



Part 5.3B Business Compliance and Enforcement: Containers in the Right of Way

A. PROHIBITION ON STORING CONTAINERS

No customer or generator shall cause any container for garbage, compostable or recyclable materials to be stored in the public right of way in violation of Portland City Code. Examples of cause may include, but are not limited to, an agreement to store a container on the right of way; requesting a container that is larger than any of the entry points to the storage area within the customer's or generator's place of business; or directing employees to store the container in the right of way. For the purposes of these rules, storage means leaving containers in the right of way for more than 2 hours either before or after collection during normal business hours. If collection occurs after normal business hours, containers may be placed in the right of way at the close of business but must be removed from the right of way by the start of the following business day or within 24 hours of set out, whichever occurs first. (D/M, per container) *

B. FOLLOW-UP AFTER INVESTIGATION

1. **Determining the Offender(s).** In its investigation, BPS shall make a determination regarding responsibility for noncompliance among the business, the property owner, the permittee and/or the independent commercial recycler. Responsibility for noncompliance and resulting assessments shall follow this determination.
2. **Letter of Noncompliance.** If, after its investigation, BPS determines that there is a condition of noncompliance, BPS shall issue a letter of noncompliance to the responsible party(s). BPS will notify the property owner as identified in the county assessment records as well as any other persons who reasonably appear to have an interest.
3. The letter of noncompliance shall give the responsible party(s) a period of 30 days from the date of the letter to achieve compliance. During this time (compliance period), the offender(s) and other interested parties may request assistance from BPS in identifying solutions that remedy the CROW condition.
4. **Extensions of Compliance Period.** BPS may grant an extension beyond the initial 30 days to achieve compliance if the offender(s) has undertaken a good faith effort to



come into compliance. The extension period cannot extend beyond 90 days after BPS issues the initial letter of noncompliance.

5. **New service.** For purposes of CROW rules, a service is considered to be a new service if after May 1, 2008, a service is started by a permittee or independent recycler or if any of the garbage, recycling or compostable containers are replaced. If, in its investigation, BPS determines that a permittee or independent recycler has established a new service with a customer and is responsible for placing containers in the right of way, BPS may take immediate enforcement action against the responsible permittee or independent recycler, including the issuance of an order to remove the non-compliant container(s).

C. LIMITED TERM EXTREME ECONOMIC HARDSHIP EXEMPTION

1. If BPS determines that the business or property owner is a responsible party for the violation, they are entitled to apply for a limited term extreme economic hardship exemption (exemption).
2. Exemptions, either initial or renewal, will be for a period of one year. Property or business owners may re-apply for one additional exemption at the expiration of the initial granted exemption.
3. Eligibility for Exemption
 - a. The applicant (Applicant) must be an owner of the business or property that is in violation of CROW requirements and identified as a responsible party for the violation.
 - b. To apply for an extreme economic hardship, the applicant must demonstrate that they have considered all reasonable options for correcting the violation and explain why none is viable. It is at BPS' discretion whether this requirement has been met.
 - c. A business / property owner who does not meet both of these requirements is not eligible to apply for an exemption. BPS shall take enforcement action at the end of the compliance period.
4. A property that has had an open CROW case after April 1, 2008 is not eligible for an initial exemption but may apply for a one-time renewal exemption.
5. The merits of each application for a hardship exemption will be considered individually.
6. Initial Application
 - a. An application for hardship will be considered when complete. All materials must be received by BPS by the end of the initial 30 day compliance period or, if



applicable, by the end of the extended compliance period granted by BPS. Incomplete applications or applications received after the end of the compliance period will not be considered and the business or property will immediately be considered to be in a state of non-compliance at the end of the compliance period.

b. Initial Exemption Application Requirements. Applications for an initial exemption must include all of the following:

