

*Solid Waste and Recycling Management
Administrative Rules*



Effective May 10, 2014

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SOLID WASTE and RECYCLING MANAGEMENT CODE
ADMINISTRATIVE RULES

The Solid Waste Management Code Administrative Rules set forth herein are hereby adopted pursuant to Multnomah County Code Chapter 27.

Dated this 10th DAY of MAY, 2014.

**KIM PEOPLES, DIRECTOR OF
MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY SERVICES**

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GENERAL PROVISIONS

1. TITLE; CITATION OF RULES

These rules may be referred to as “Recycling Rules,” “RR,” or “rules” and shall be cited, for example, as RR 1.1(a).

2. DEFINITIONS - Unless the context or subject matter requires otherwise, the terms used in these rules shall be defined as provided in MCC Chapter 27 and as follows:

- a. **Business.** Any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.
- b. **Business Recycling Customer.** A person who enters into a service agreement with a licensee for business recycling services.
- c. **Civil Penalty.** A fine issued for violation of license terms, applicable local, state, and federal law, or the rules, subject to ORS 153.015-153.019.
- d. **Complaint.** An oral or written statement received by the County alleging a violation.
- e. **Collection license.** A license issued by the Director which allows the holder to provide solid waste and recycling collection and drop box service within the areas of Multnomah County that are covered by MCC Chapter 27.
- f. **Director.** The Director of the Multnomah County Department of Community Services or their designee.
- g. **Drop Box.** A single receptacle used to store solid waste or recyclable materials that is designed to be removed from the customer’s site on the back of an open truck for unloading at a disposal site, material recovery facility, or other storage or processing facility. The contents of the receptacle are not mixed with the contents of other similar receptacles until delivery to a disposal site.
- h. **Glass.** Bottles and jars, colored and clear mixed. Glass must be kept separate from other recyclables in a rigid container and on a collection vehicle.
- i. **Legal holiday.** Defined in ORS 187.010 and 187.020.
- j. **Mixed Recycling.** Mixed recycling includes the following:

- i. Metals: Aerosol cans, aluminum and steel tinned containers, ferrous and nonferrous scrap no greater than 36 inches in length and forty pounds in total weight.
 - ii. Paper: Magazines, newspapers, office paper (including white and colored ledger and computer), scrap paper (including envelopes, fax paper, blueprints, brochures and other miscellaneous papers), paper board, box board, milk cartons and aseptic containers and telephone directories.
 - iii. Corrugated cardboard and kraft paper. Boxes placed outside the container should be flattened and cardboard pieces should be no larger than 36 inches by 36 inches.
 - iv. Plastic bottles and tubs larger than six ounces, plastic buckets five gallons or less and rigid plastic nursery pots four inches or larger.
- k. **MCC.** Multnomah County Code.
- l. **Multi-Family Residence.** Any multi-dwelling building or group of buildings that contains five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or household moorages. Multi-family also includes certified or licensed residential care housing, such as adult foster care homes.
- m. **Principals.** Include all officers, partners, owners and managers of the firm or corporation.
- n. **Regional Service Standard.** The level of recycling service defined in Metro Code Chapter 5.10.
- o. **Regular Collection of Standard Recyclable Materials.** Collection at least as often as garbage service collection of any material or group of materials that can be recycled, as defined in the Regional Solid Waste Management Plan and the these administrative procedures.
- p. **Residential.** Single-family residences, including duplexes, triplexes, and fourplexes.
- q. **Rural.** Areas of Multnomah County that are outside the Metro urban growth boundary.
- r. **Solid Waste and Recycling Management Code.** MCC Chapter 27, which regulates licensing for solid waste haulers in the unincorporated areas outside of urban service boundary of Multnomah County.
- s. **Urban Services Boundary.** The boundary that establishes a jurisdiction's role as the principal provider of municipal services. This boundary may extend beyond a city's boundary and include portions of unincorporated Multnomah County. (For a map of the City of Portland Urban Services Boundary see <http://www.portlandoregon.gov/bps/article/51672> or use www.portlandmaps.com to look up individual addresses).

- t. **Used motor oil.** Used motor oil must be contained in see-through plastic container with a screw-top lid. Breakable or leaking containers will not be accepted. Contaminants such as anti-freeze, solvents, gasoline or water may not be included.
 - u. **Violation.** An alleged or an affirmed violation, whether presently occurring, or occurring in the past, and whether occurring on an on-going, intermittent or one-time basis. Violations of MCC Chapter 27, applicable local, state, or federal law, and these rules are unclassified violations as described in ORS 153.015.
 - v. **Wasteshed.** The Metro wasteshed designated by the Environmental Quality Commission, including Clackamas, Washington and Multnomah Counties.
3. **AUTHORITY** The Director adopts these rules pursuant to MCC Chapter 27.503. The Director may amend or repeal these rules and may adopt new rules as necessary for the administration of the Solid Waste and Recycling Management Program.

