

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: April 9, 2019 **Approx. Start Time:** 3:30 p.m. **Approx. Length:** 30 min

Presentation Title: Business Food Waste Collection Requirement

Department: Transportation & Development - Sustainability & Solid Waste

Presenters: Eben Polk, Kelly Stewart

Other Invitees: Dan Johnson, Cheryl Bell, Rick Winterhalter, Clackamas County Refuse & Recycling Association, Jennifer Erickson (Metro)

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Shall staff proceed to develop a code amendment that will implement the new Metro ordinance requiring collection of food scraps by certain food-related businesses, per the Regional Waste Plan?

EXECUTIVE SUMMARY:

In July 2018 Metro adopted a policy that requires local governments to ensure that certain food-related businesses separate and recover food waste. Metro subsequently adopted administrative rules to implement the policy in October 2018 (Ordinance and Administrative Rules in Attachment A). Local governments within the Metro district are required to pass implementing ordinances by July 31, 2019. To facilitate local ordinance adoption, Metro has provided a model ordinance (Attachment B).

Diverting more food waste away from landfills is a state and regional priority and a significant opportunity to reduce our climate impact. Food is approximately 16 percent of what our region sends to the landfill—the single largest component. When separated and collected, food waste can be processed to generate clean energy and/or agricultural amendments.

Oregon law identifies an increased recovery goal for food waste of 25 percent by 2020, and the Regional Waste Plan identifies food recovery as a priority. Regionally, the collection of commercial food waste under voluntary programs has plateaued. Of 140,000 tons of food scraps discarded by businesses each year, about 28,000 tons are currently diverted from the landfill to a better use.

Metro first studied requirements for food waste recovery initiated in other communities in the US. In October 2016 the Metro Council directed their staff to (a) develop a draft policy requiring food-related businesses including restaurants and grocery stores to keep food scraps out of the garbage, (b) determine how to aggregate and transfer collected food scraps, and (c) secure local and stable processing capacity. Based on Council direction, Metro staff developed policies and initiatives to fulfill these objectives. In 2017 and 2018 County staff participated as a stakeholder in the process to develop the policy and conduct outreach with the business community. During our participation we have underscored the importance of (a) engagement with local elected leaders and businesses, (b) adequate lead time, and (c) convenient transfer options to minimize collection costs.

During 2017 and 2018 Metro conducted outreach and engagement with food-related businesses, city councils, county commissions, chambers of commerce, MPAC, and their Solid Waste Alternatives Advisory Committee (SWAAC). Outreach and engagement activities are summarized below and in Attachments C & D.

The mandate would initially apply only to large food waste generators such as food processors, restaurants, and grocery stores meeting a threshold for food waste generation starting in March 2020, extending to smaller institutions, restaurants, grocers, and schools in 2021 and 2022. Food-related businesses that generate less than 250 pounds of food waste per week are not subject to the requirement. Specifically, Metro’s administrative rules require compliance in phases:

Business Group 1	Business Group 2	Business Group 3
March 31, 2020-March 31, 2021	March 31, 2021-Sept. 30, 2022	Sept. 30, 2022-Sept. 30, 2023
≥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

The food scraps requirement is similar to our 2008 code amendments requiring that businesses recycle basic materials such as metals, paper, and certain plastics. County Code already anticipates the potential for required food waste collection, stating that “All businesses within the County shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter...” (10.03.145). It is difficult to forecast how many businesses will be covered by this requirement. We estimate based on state employee data that 70 businesses in unincorporated Clackamas County would be included in Group 1, with another 100 to 220 in Groups 2 and 3.

In unincorporated Clackamas County, food-waste generating businesses already have access to food scraps collection service as an option, which can be included with commercial service. That is, when a business participates, they will not pay an additional fee for food scraps collection. (This is similar to recycling—businesses are subject to a basic Business Recycling Requirement but recycling service does not entail an additional fee.) A business subject to this requirement would also receive free indoor containers, signage, and training for employees.

At present commercial food waste is not accepted at Metro South transfer station. To defray costs associated with transferring food waste longer distances than garbage, Metro’s administrative rules (Attachment A) include payments to franchised collection companies that will offset the additional cost. Metro also proposes to maintain a lower disposal fee for commercial food than for garbage, which will help offset the cost associated with expanding food collection service.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? Working from assumptions about the staff time needed to provide comprehensive technical assistance and support to participating businesses, we estimate \$220,000 (2 FTE) will be needed in FY 19-20, 20-21, and 21-22, declining in out years. This cost would include technical assistance in both cities and unincorporated Clackamas County within the Metro district. This does not include the potential for staff time for enforcement—such time is projected to be negligible based on experience with the Business Recycling Requirement.

