstrate they generate less than 250 pounds per week of food waste are not subject to this requirement.

Business Group 1	**Business Group 2**	**Business Group 3**
≥0.5 ton (1,000 pounds) per week food waste generated	≥0.25 ton (500 pounds) per week food waste generated	≥0.125 ton (250 pounds) per week food waste generated

4. A person that provides space to a Covered Business must allow or facilitate provision of a food waste collection service for the Covered Business.

5.10 – 4020 Effective Dates

These rules are effective on October 31, 2018.

Local governments must meet the following deadlines:

1. Local Government Adoption of Requirement: July 31, 2019.
2. Implement Requirement for all Covered Businesses in Business Group 1: March 31, 2020-March 31, 2021.
3. Implement Requirement for all Covered Businesses in Business Group 2: March 31, 2021-September 30, 2022.
4. Implement Requirement for all Covered Businesses in Business Group 3: September 30, 2022-September 30, 2023.

5.10 – 4025 Exemptions

1. Governments Outside Metro Boundary: A local government outside of the Metro Boundary is exempt from this business food waste requirement.

2. No Commercial District: A local government that does not have a commercial zone or commercial district is exempt from this business food waste requirement.

5.10 – 4030 Compliance Waivers

Metro may grant a compliance waiver to a local government that meets the standards below.

1. Business quantity minimum threshold: Metro will waive application of the business food waste requirement for a local government with five or fewer Covered Businesses within its boundary. Metro will review the number of Covered Businesses in each local government jurisdiction annually. If Metro determines that a local government exceeds the minimum number of Covered Businesses during the review period, Metro will notify the local government of its findings in writing and will require the local government to comply with these rules within 12 months of the notification.

5.10 – 4035 Access to Services Payments

1. Franchised waste haulers: Metro may provide payments on a temporary basis to a waste hauler operating within the region under local government commercial collection franchise authority that is not within reasonable proximity of food waste transfer or processing services. Reasonable proximity is defined as within a distance that is equal to the average uncongested travel time one way to the nearest in-region transfer station that accepts municipal solid waste. Metro will establish zones to clearly define areas that are outside reasonable proximity and may apply a travel time inflator to account for congestion. Payment will be based on the number of loads per week of food waste generated within the zone at a 50% capture rate and the additional time required to deliver these loads to the nearest food waste transfer or processing services. Metro will determine whether a waste hauler is eligible to receive payment, the payment amount, disbursement method, and frequency of payments.

2. Metro will calculate the payment amount for a waste hauler using the following elements:
    a. Average cost per hour to operate collection vehicle in the Metro region.
    b. Number and type of Covered Businesses entities within the zone and within the waste hauler's collection franchise boundary.
    c. Estimated total tons per week generated by Covered Businesses within the zone at a 50% capture rate.
    d. Number of loads per week generated by Covered Businesses within the zone. Load size will be based on the average size of route truck food waste loads delivered to Metro Central Transfer Station over a 12 month period.
    e. Maximum additional time round trip beyond reasonable proximity required to transport loads to food waste transfer or processing services.
    f. Additional hours multiplied by cost per hour.

3. Metro will periodically review the elements used to calculate the payments and will make any adjustments that are necessary including utilizing new sources of data. Metro will notify waste haulers and local governments of any adjustments to the payment calculation elements within 30 days.

4. The following criteria must be met in order for a waste hauler to qualify for payment:
    a. The local government must adopt a legally-enforceable mechanism that meets the business food waste requirement and performance standard by the adoption deadline.
    b. Waste haulers must enter into a contractual agreement with Metro.
    c. Waste haulers must submit annual reports to Metro no later than March 31. Reports must demonstrate that funds have been included in Detailed Cost Reports submitted annually by waste haulers to local governments.
    d. Metro may request that local governments confirm that the payments received by waste haulers have been included in required Detailed Cost Reports and are factored into the collection rate-setting process. Cooperative programs may provide confirmation on behalf of member jurisdictions.

5. Metro will revoke payments if the waste hauler does not report payments or provides false or incomplete information.

6. Metro will discontinue payments to a waste hauler once transfer or processing services become available within reasonable proximity as determined by Metro. Metro will notify local governments and affected waste haulers at least 30 days before discontinuing payments.

7. Metro will re-evaluate the payments periodically and will automatically renew them until Metro determines that circumstances have changed. The waste hauler or local government does not need to take any action to renew payments unless otherwise directed by Metro.

8. Covered Businesses: Metro may provide payments on a temporary basis to a Covered Business that transports its own source-separated food waste. Food waste must be generated solely from its own operations and generated from a single location within the Metro boundary that is not within reasonable proximity of food waste transfer or processing services. Reasonable proximity is defined as within a distance that is equal to the average uncongested travel time one way to the nearest in-region transfer station that accepts commercially-derived municipal solid waste. Metro will determine whether a Covered Business is eligible to receive a payment, the payment amount, disbursement method and frequency.