4. EFFECTIVE DATE

- a. These rules will apply to all matters that become subject to the provisions of the Solid Waste and Recycling Management Code on or after the 10th Day of May, 2014.
 - b. Paragraph (a) of this rule will apply except to the extent that in the opinion of the Director or a Hearings Officer the application of these rules in a particular matter or proceeding would not be feasible or would work an injustice, in which event the current rule most consistent with the fair and expeditious resolution of the matter under consideration will be applied.
5. **INTERPRETATION** These rules will be construed in conformity with Multnomah County ordinances, resolutions, and orders, and with state and federal laws, rules and regulations, all of which supersede any conflicting provisions in these rules. If any provision, sentence, phrase, clause or word in these rules is for any reason held to conflict with any superior authority or is held unconstitutional, illegal, invalid or otherwise unenforceable by a court of competent jurisdiction, such conflict or holding will not invalidate the remainder of these rules, but will be confined to the provision, sentence, phrase, clause or word held unconstitutional, illegal, invalid or otherwise unenforceable.

6. OWNERSHIP OF RECORDS; PUBLIC RECORDS STATUS

- a. The records of the Multnomah County Department of Community Services and of its officers, employees and other agents relating to matters subject to the rules are the Department's property.
- b. Except as exempt or protected by law from disclosure, the records described in paragraph (a) of this rule are available for public inspection.
- c. Records submitted for reporting purposes are conditionally exempted from disclosure according to ORS 192.501(2). The County will not disclose "trade secrets" records unless required by law.

7. TIME

- a. In computing any period of time prescribed or allowed by the Solid Waste and Recycling Management Code or these rules, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the computed period will be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
- b. Notwithstanding paragraph (a) of this rule, civil penalties are assessed on the date a Notice of Violation, License Suspension, or Revocation is served or on the date ordered by a Hearings Officer, whichever is applicable. In accordance with MCC Chapter 27.511, additional civil penalties may be assessed for the same violation for each day the violation remains unresolved after the date on which the civil penalties are first assessed.

8. ADDRESS TO BE USED

Any mailing required under the Solid Waste and Recycling Management Code or these rules will be mailed to the recipient's last known business address unless the Director has actual written notice of the recipient's preferred mailing address.

9. ANNUAL LICENSE REQUIRED

- a. Any person collecting solid waste or recyclable materials within the limits of Unincorporated Multnomah County and outside urban services districts must obtain an annual collection license from the Multnomah County Department of Community Services. This includes any person offering on-route, on-call, and/or drop-box collection service.
- b. The following persons do not require a solid waste collection license:
 - i. Solid waste haulers who only have collection routes in sections of Multnomah County otherwise covered by an urban services district

and are regulated, licensed, or franchised by another local government.

- ii. A civic, community, benevolent or charitable non-profit organization that collects, transports and markets source separated recyclable materials for resource recovery, but only for the purpose of raising funds for a charitable, civic or benevolent activity.
- iii. A person who transports solid waste that such person produces directly to a disposal site authorized by the Oregon Department of Environmental Quality and Metro or to a recycling or resource recovery facility.
- iv. A property owner who transports solid waste left by a former tenant upon such owner's property.
- v. A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment.

10. ANNUAL LICENSE APPLICATION

- a. Annual license applications or renewal applications must be submitted to the County at least 15 business days before the expiration of an existing license or prior to the initiation of a new license.
- b. A new or renewal application for a collection license will be on forms provided by the County (Appendix A).
- c. Required attachments must be included with the application form.
- d. The application must include the following information:
 - i. The name and address of the business;
 - ii. State of Oregon business license number;
 - iii. The address of the business' operating yard;
 - iv. The names and business addresses of all principals of the business;
 - v. Disclosure, for the business and each principal of the business, of:
 - 1. All civil litigation within the course and scope of the applicant's solid waste and recycling collection activities in Oregon within the last ten years resulting from allegations of property damage, discrimination, or violations of environmental laws;
 - 2. All accidents, performed during the course and scope of your solid waste collection activities, that occurred within the Metro watershed, and required the filing of an ODOT Motor Carrier Crash Report (Form 735-9229); and,