What is the funding source? Metro proposes to boost funding support to local governments to cover the additional staffing resources needed to implement the requirement. These funds are identified in our program’s draft budget for FY 19-20. County franchise fees would supplement as needed. Via an IGA, the County receives Metro funds to ensure sufficient staff and material

resources to provide free technical assistance, training, and resources to businesses in unincorporated areas and the cities through cooperative working agreements.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
Our mission includes the provision of materials management services so businesses, the public, and future generations can experience a livable community. Our program's purpose includes the provision of recycling and sustainability-related services to businesses so they can reduce waste and conserve resources.
- How does this item align with the County's Performance Clackamas goals?
It supports goals to honor, utilize, promote, protect and invest in our natural resources, and ensure safe, healthy, secure communities.

LEGAL/POLICY REQUIREMENTS:

- Metro's Ordinance 18-1418, adopted July 19, 2018, requires that local governments adopt ordinances requiring certain food-related businesses and workplaces that generate more than 250 pounds of food waste per week to separate food wastes for collection (Metro Code Chapter 5.10). Local ordinances must comply with Administrative Rules adopted by Metro.
- Oregon Administrative Rules (340 div. 90) allow a local food scraps collection requirement to count towards the required number of recycling program elements that cities and the county must implement to meet the amended Opportunity to Recycle Act (ORS 459/459A).
- The recently drafted Regional Waste Plan, pending adoption by the Metro Council, identifies food scraps collection as a priority material.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Metro, with support and input from County staff, have conducted extensive outreach and stakeholder engagement with businesses and local governments. In addition to presentations to cities in the Metro boundary, Metro has engaged directly with a number of businesses and business associations such as the Oregon Restaurant and Lodging Association (ORLA), the Oregon Food Bank, Oregon Health Authority, and the Oregon Department of Agriculture. Businesses that will be impacted by this policy have been contacted with several opportunities to provide input as seen in Attachments C and D.

Stakeholder engagement has included:

- Surveys of 360 businesses
- Letters inviting public comment sent to more than 2,000 potentially affected businesses
- 20 city councils and county commissions
- 8 industry professional associations, organizations or committees (such as ORLA)
- 8 Chambers of Commerce
- 12 food rescue agencies
- Regional city managers
- Regional mayors and chairs meeting
- MPAC
- SWAAC (Solid Waste Alternatives Advisory Commission)

The letter sent to more than 2,000 businesses for the October 2017 public comment period yielded 38 comments, summarized as follows:

- 21 in support of a requirement
- 1 opposed
- 5 with questions
- 8 with some concerns or suggesting clarifying edits
- 3 neutral or not applicable

Engagement in Clackamas County has included:

- December 2016: Briefing to C4.
- June 2017: Solid Waste Commission briefing
- July 11, 2017: BCC policy session and presentation from Metro staff
- November 21, 2017: BCC policy session
- December 7, 2017: comment letter to Metro
- Ongoing: County staff participation as a stakeholder in Metro’s policy development committee
- Various dates: Presentations to city councils / commissions in Gladstone, Lake Oswego, Milwaukie, Oregon City, West Linn, and Wilsonville. Presentations to North Clackamas Chamber of Commerce, Milwaukie Rotary Club

If the Board of County Commissioners opts to proceed with developing our local implementing ordinance, public engagement will include two public hearings and a publicly noticed meeting of the Solid Waste Commission.

OPTIONS:

1. Do not proceed with ordinance amendments that would implement the regional business food scraps collection requirement at this time. Direct staff to respond to concerns of the Board and schedule for future consideration.
2. Proceed with ordinance amendments that would implement the regional business food scraps collection requirement.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners direct staff to proceed with Option 2. Staff would then draft applicable amendments to County Code and present these to the Solid Waste Commission and the Board of County Commissioners for consideration.