9. Metro will calculate the payment amount for a Covered Business using the following elements:
    a. Average cost per hour to operate collection vehicle in the Metro region.
    b. Total loads and tons per week of acceptable food waste delivered to Metro Central Transfer Station based on actual delivery weights recorded by the Metro Central scale house.
    c. Location zone of the point of generation of the food waste.
    d. Maximum additional time round trip beyond reasonable proximity required to deliver loads to the nearest food waste transfer or processing services.
    e. Additional hours multiplied by cost per hour.

10. Metro will periodically review the elements used to calculate the payments and will make any adjustments that are necessary including utilizing new sources of data. Metro will notify the Covered Business of any adjustments to the payment calculation elements within 30 days.

11. The following criteria must be met in order for a Covered Business to qualify for payment:
    a. The business must be located within the jurisdictional boundaries of a local government that has adopted a legally-enforceable mechanism that meets the business food waste requirement and performance standard by the adoption deadline.
    b. The business must apply for a payment and submit all required information in a format prescribed by Metro.
    c. The business must fully comply with all program criteria or standards.
    d. The business must demonstrate to Metro that its food waste is being disposed as waste in a landfill. A business does not qualify for payments if it transports its food waste to other locations for other uses or recovery.
    e. A business must have a credit account with Metro for use of Metro Central station including obtaining Metro-issued RFID tags. Cash transactions are ineligible for access payments.

12. Metro will discontinue payment to a Covered Business once a transfer or processing facility becomes available within reasonable proximity to the business as determined by Metro. Metro will notify any affected Covered Businesses at least 30 days before discontinuing payments.

13. Metro will re-evaluate the payments periodically and will automatically renew them until Metro determines that circumstances have changed. Metro may revoke a payment to a Covered Business any time for a violation of any criteria or payment condition.

5.10 – 4040 Local Government Requirements

1. A local government must implement one of the following:
    a. Adopt a legally-enforceable mechanism that meets the performance standard in rule 4050. A legally-enforceable mechanism includes but is not limited to local code, regulation, ordinance, or law.
    b. Adopt the Business Food Waste Requirement Model Ordinance and require business food waste be delivered to a solid waste facility authorized by Metro.

2. A local government must require Covered Businesses within its jurisdiction to:
    a. Separate food waste from all other solid waste for collection.
    b. Recover food waste that is controlled by the business, agents, and employees. This requirement does not apply to food wastes controlled by customers or the public. At its discretion, a Covered Business may also collect food waste from customers but must ensure that food wastes are free of non-food items. K-12 schools may also include student-generated food waste from school cafeteria meals but must ensure that food wastes are free of non-food items.

3. A local government must require persons or entities that lease or provide space to a Covered Business to allow or facilitate the provision of food waste collection service for those Covered Businesses.

4. A local government must submit annual implementation plans to Metro according to the procedures set forth in these Administrative Rules.

5. A local government may:
    a. Implement the program in the manner that is most efficient and effective for local conditions, local solid waste system considerations, geography, and that which best suits the Covered Businesses as long as the local government complies with the performance standard and deadlines.
    b. Grant temporary waivers to a Covered Business according to the procedures set forth in these Administrative Rules.
    c. Designate another agency or partner to implement the program on their behalf. A designated agency is a county agency, city agency or contracted agent that is responsible for designing and implementing the business food waste requirement according to the procedures set forth in these Administrative Rules.

5.10 – 4045 Local Government Annual Implementation Plan

A local government is required to submit to Metro an annual implementation plan regarding the business food waste requirement. A local government may develop and implement its plan individually or through cooperative or partnership agreements between governments. A local government may implement the business food waste requirement in a manner that best suits local conditions as long as

the local government meets or exceeds the performance standard. An implementation plan must meet the performance standard set forth in these Administrative Rules.

5.10 – 4050 Local Government Performance Standard

1. Business Notice of Requirement. After a local government adopts the business food waste requirement and according to the implementation schedule, the local government must send notice to Covered Businesses that outlines the requirement and how to comply and receive assistance. A local government must establish a mechanism to notify new Covered Businesses of the business food waste requirement.

2. Business Compliance. A local government must require that Covered Businesses comply with the business food waste requirement including, but not limited to:
    a. Adherence with the implementation schedule.
    b. Correctly-labeled and easily-identifiable collection receptacles.
    c. Arranging for food waste collection service as necessary.
    d. Ensuring building owners or managers of single or multi-tenant buildings containing Covered Businesses allow or otherwise enable the provision of food waste collection service to lessees or occupants subject to the business food waste requirement.