3. All Department of Environmental Quality and Metro enforcement actions, including a description of nature of enforcement action and outcomes.
4. All prohibitions from operating collection vehicles due to an unsatisfactory safety fitness rating from either the U.S. Department of Transportation or the Oregon Department of Transportation.
- vi. The number of residential, multifamily, and commercial customers being serviced by the applicant in unincorporated Multnomah County at the time of application, including drop box customers.
- vii. A complete list of outreach and education activities conducted by the applicant in unincorporated Multnomah County in the previous year, including frequency.
- viii. Insurance Certificates. Proof of insurance as follows:
 1. Commercial general liability insurance on an occurrence basis with a combined single limit of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, with an annual aggregate limit of \$2,000,000. The Certificate of Insurance must state "Additional Insured Form (include form number) attached. This form is subject to policy terms, conditions, and exclusions." The County must be listed as an Additional Insured by Endorsement on a primary and non-contributory basis. Coverage must specifically include products and completed operations coverage. A cross-liability clause or separation of insureds condition must be included.
 2. Commercial Automobile Liability insurance with a combined single limit or the equivalent of not less than \$2,000,000 for each occurrence for Bodily Injury and Property damage, including coverage for owned, hired, or non-owned vehicles.
 3. Workers' Compensation insurance in compliance with ORS 656.017. Employer's Liability insurance with coverage limits of not less than \$500,000 must be included.
 4. Coverage must be without prejudice to other existing coverage. Licensee shall pay all deductibles and retentions. Licensee's coverage will be primary in the event of loss.
 5. Licensee must provide that the County will be given 30 days' advance written notification if the policy's limits are reduced or if the policy is terminated or changed.
- ix. Hold Harmless Agreement. The applicant will furnish to the County on a form provided by the County, a signed statement that the

licensee will hold harmless the County, its officials, agents, and employees and will indemnify the County, its officials, agents, and employees for any claims for injury or damage to property that may arise as a result of any activity carried on by the licensee, or the licensee's employees or agents.

- x. License Fees. Prior to final approval, any outstanding Annual License Fee balance, including penalties and interest owed, must be paid to the County.
- xi. The applicant, when submitting a new or renewal application, will pay a nonrefundable application fee of \$150.00.
- xii. The annual fee paid by the licensee will be calculated according to the number of regularly scheduled customers serviced by licensee at the time of application in accordance with the following formula: (\$1.00 per residential, multi-family, and business customer) (per month) = license fee.
 - 1. If a hauler previously not licensed by Multnomah County applies for a license within the calendar year, the fee will be prorated to reflect the number of months remaining in that calendar year rounded to the nearest month.
 - 2. If the license fee is greater than the application fee, the County will subtract the application fee from the licensing fee to calculate the total amount owed.
 - 3. The County will accept quarterly payments in lieu of annual payments.
- xiii. Approval or Denial of an Application. The County may deny a license application or renewal when:
 - 1. The applicant or its principals have one or more unresolved Notices of Violation;
 - 2. An applicant provides late, incomplete or inaccurate information on the application;
 - 3. An applicant is unable to meet local, state or federal requirements, including but not limited to licenses, registrations, etc.;
 - 4. An applicant fails or refuses to comply with the requirements of Section 11, Licensee Responsibilities; or
 - 5. Failure to pay license fee when due.
- xiv. An applicant may appeal an application denial as outlined in these rules.

11. LICENSEE RESPONSIBILITIES

- a. **Applicable State and Local Laws.**
 - i. A licensee is subject to all applicable Federal, State, Metro, and County laws, including MCC Chapter 27.
 - ii. A licensee is subject to all applicable Federal, State, Metro, and County laws including but not limited to federal, state and local laws and regulations relating to zoning, driving, equipment maintenance, transportation, employee and public safety, and waste, compostable, and recyclable materials collection, storage, transfer, and disposal.
- b. All solid waste, recycling, and yard-debris collection vehicles must be clearly identified by displaying the licensee's name and telephone number prominently and conspicuously on both sides of the vehicle. Where a licensee has acquired used vehicles, or changed its business name, that licensee must update the vehicle identification within 45 days. In this case, that licensee must ensure that the phone number on the vehicle will refer callers to the licensee currently using the vehicle.
- c. **Cleanup on Route.** The licensee must pick up all material in the public right-of-way as a result of being blown, littered, broken, or leaked in the course of collection subsequent to being set out by the licensee's customer.
- d. **Transfer.** The transfer of solid waste, recycling, or yard-debris is prohibited in the public right of way.
- e. **Disposal Requirements.**
 - i. Disposal of recyclable materials is prohibited. The licensee is responsible for transporting and delivery of collected recyclable materials for recycling. The licensee must ensure that all collected recyclables are delivered to a processor or broker of recyclable materials or to an end use market.
 - ii. The licensee is responsible for transporting and delivery of collected solid waste for disposal. The licensee must ensure that all collected solid waste is delivered to a licensed disposal facility.
- f. **Service Requirements**
 - i. **Maintaining Passage on Public Streets.** Licensees must exercise reasonable efforts to minimize stopping of collection vehicles in a manner that blocks the passage of other vehicles or pedestrians on public streets or sidewalks while collecting solid waste, recyclables or compostables, or placing of drop-boxes.
 - ii. Consistent with ORS 459A.070, if a customer source separates recyclable material and makes it available for reuse or recycling, licensees may charge the customer less, but not more, for

collection and disposal of solid waste and collection of recyclable material than the collection service charges a customer who does not source separate recyclable material. This provision does not affect charges for the collection of compostables.