ATTACHMENTS:

- A. Metro Ordinance and Administrative Rules
- B. Metro Model Ordinance
- C. Final Public Comment Report: Business Food Waste Requirement (Oct 1, 2018)
- D. Metro Stakeholder Engagement Summary: 2016 - 2018

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Eben Polk @ 503-742-4470

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 18-1418
CODE CHAPTER 5.10 TO ESTABLISH A)	
BUSINESSES FOOD WASTE REQUIREMENT.)	Introduced by Chief Operating Officer Martha Bennett in concurrence with Council President Tom Hughes

WHEREAS, Metro regulates solid waste generated within the Metro region pursuant to Metro’s constitutional, statutory, and charter authority and as set forth in the Metro Code; and

WHEREAS, food represents 18 percent of the region’s disposed waste—the largest single material sent to landfill and the largest single recoverable material sent to landfill; and

WHEREAS, when sent to landfill, food waste generates methane which is 25 times more potent of a greenhouse gas than carbon dioxide; and

WHEREAS, food waste is identified as a primary material for recovery within the region’s Regional Solid Waste Management Plan, which guides Metro and local government work; and

WHEREAS, the State of Oregon Department of Environmental Quality, via Oregon Revised Statutes 459A.010 has set a food waste recovery goal of 25% by 2020; and

WHEREAS, the State of Oregon Department of Environmental Quality has added a required food waste collection program for nonresidential generators to the list of menu items available to local governments for compliance with state law under Oregon Administrative Rule 340 Division 90; and

WHEREAS, the Metro region has had a voluntary business food waste collection program in place for over ten years yet only fourteen percent of the total food waste is recovered; and

WHEREAS, the Metro Council has determined that in order for the region to significantly increase food waste recovery, a more aggressive approach to food waste recovery is necessary; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code 5.10 is amended to establish a Business Food Waste Requirement as set forth in Exhibit A to this Ordinance.

ADOPTED by the Metro Council this 26th day of July 2018.

Tom Hughes, Council President

Attest:

Approved as to Form:

Miranda Mishan, Recording Secretary

Alison R. Kean, Metro Attorney

Metro Ordinance No. 18-1418 – Exhibit A

BUSINESS FOOD WASTE REQUIREMENT

5.10.410	Purpose and Intent
5.10.420	Business Food Waste and Covered Businesses
5.10.430	Business Food Waste Requirement
5.10.440	Business Food Waste Requirement Performance Standards
5.10.450	Temporary Waiver
5.10.460	Metro Enforcement of Business Food Waste Requirement
5.10.470	Metro Model Ordinance

BUSINESS FOOD WASTE REQUIREMENT

5.10.410 Purpose and Intent

The business food waste requirement provides an opportunity to increase recycling of food waste and to assist the Metro region to achieve waste reduction goals. Metro does not intend for this requirement to apply to food that is fit for human consumption and accepted for donation by a charitable organization or the use of food waste for animal consumption in compliance with applicable regulations.

5.10.420 Business Food Waste and Covered Businesses

For the purpose of this section, business food waste is solid waste consisting of food waste removed from the food supply chain that is not fit for human or animal consumption. A covered business is a business that cooks, assembles, processes, serves, or sells food.

5.10.430 Business Food Waste Requirement

Local governments must require (1) covered businesses in their jurisdiction to source separate and recover business food waste; (2) delivery of collected business food waste to a facility authorized by Metro; and (3) persons, as defined by Metro Code Section 1.01.040(h), who provide space to a covered business to allow the source separation and collection of food waste.

5.10.440 Business Food Waste Requirement Performance Standards

The Chief Operating Officer will adopt administrative rules to address the business food waste requirement performance standards. The performance standards must include, without limitation, the following elements:

- (a) Provisions requiring that local governments
 - (1) Notify covered businesses and waste haulers of the business food waste requirement;
 - (2) Require covered businesses and waste haulers to comply with the business food waste requirement;
 - (3) Provide education and technical assistance to covered businesses and waste haulers regarding the business food waste requirement; and
 - (4) Enforce the business food waste requirement.

- (b) Provisions requiring local governments to compel persons providing space to a covered business to allow for the source separation and collection of business food waste.

The Chief Operating Officer may allow a local government to waive the business food waste requirement as to a specific business as provided in the administrative rules.