3. A local government must ensure appropriate collection receptacles and service are made available.

4. A local government must require that franchised or otherwise licensed waste haulers deliver food waste to a facility that complies with federal, state, regional and local laws and regulations.

5.10 – 4055 Business Assistance

A local government must provide educational materials and offer technical assistance to Covered Businesses to assist with program set-up, understanding program requirements and separation standards.

a. Educational materials must include, at a minimum:
    i. Labels for collection containers that clearly communicate what is allowed in the food waste collection system.
    ii. Signs and/or posters that provide clear and simple instructions.
    iii. All signs and program materials must be designed to be understood by people with limited English proficiency.
    iv. Program contact phone number for businesses to call for program assistance.

b. Technical assistance offered must include, at a minimum:
    i. Education and assistance with food waste prevention techniques and edible food donation programs.
    ii. Assistance with food waste collection program set up and training on-site at the business.
    iii. Assistance with mitigating issues arising from program participation such as odors or vectors.
    iv. Ensure correct labeling of all food waste collection receptacles.
    v. Serve as a facilitator between the business and solid waste hauler as needed to assist with the provision of appropriate collection receptacles and service frequency.

5.10 – 4060 Local Government Enforcement of the Business Food Waste Requirement
A local government must establish a method for ensuring compliance with the business food waste requirement. Covered Businesses may be subject to enforcement actions should they not meet the compliance dates listed in section 5.10 – 4020.

5.10 – 4065 Local Government Temporary Compliance Waivers to Covered Businesses

1. A local government may establish a method for granting temporary waivers to Covered Businesses. A local government must obtain Metro approval of the waiver method and conditions.

2. Temporary waivers must meet the following minimum standard:
    a. May not exceed 12 months, annual renewal allowed.
    b. In order to be renewed, a local government must annually review waivers to determine if conditions that warrant the waiver are still in place and cannot be remedied.
    c. Covered Businesses seeking a temporary waiver must agree to periodic waiver verification site visits. Local governments are responsible for determining if one or more of the following criteria warrant a temporary waiver:
        i. Less than 250 pounds per week of food in the disposed waste.
        ii. Food waste produced by the Covered Business is not suitable for inclusion in the program, or cannot be made suitable without unreasonable expense.
        iii. Physical barriers to compliance exist and cannot be immediately remedied.
        iv. Compliance results in unreasonable capital expense.
        v. Compliance results in a violation of other government ordinance, health or safety code.

5.10 – 4070 Metro Enforcement of the Requirement
A local government may request that Metro assist with enforcement of the business food waste requirement. Metro will provide enforcement assistance after Metro and the local government establish an Intergovernmental Agreement.

5.10 – 4075 Self-Haul of Source-Separated Food Waste
The local government may allow a Covered Business to self-haul source-separated food waste generated by that business. The local government must require the Covered Business to comply with these rules, including without limitation delivery of the food waste to a facility authorized by Metro.

5.10 – 4080 Compliance Verification and Reporting
Local governments must collect and report data to Metro to demonstrate compliance and assist with program evaluation. Metro will determine reporting requirements and frequency, review data and make a determination of compliance as set forth in Annual Implementation Plans.

5.10 – 4085 Funding Guidelines

1. Metro may provide funding to support the implementation of the business food waste requirement to local governments upon adoption of the requirements by the Metro Council. Metro intends to

provide funding for the first five fiscal years of the business food waste requirement, subject to Metro Council approval of funding amounts during the annual budget process. After the first five years of implementation, ongoing program maintenance funding may also be provided subject to Metro Council approval during the annual budget process.

2. A local government must use funds for business assistance, infrastructure, compliance, and enforcement efforts to implement the business food waste requirement. Metro will review and approve the intended uses prior to distributing funds.

3. If a local government has designated another agency or partner to implement the program, Metro may, at its sole discretion, distribute funds to the designated agency. A designated agency is a county agency, city agency or contracted agent that is responsible for designing and implementing a waste reduction program including the business food waste requirement, on behalf of a local government.

4. In order to receive funding, a local government or its designated agency must submit documentation demonstrating compliance with the requirements of Metro Code 5.10.410-5.10.470 and these rules and enter into an Intergovernmental Agreement with Metro.

5. Metro will withhold funding associated with the implementation of the business food waste requirement from governments that do not comply with the business food waste requirement. If governments remain out of compliance for more than two years, funding associated with other programs may also be withheld or Metro may seek any remedy under applicable state law. Governments that are, in the sole opinion of Metro, actively making good faith efforts to adopt the business food waste requirement will remain eligible for associated funding. Metro will determine how any withheld funds will be utilized.