- iii. The customer will not receive a reduced rate if recycling or yard debris service is refused.
- iv. **Glass separation requirement.** At all times, glass must be kept separate from all other standard recyclable materials..
- v. **Residential Customers**
 - 1. The licensee must provide customers with a recycling container, including a separate, durable container for glass.
 - 2. Container Identification.
 - a. The licensee must clearly identify all of its collection containers, including compactors, but excluding containers of less than 18-gallon capacity, by displaying the licensee's current name and telephone number prominently and conspicuously on at least the portion of the container that is visible when the container is being used to store materials.
 - b. The licensee must clearly label all containers for recyclables or yard-debris indicating the material(s) to be placed in the container.
 - 3. The licensee must provide regularly scheduled customers with weekly recycling collection service, unless the Director has granted an exception under section 11(h) of these rules.
 - 4. The licensee must pick up mixed recycling, glass, and used motor oil set out for collection, as long as the materials are prepared according to guidelines set forth in the education materials provided to customers.

vi. **Multi Family Customers**

- 1. The licensee must provide mixed recycling and glass service to all multi-family accounts as part of regular solid waste service.
- 2. The licensee must provide regular collection of mixed recycling and glass as long as the materials are prepared according to guidelines set forth in the education materials provided to customers, unless the Director has granted an exception under section 11(h) of these rules.

vii. **Business Customers**

- 1. The licensee must provide mixed recycling and glass service

to all commercial accounts as part of regular solid waste service.

2. The licensee must provide regular collection of mixed recycling and glass set out for collection, as long as the materials are prepared according to guidelines set forth in the education materials provided to customers.
- g. **Yard debris.** Yard debris service in rural areas is optional. Yard debris includes the following organic materials: leaves, weeds, grass clippings, branches, and prunings no greater than 4 inches in diameter or 36 inches in length. No animal waste, dirt, sod, stumps, metal, rocks, ashes, food waste, lumber, or garbage may be included.
- h. **Exceptions.** The County acknowledges that some areas of Unincorporated Multnomah County currently have service levels that are the same as those of adjacent jurisdictions for which Metro has approved an Alternative Program under Metro Code 5.10.240.
 - i. The County will grant an exception to licensees to allow these described areas to remain at their current service levels until Metro completes and adopts revisions to the Regional Service Standard Alternative Program. Any annual exception will be based on service levels described in the licensee's application.
 - ii. Licensees issued an exception to the weekly collection requirement must comply with the collection standards described in the exception.
- i. **Vehicle and Equipment Standards.** A licensee or a license applicant must notify the Director when it has been prohibited from operating one or more collection vehicles due to an unsatisfactory safety fitness rating from either the U.S. Department of Transportation or the Oregon Department of Transportation. The Director will suspend that licensee's collection license if the licensee has been found to operate a vehicle with an unsatisfactory safety fitness rating.
- j. **Prevention of Leaking and Spilling Loads.** The licensee must ensure that all collection vehicles and containers are constructed, loaded, operated and maintained in a manner to reduce to the greatest extent practicable dropping, leaking, blowing, sifting or escaping of solid wastes, recyclables, and compostables, or the vehicle's fuel, hydraulic fluid or lubricants from the vehicle onto private property and public streets while stationary or in transit excepting (a) normal leakage of fuel, hydraulic fluid or lubricants typically associated with a properly maintained vehicle; and (b) leakage of fuel, hydraulic fluid or lubricants due to equipment failure provided that the failure is immediately corrected and the leakage is

cleaned up as soon as practicable.

k. Office and Personnel Requirements

- i. Email: Licensees shall have electronic mail (email) available for messages to and from the County. The email must be capable of receiving, opening and printing documents in PDF format. Licensee must provide the County with one primary email address.
- ii. Where an email communication is sent between the County and a licensee, it shall be sent to the primary email address provided to the County by the licensee as required above, or to the County email address solidwaste@multco.us. Notices sent between the County and licensees by email shall be deemed effective and delivered on the same day as email transmission, or the first business day thereafter if emailed on a Saturday, Sunday or legal holiday.
- iii. The licensee shall have voice mail, an answering machine, or answering service to receive calls when company personnel are unavailable.
- iv. The licensee shall provide the County with an after-hours telephone number to be used only in emergencies.
- v. The licensee shall notify the County of anticipated changes in addresses, phone numbers, and email address for any facilities regulated by these rules, including but not limited to office, mailing address, yard location(s), and after-hours phone number. Such notice shall be provided to the County in writing no less than ten business days prior to such change.
- vi. The licensee shall notify the County in writing of changes in company contact persons and responsible officials within 15 business days after such changes occur.