5.10.450 Temporary Waiver

The Chief Operating Officer may waive, for no longer than 365 days, the local government's implementation of the business food waste requirement only as provided in the administrative rules. The Chief Operating Officer may provide for an extension of the temporary waiver in the administrative rules

5.10.460 Metro Enforcement of Business Food Waste Requirement

Upon a request by a local government and as provided in an intergovernmental agreement, Metro will perform the local government function to ensure covered business compliance with the business food waste requirement.

5.10.470 Metro Model Ordinance

The Chief Operating Officer may adopt a business food waste requirement model ordinance for use by the local government. The model ordinance is advisory only.

**Attachment A
(cont.)**

**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.

ATTACHMENT B

BUSINESS FOOD WASTE REQUIREMENT MODEL ORDINANCE

Section 1. Applicability

This ordinance applies to all covered businesses. A covered business is a business that cooks, assembles, processes, serves, or sells food or does so as service providers for other enterprises.

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 with full-service restaurants or on-site food preparation or service are subject to this requirement.

Section 2. Business Food Waste Requirement

Covered businesses must separate food waste from all other solid waste for collection. 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.

Covered businesses must collect 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 business may also collect food waste from customers or the public 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.

Covered businesses must have correctly-labeled and easily-identifiable receptacles for internal maintenance or work areas where food waste may be collected, stored, or both.

Covered businesses must post accurate signs where food waste is collected, stored, or both that identify the materials that the covered business must source separate.

Owners or managers of single or multi-tenant buildings containing covered businesses must allow or otherwise enable the provision of food waste collection service to lessees or occupants subject to the business food waste requirement.

Section 3. Compliance Timeline

Covered Businesses must comply with the food waste requirement as determined by the quantity of food waste they generate per week, on average. Implementation will begin with Business Group 1 and progress to the other groups according to the dates noted below. Covered Businesses that demonstrate they generate less than 250 pounds per week of food waste are not subject to this requirement.

Business Group 1 March 31, 2020-March 31, 2021	Business Group 2 March 31, 2021-Sept. 30, 2022	Business Group 3 Sept. 30, 2022-Sept. 30, 2023
≥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

Section 4. Temporary Compliance Waivers to Covered Businesses

A covered business may seek a temporary (12 month) waiver from the business food waste requirement by providing access to a recycling specialist for a site visit and demonstrating that the covered business cannot comply with the business food waste requirement. Businesses must agree to periodic waiver verification site visits to determine if conditions that warrant the waiver are still in place and cannot be remedied in accordance with waiver criteria.

Section 5. Enforcement of the Business Food Waste Requirement

A covered business that does not comply with the business food waste requirement may receive a written notice of noncompliance. The notice of noncompliance will describe the violation, provide the covered business an opportunity to cure the violation within the time specified in the notice, and offer assistance with compliance.

A covered business that does not cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation will provide an additional opportunity to cure the violation within the time specified in the citation and will notify the covered business that it may be subject to a fine.

A covered business that does not cure a violation within the time specified in the citation may be subject to a fine.

Final Public Comment Report: Business Food Waste Requirement



October 1, 2018

BACKGROUND

First Comment Period

Between September 15 and October 20, 2017, Metro conducted the first public comment period for the proposed business food waste requirement ordinance and associated administrative rules. Notification letters were sent to more than 2,000 potentially-affected businesses to inform them of the policy and to invite comments. Metro also produced 1,000 public comment postcards for local government partners to hand out to businesses. A Metro News story, published on September 15, also announced the public comment period and provided information on how to submit public comment. This Metro News story was also promoted on Metro's Facebook page (www.facebook.com/oregonmetro) and Twitter feed (@oregonmetro).

In addition, the Metro web page dedicated to the food scraps project (www.oregonmetro.gov/foodscraps) provided businesses with information on what types of materials would be included in the program, the types of businesses that would be required to participate, an estimate of the dates businesses would need to be in compliance with any new policy, and a guide designed to help businesses estimate the quantity of food scraps their business likely generates.

Comments were required to be submitted in writing for inclusion in this report. Comments were received primarily through an email address established for the comment period. Comments were also received via U.S. mail, through letters emailed to the Metro Council offices, and through a related Metro News posting on Metro's Facebook page.

Second Comment Period

From April 16 through May 15, 2018, Metro conducted a second public comment period to solicit comments on the changes made to the administrative rules noted below.