l. Annual License Fees. The licensee is required to pay an annual license fee to the County as calculated in Section 10.d.xii above.

m. Record Maintenance and Reporting

- i. Each licensee must maintain records for each customer showing:
 1. Address of service recipient;
 2. Dates of service;
 3. Types of service provided, including, but not limited to, solid waste and recycling collection, yard debris and special services, and the frequency of each collection service;
 4. Rates charged for service;
- ii. Each licensee must maintain detailed account information separately for solid waste, recyclables, and yard debris collection

including:

1. Number of single-family residential customers;
 2. Number of multi-family accounts; and
 3. Number of commercial customers;
- iii. Each licensee must maintain route maps for solid waste, recyclables, and yard debris collection showing daily routes.
 - iv. Each licensee must maintain monthly solid waste, recyclables and yard debris tonnage information, including location of disposal site or processing site.
 - v. Each licensee must store the records for not less than three years.
 - vi. Each licensee must make available for inspection by the Director at any time during normal work hours:
 1. All records the licensee is required to maintain under this section; and,
 2. Any other records in the licensee's possession that the Director deems relevant to verify the accuracy of license fees paid to the County, or to carrying out any responsibility that the Director has under these Rules.
 - vii. Each licensee must submit annual hauler reports to Metro as required.

n. Public Education

- i. The licensee must actively promote recycling to its customers, advocating a waste diversion goal equal to or greater than specified in ORS 459A.010, Statewide Goals.
- ii. The licensee is responsible for notifying and educating its customers on waste reduction, reuse, and the opportunity to recycle. Licensees must use and distribute educational and other materials provided by the County. Licensees may not alter County materials, except to add licensee contact information. Subject to obtaining prior approval from the County, licensees may use their own materials in addition to County materials. A copy of any additional licensee materials must be filed with the County.
- iii. The licensee must supply customers with information concerning their opportunity to recycle in the following manner:
 1. Semiannual recycling and yard debris information to all residential, multi-family and business collection service customers that includes, at a minimum, the materials collected and the schedule for collection, and at least annually, includes additional information describing the procedure for preparing materials for collection;

- 2. Recycling and yard debris notification and educational packets for all new customers within 14 days of signing up.
 - iv. The licensee must not represent to any customer that materials collected by the hauler as recyclables are actually being recovered if the hauler knows that the material is not actually being recovered.
 - v. The licensee must provide the County with written verification that recycling information has been provided to all customers.
- o. **Composition studies.** A licensee must participate in solid waste composition studies as requested.

12. CUSTOMER RESPONSIBILITIES

- a. Any person who contracts for service from a licensee shall be responsible for payment for that service.
- b. All customers, including drop box, residential, multifamily, and commercial customers, shall place garbage, recycling, and/or yard debris containers at a location that is readily accessible and safe to empty and load, and mutually agreed to by the licensee and the customer.
- c. The customer shall prepare recyclable materials for collection in accordance with County approved instructions provided by the licensee.

13. COUNTY RESPONSIBILITIES

- a. The County recognizes that regulation of solid waste and recycling collection within the unincorporated areas of the county is necessary to ensure a comprehensive and consistent level of recycling service for the region, and to assist the region in meeting state recovery and waste reduction goals, conservation of natural resources and reduction of greenhouse gas emissions.
- b. The County will administer these rules in compliance with State law, the Regional Solid Waste Management Plan, and the intergovernmental agreement with Metro, Contract Number 201439, executed September 26, 2013.

14. ENFORCEMENT OF LICENSE PROVISIONS and APPEALS

- a. **PRIORITY OF MATTERS** The Director will process all matters subject to the Solid Waste and Recycling Management Code to the extent permitted by County resources and in the order that maximizes the efficient use of

County resources.

b. COMPLAINT

- i. Complaint Intake Any person may file a written complaint with the Director. The complainant's name and contact information are required to file a complaint. Submission of anonymous complaints and/or complainant's unavailability as a witness will result in dismissal of the complaint.
- ii. Confidentiality of Complaints The County is required by law to disclose complainant's name if complainant is going to be a witness in a hearing. A complaint is a matter of public record and may be disclosed to the public unless disclosure is prohibited.
- iii. Withdrawn Complaint The Director may dismiss a complaint withdrawn by the complainant prior to commencement of the Director's investigation. The Director will file a written determination to dismiss a withdrawn complaint in the file in which the Complaint Form is filed.

c. INVESTIGATION RECORD The investigation record will consist of the complaint; supplementary documentation submitted to, obtained, or created by the Director, including the Director's notes; and reports on communications or site visits made in the course of investigation.

- i. Record of Complaint Each complaint must be recorded on a Complaint Form (Appendix B). The Complaint Form may be completed by complainant or the Director based on the complainant's statements. The Director will file the Complaint Form and any attachments in an open License Complaint or License Violation file for the subject hauler or business owner, if any, otherwise the Director may open a new License Complaint or License Violation file for the subject hauler or business owner and include the Complaint Form.
- ii. Supplementary Documentation The following information may be included:
 - 1. Case number;
 - 2. Copy of the subject hauler's most recently issued license;
 - 3. Business address of the subject hauler or business owner, if known, or location information if no business address assigned;
 - 4. Name and mailing address of the property owners, contract

- purchasers, and/or lessees;
5. The identity, including name, address and telephone number, and statements of all actual, alleged and potential respondents;
 6. The identity, including name, address and telephone number, and statements of all persons that have or may have information relevant to the determination of the existence of one or more violations;
 7. Determination of Multnomah County jurisdiction over the subject hauler or business owner pursuant to the Residential and Business Recycling Code;
 8. Determination of the existence and status of any prior or current violations by the subject hauler;
 9. Determination of the MCC provisions violated;
 10. Record of the Director's actions and communications with the public that are material to the determination on investigation; and
 11. Copy of any other supplementary documentation submitted to or obtained or created by the Director, including the Director's notes or reports on communications or field investigations, that is material to the determination on investigation.

d. FIELD INVESTIGATION

- i. For the purpose of determining and documenting evidence pertaining to a determination of the existence of one or more violations by the subject hauler or business owner, the Director may, in addition to any other manner of investigation, conduct a field investigation, including field inspections of the subject hauler or business owner, observation of the subject hauler or business owner from public or private locations, and identification and interviewing of persons having or potentially having information relevant to the investigation.
- ii. The Director may enter private property for the purpose of making contact with a person having a possessory interest in such property to the extent allowed by law. Otherwise, the Director may not enter private property without first obtaining either informed consent from a person having a possessory interest in such property or an administrative inspection warrant authorizing the Director's entry onto such property.
- iii. Subject to Section 14.d.ii, the Director may conduct a site

inspection with or without prior notice to the owners, contract purchasers, and/or lessees of subject property or respondents, if different. The determination of whether or not to give prior notice may be made after consideration of one or more of the following criteria:

1. Whether the violation(s) alleged in the complaint present or potentially present an existing or imminent threat to public health or safety or to natural resources;
 2. Whether prior notice will make detection and documentation of the violation(s) alleged in the complaint more difficult; and
 3. Whether prior notice will unnecessarily increase the known or reasonably foreseeable risk of harassment of, or harm to, the Director or others.
- iv. The Director may not conduct a field investigation under circumstances that present a known or reasonably foreseeable risk of harassment of, or harm to, the Director or others, unless the Director implements measures reasonably calculated to ensure the personal safety of the Director and/or others.
- v. The Director must include a written report on each completed field investigation, together with any materials supporting documentation, in the investigation record. The field investigation report may include the following information:
1. Name and title of investigator;
 2. Date, time and place of field investigation;
 3. Any evidence obtained, such as photographs;
 4. To the extent possible, identification and explanation of possible code violation(s) observed and, to the extent possible, identification and explanation of possible corrective actions;
 5. If applicable, an explanation of why one or more violations alleged in the complaint was not observed;
 6. If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all persons interviewed that have a legal interest in the subject property, including the property owners, contract purchasers, or lessees, and lien holders or other security interest holders;
 7. If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all actual, alleged and potential respondents

interviewed;

8. If applicable, and to the extent possible, the identity, including name, address and telephone number, and statements of all persons interviewed that have or may have information relevant to the determination of the existence of a violation.

e. NOTICE OF VIOLATION

- i. Whenever the Director has reasonable grounds to believe that a licensee or business is in violation of MCC Chapter 27, the Director is authorized to issue a Notice of Violation.
- ii. The Notice of Violation must contain the following information:
 1. The name and address of the licensee or business in violation;
 2. The code section allegedly violated and a brief descriptive statement of the nature of the violation;
 3. A statement of the amount due as a civil penalty for the violation;
 4. A statement explaining all civil penalties are due within 30 days of service of the notice;
 5. A statement advising that if any civil penalty is not timely paid, the failure to comply may lead to enhancement of the original civil penalty or additional penalties, including license suspension or revocation;
 6. A statement that the determination of violation is final unless appealed by filing a written notice of appeal including a fee, in an amount set by Board resolution, to the Director, within 14 days of the date the Notice of Violation was served; and
 7. A description of the licensee's or business's appeal rights as follows:

APPEAL RIGHTS FOR NOTICE OF VIOLATION

YOU MAY APPEAL ONE OR MORE DETERMINATIONS IN THIS NOTICE OF VIOLATION BY COMPLETING AND RETURNING THE ENCLOSED NOTICE OF VIOLATION APPEAL FORM AND A \$250.00 APPEAL FEE, PAYABLE TO "MULTNOMAH COUNTY," BY HAND DELIVERY OR BY MAIL, TO:

Code Compliance Specialist
Department of Community Services
1600 SE 190th Ave.
Portland, OR 97233.