The region may still have a limited number of facilities that accept commercial food scraps at the time the program is implemented, which might result in increased travel times for haulers delivering collected food scraps. Those times would translate into higher costs that would be passed on to customers. To address this, the administrative rules originally contained a distance waiver, through which Metro would waive the required food scraps collection requirement until a jurisdiction had a food scraps transfer station or processor in relatively close proximity. Following input from the Metro Council at the Council work session in November 2017, **Metro staff developed an alternative approach intended to achieve the same objective as the distance waiver**, but to do so in a way that more strongly advances the intent of the regional food scraps policy and allows all businesses to participate. In addition, the **policy implementation dates were adjusted** forward one year to allow for ample time for collection system development.

The Metro Council held a public hearing on Ordinance 18-1418 on July 12, 2018 and adopted the ordinance on July 26, 2018. The administrative rules were on a separate yet parallel path and a third 30-day review and comment period was held for the rules only as described below.

Third Comment Period (Administrative Rules only)

From August 31 through September 28, 2018, Metro conducted a third public comment period. Due to Council adoption of Ordinance 18-1418, only the administrative rules were included in this final comment round.

Following input from local governments, the solid waste hauling community, businesses, citizens and Metro's Solid Waste Alternatives Advisory Committee, additional changes were made to the administrative rules. The **access to services payments section was amended to directly compensate solid waste haulers** to offset the potential additional cost of delivering food scraps to Metro Central Transfer Station. Previous versions of the rules had these funds paid to local governments. A **provision was added to the access to services payments** to enable companies that haul their own food waste (such as food processors) to qualify for these payments. More specific wording was added to indicate that **schools may include food waste collected from student lunches** and not just from the food preparation phase. Other minor changes were made to wording in order to increase clarity and to update formatting to meet the new Metro standard.

All of the comments received, as well as the comment log with staff response are included with this report as Attachment A.

COMMENT SUMMARY

First Comment Period

At the close of the first comment period, 40 sets of written comments were received:

- 20 were clearly supportive of the mandatory policy
- 1 was opposed
- 11 requested specific edits to the policy or had general concerns and suggestions for changes
- 6 had general questions or were requests for additional information on various topics
- 2 comments were not applicable or neutral
- A fifth-grade class from Sauvie Island Academy also submitted letters; 18 students were in support and 4 were opposed.

The majority of those **in favor** of the policy indicated:

- A mandatory program was overdue and it was a surprise that it was not yet required in such an environmentally progressive region.
- The education and outreach structure and associated funding to support local government technical assistance is important for businesses to be successful.
- It is important to make sure that proper infrastructure is in place for businesses and that there is adequate funding to support implementation success.
- It is the responsible and sustainable thing to do, all businesses should be required to participate and the data support the need for the policy.

The one comment **opposed** to the policy believed that these businesses were already participating in a program and if the service was free, more would participate.

The **concerns** expressed by eleven of the comments included the following:

- Increased costs to businesses already strained by new fees and taxes
- Potential nuisance or health/sanitation issues
- Questions regarding Metro’s legal authority to impose the policy on local governments
- Risk of failure or unintended consequences
- Equity—better understand the burdens on different business communities, especially those with little influence over the policy
- Concerns about timeframe for implementation being too aggressive—should be more flexible
- Critical cost details are still unknown
- Necessary infrastructure for commercial food waste transfer still lacking in the region

Second Comment Period

At the close of the second comment period, 8 sets of written comments were received:

- 3 were in support of the policy
- 3 supported intent of the policy but had specific concerns about how the access to services funds would be disbursed
- 1 requested that Metro consider a pilot program in one area of the region prior to region-wide implementation
- 1 requested the requirement be expanded to cover multifamily households

Third Comment Period

At the close of the third comment period, 3 sets of written comments were received:

- All comments supported the intent of the rules
- All comments requested that Metro expedite the development of transfer capacity to better serve the region and that the access to service payments serve only to temporarily bridge the service gaps
- None of the comments suggested specific changes to the rules as written

AMENDMENTS MADE TO DRAFT POLICY

All comments received during the first comment period were reviewed by the intergovernmental policy team. Those comments that requested **specific changes** to the Administrative Rules were discussed by the team which then determined which comments necessitated changes or clarifications to the draft ordinance and administrative rules documents and what those specific changes should be. The majority of the changes made were to improve clarity and correct inconsistencies in the documents. The revised draft of the ordinance and administrative rules, dated November 8, 2017, which illustrates proposed changes based on the comments during this first period is included as Attachment B.