YOUR COMPLETED NOTICE OF VIOLATION APPEAL FORM AND \$250.00 APPEAL FEE MUST BE SUBMITTED WITHIN 14 DAYS AFTER THE DATE OF THIS NOTICE OF VIOLATION.

IF YOU APPEAL, the Multnomah County Code Compliance Specialist will forward this Notice to a Code Compliance Hearings Officer. The Hearings Officer will set a public hearing to review the violation and determine the validity of the alleged violations and any Civil Penalties. If the Hearings Officer affirms the imposition of the Civil Penalties, or any portion thereof, the Hearings Officer will issue an Order of Civil Penalty setting forth your payment obligations.

If Civil Penalties, or any portion thereof, are not paid within 60 days after payment is ordered by the Hearings Officer, the County will begin to charge interest on any unpaid civil penalties at a rate of 9% per annum and will have the right to record the Order of Civil Fine in the Clerk Lien Record for any Oregon county. The lien for payment of the Civil Penalties will attach to all of your real property located in each county in which the Order is recorded.

f. SERVICE The Notice of Violation must be served on the licensee or business owner or designee by personal service or by regular and certified mail with return receipt requested.

g. DISMISSAL Notices of Violation may be dismissed by a Director's Order upon reasonable proof that the violation has been corrected.

h. ADMISSION OF VIOLATION

- i. Any party issued a Notice of Violation may, in lieu of requesting a hearing, admit the violation and submit the civil penalty as stated on the Notice of Violation to the Director. The party may attach a written explanation of mitigating circumstances with the payment of the civil penalty.
- ii. Any written explanations submitted may be reviewed by the Director. The Director has discretion to reduce the submitted civil penalty and refund any portion not retained based on the written explanation.
- iii. The Director has discretion to enter into a settlement agreement with a licensee imposing conditions in exchange for payment of civil penalty.
- iv. Breach of a settlement agreement constitutes a violation for which a civil penalty may be assessed.

- i. **DIRECTOR'S ORDERS** Any authorized Director's Order, when made and entered into the record, is a bar to another enforcement action for the same violation.

j. **NOTICE OF LICENSE SUSPENSION OR REVOCATION**

- i. Failure to correct a violation or untimely payment of civil penalties may lead to license suspension or revocation.
- ii. Whenever the Director has reasonable grounds to believe that a licensee has failed to correct a violation or failed to pay civil penalties in a timely manner, the Director is authorized to issue the licensee a Notice of License Suspension or Revocation.
- iii. The Notice of Suspension or Revocation must contain the following information:
 - 1. The name and address of the licensee in violation;
 - 2. A brief descriptive statement that the license is being suspended or revoked for failure to correct a violation or to pay penalties in a timely manner;
 - 3. A statement of the amount due as a civil penalty;
 - 4. A statement explaining all civil penalties are due within 30 days of service of the notice;
 - 5. A statement advising that if any civil penalty is not timely paid, the failure to comply may lead to enhancement of the original civil penalty or additional penalties, including license revocation;
 - 6. A statement that the determination of violation is final unless appealed by filing a written notice of appeal including a fee, in an amount set by Board resolution, to the Director, within 14 days of the date the Notice of Suspension or Revocation was served; and
 - 7. A description of the licensee's appeal rights as follows:

APPEAL RIGHTS FOR SUSPENSION OR REVOCATION

YOU MAY APPEAL ONE OR MORE DETERMINATIONS IN THIS NOTICE OF SUSPENSION OR REVOCATION BY COMPLETING AND RETURNING THE ENCLOSED NOTICE OF SUSPENSION OR REVOCATION APPEAL FORM AND A \$250.00 APPEAL FEE, PAYABLE TO "MULTNOMAH COUNTY," BY HAND DELIVERY OR BY MAIL, TO:

Code Compliance Specialist
Department of Community Services
1600 SE 190th Ave.
Portland, OR 97233.

YOUR COMPLETED NOTICE OF APPEAL FORM AND \$250.00 APPEAL FEE MUST BE SUBMITTED WITHIN 14 DAYS AFTER THE DATE OF THIS NOTICE OF VIOLATION.