Comments received during the second comment period were reviewed by Metro staff. The primary changes were to the Access to Services Payments section of the administrative rules—shifting payments to solid waste haulers rather than to local governments and including specific businesses in the payments. The revised draft of the administrative rules, dated August 22, 2018, which illustrates changes based on the comments during this second period is included as Attachment C.

Comments received during the third comment period were reviewed by Metro staff. No substantive changes were made to the draft documents based on the comments received. The final version of the rules is included as Attachment D.

CONCLUSION

The first round of public comments indicated overall general support for the policy.

- Questions remain regarding the details of the temporary waivers for local government implementation. Staff will need to determine the appropriate criteria and base data, evaluate potential impacts on tons recovered and collection economics, test approaches and revise the rules over time.
- Questions remain regarding the financial impacts of the policy both on local governments and on affected businesses. Metro needs to complete further analysis on the cost impacts including the tip fee that will be charged prior to the effective date of the policy if the ordinance is adopted by the Metro Council. (The policy would take effect on October 26, 2018, if the Metro Council adopts the ordinance on July 26, 2018.)
- Metro should develop and issue guidance documents to bring clarity to specific elements of the Administrative Rules; specifically local government reporting requirements.

The second round of comments echoed the overall support and raised the following:

- Some local governments and the hauling community requested that the access to transfer services payment disbursement method be reconsidered. The preference of the commenters was that the payments be directed to the haulers rather than local governments.
- Questions remained regarding the parameters of how the funds could be used should they be allocated to local governments rather than haulers.

The third round of comments supported the intent of the policy, appreciated the changes made to the access to service payments and reiterated the need for a more transfer options to serve the region.

On September 26, 2018 a public hearing on the draft administrative rules was held in accordance with Metro Code Chapter 5.01.280. The final draft of the administrative rules (AR 5.10-4000 through 4090) will be presented to Metro's Chief Operating Officer for adoption. If adopted, the rules become effective 30 days after adoption unless the Chief Operating Officer specifies a later adoption date.

The complete report, including all attachments can be viewed on the Metro website: www.oregonmetro.gov/foodscraps

ATTACHMENT D.

Metro Stakeholder Engagement Food Scraps Policy Proposal 2016 through 2018

Metro staff conducted the following outreach to individual businesses, business associations, elected officials and boards, chambers of commerce, non-profits and government agencies. The majority of outreach was done in-person and many were done in partnership with the region's local government staff.

Business survey and interviews

- Survey developed and distributed in partnership with the Oregon Restaurant & Lodging Association. Conducted by third party, reached 360 businesses.

Individual businesses and industry associations – one-on-one meetings and presentations

- Albertsons/Safeway
- Aramark/Pacific Wild
- Bon Appetit/Oregon Episcopal School
- Building Owners and Managers Association (BOMA)
- Clackamas County Business Alliance
- Costco
- Gresham Chamber of Commerce
- Elmer's
- Hillsboro Chamber of Commerce
- McMenemy's
- North Clackamas Chamber Public Policy Committee
- Northwest Food Processors Association
- Northwest Grocers Association
- Oregon Convention Center, Oregon Zoo, EXPO, P'5
- Oregon Restaurant & Lodging Association (four meetings)
- Portland Business Alliance (2 engagements)
- Providence Hospital
- Red Robin
- Shari's Restaurants
- Tualatin Chamber of Commerce Business Advisory Council
- Walmart
- Washington County Green Business Alliance
- Washington County Haulers
- Westside Economic Alliance (2 meetings)
- Willamette View Retirement

Local government meetings and presentations

- Beaverton City Council
- Clackamas County Commission
- Cornelius City Council

- Fairview City Council
- Forest Grove City Council
- Forest Grove Sustainability Commission
- Gresham City Council & staff
- Hillsboro City Council
- King City City Council
- Lake Oswego City Council
- Milwaukie City Council
- Oregon City Commission
- Regional City Managers (2 meetings)
- Regional Mayors and Chairs (2 meetings)
- Sherwood City Council
- State and County Health Departments
- Tigard City Council
- Troutdale City Council
- Tualatin City Council
- Washington County Commission
- Washington County SWAC
- West Linn City Council
- Wilsonville City Council
- Wood Village City Council

Food Rescue Agency Roundtable

- 12 food rescue non-profits participated.