IF YOU APPEAL, the Multnomah County Code Compliance Specialist will forward this Notice to a Code Compliance Hearings Officer. The Hearings Officer will set a public hearing to review the license suspension or revocation and determine the validity of the alleged violations and any Civil Penalties. If the Hearings Officer affirms the imposition of the Civil Penalties, or any portion thereof, the Hearings Officer will issue an Order of Civil Penalty setting forth your payment obligations.

If Civil Penalties, or any portion thereof, are not paid within 60 days after payment is ordered by the Hearings Officer, the County will begin to charge interest on any unpaid civil penalties at a rate of 9% per annum and will have the right to record the Order of Civil Fine in the Clerk Lien Record for any Oregon county. The lien for payment of the Civil Penalties will attach to all of your real property located in each county in which the Order is recorded.

k. SERVICE The Notice of Suspension or Revocation must be served on the licensee by personal service or by regular and certified mail with return receipt requested.

l. DISMISSAL Notices of Suspension or Revocation may be dismissed by a Director's Order upon reasonable proof that the violation has been corrected and any civil penalties have been paid.

m. APPEALS

- i. Any party served a Notice of Suspension or Revocation may appeal the Notice by submitting a notice of appeal in writing along with the appeal fee to the Director within 14 days of the date the Notice was served on the party.
- ii. Any appeal must be accompanied by an appeal fee of \$250. The Director will dismiss an appeal filed without the appeal fee, unless the appeal fee is subsequently filed within 14 days of the date the Notice was served on the party. If a check providing the appeal fee

is returned for insufficient funds and the appeal fee is not paid within the time set by the Director, the Director will dismiss the appeal.

n. HEARINGS

- i. Upon receipt of a timely appeal, the Director or Hearings Officer will set the matter for hearing.
- ii. The business owner or designee appealing the Notice of Violation will be given a written notice of the hearing no less than ten days prior to the scheduled hearing.
- iii. The licensee appealing the Notice of Violation, License Denial, Suspension, or Revocation will be given a written notice of the hearing no less than ten days prior to the scheduled hearing.
- iv. The hearings officer will hold a public hearing on any timely appeal.
 1. The appealing party and the County will be allowed to present testimony and documentary evidence at the hearing.
 2. The hearings officer may consider mitigating or extenuating circumstances presented on behalf of a party.
- v. The hearings officer shall affirm, or affirm as amended by the hearings officer, a civil penalty assessed by the Director if the Director has:
 1. Established the criteria for which a license was denied; or
 2. Established the existence of the violation for which the civil penalty is imposed; and
 3. Has afforded respondent due process of law.
- vi. Strict compliance with the Enforcement Code or these rules is not required to affirm a violation or a civil penalty if the Director's substantial compliance with the Enforcement Code or these rules actually affords respondent due process of law.
- vii. The hearings officer may amend the civil fine as calculated and assessed by the Director, but the hearings officer may not set the civil fine aside on account of improper calculation or correction of the violation prior to the day of hearing.
- viii. The hearings officer will issue a written decision containing findings of fact addressing the allegations contained in the Notice of Violation, License Denial, Suspension, or Revocation. The decision will clearly state the hearings officer's conclusion and the reasoning based on the findings of fact. The decision will be signed and dated by the hearings officer and will be served by personal service or regular and certified mail to the last known address of the appealing party. The decision will be final on the date of personal

- service or three days after mailing.
- ix. In all appeals under this chapter, the hearings officer will have discretion ordering conditions, restrictions and penalties.
 - x. Failure of a party to file an appeal as provided in this section or unexcused failure of a party to appear at a duly scheduled hearing constitutes a waiver by the party of any further appeal under this chapter. Upon entry of a waiver in the record, the last decisions issued by the Director will become final.

15. CALCULATION OF CIVIL PENALTIES

Violations of this Chapter are unclassified violations pursuant to ORS 153.015. Civil penalties will be calculated according to ORS 153.019.

16. RESOLUTION OF MATTERS

- a. The Director may not take further action on a matter subject to Section 14 of these rules after that matter has been closed. The Director may close a matter subject to Section 14 of these rules after the occurrence of any of the following:
 - i. Determination to dismiss a withdrawn complaint under Section 14.b.iii;
 - ii. Determination of dismissal under Section 14.g;
 - iii. Resolution of the violation and payment of the civil fine, if any;
 - iv. Issuance of an order of the hearings officer or court dismissing the matter or otherwise enjoining Multnomah County or the Director from taking further action on the matter under the Enforcement Code; or
 - v. Determination by the Director that the matter is not likely to be successfully resolved within a reasonable time or a reasonable expenditure of resources due to factors beyond the control of Multnomah County.
- b. Prior to closing a matter subject to the Enforcement Code, the Director must include in the file for the matter a written determination of closure explaining the basis for closing the matter.

APPENDICES

Appendix A: Solid Waste and Recycling Program Collection License Application

Appendix B: Solid Waste and Recycling Management Complaint Intake Form