- 1) Application Fee. BPS shall charge a processing fee to all applicants. The fee amount is listed in the fee schedule included in these administrative rules. All application fee payments shall be final. No payments will be returned, regardless of whether the exemption is approved or disapproved.
- 2) Consideration of all Reasonable Alternatives. The applicant must submit a list of all actions considered in attempting to comply with the CROW requirement and the specific reason why each is not capable of achieving compliance within the compliance period. Applicant shall provide documentation of each alternative sufficient for BPS to evaluate its merits. Such documentation may consist of items such as names, dates and contact information for people consulted in an attempt to achieve compliance, for example, the owner of a neighboring business who was asked if they would share collection service with the applicant and the reason given for refusal.
- 3) Applicant must submit three bids from licensed contractors for construction work that would meet the minimum storage space requirements as shown in Subsection 5.2 F of BPS' Business Solid Waste, Recycling and Compostables Administrative Rules. Bids must be dated no more than 60 days prior to the submission of the application
- 4) Applicant must submit copies of the previous three years federal tax returns filed by the business or property owner identified by BPS as a responsible party for the violation to document financial hardship.

c. Ruling on Application.

- 1) Applicant's gross income average (GIA) will be determined by averaging the gross income from the previous 3 years as stated in their federal tax returns submitted to BPS as part of their application materials.
- 2) Applicant will be categorized as a "small business" if the business, or the applicant? GIA is less than \$680,000.
- 3) Applicant qualifies for an exemption if the lowest bid submitted for meeting the space requirements is:
 - a) More than 4% of their GIA if they are a "small business" as defined in this section of the rules



- b) More than 5% of their GIA if they are not a “small business” as defined in this section of the rules
- 4) BPS will issue its determination on the application within 30 calendar days of receipt of completed application.
- 5) The hardship exemption shall be for a period of 12 months, effective on the day that the decision is issued by BPS.
- 6) If the application is denied, the applicant is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the mailing of BPS’ rejection of the application unless the applicant submits a request for an appeal as described in Subsection 5.3B D.11 of these administrative rules.

7. Renewal Application

- a. A business or property owner who has a current exemption may apply for one additional exemption that would take effect upon the expiration of the initial one.
- b. The application for renewal will be considered when complete. All materials must be received by BPS at least 60 days prior to the expiration of the initial exemption. Incomplete applications or applications received less than 60 days prior to the expiration of the initial exemption will not be considered and the business or property will immediately be considered to be in a state of non-compliance at the end of the initial exemption.
- c. Renewal Exemption Application Requirements. Applications for a renewal exemption must include all of the following:
 - 1) Application Fee. BPS shall charge a processing fee to all applicants. The fee amount is listed in the fee schedule included in these administrative rules. Payment of the application fee is final, regardless of the final determination upon the application.
 - 2) Progress Summary. The applicant must submit a list of all actions taken in an attempt to comply with the CROW rules since the time their initial exemption was granted, including the specific reason why applicant was unable to achieve compliance within the initial exemption period.
 - 3) Applicant must submit three bids from licensed contractors for construction work that would meet the minimum storage area for garbage, recycling and food waste containers as determined in Subsection 5.2 F of BPS’ Business Solid Waste, Recycling and Compostables Administrative Rules. Bids must be dated no more than 60 days prior to the submission of the application.



- 4) Applicant must submit copies of the previous three years federal tax returns filed by the business or property owner identified by BPS as a responsible party for the violation to document financial hardship.
- d. Upon receipt of a complete application package, BPS shall schedule a public hearing and will mail a notice of the applicant's request, including the time, date and location of the hearing, to the recognized organization(s) in which the property is located, to self-identified interested parties and to all organizations recognized by the City's Office of Neighborhood Involvement that are within 400 feet of the property.
- e. Ruling on Application.
 - 1) Applicant's gross income average (GIA) will be determined by averaging the gross income from the previous 3 years as stated in the federal tax returns submitted to BPS as part of the application materials.
 - 2) Applicant will be categorized as a "small business" if their GIA is less than \$680,000.
 - 3) Applicant qualifies for an exemption if the lowest qualified bid submitted for meeting the space requirements is:
 - a) More than 6% of their GIA if they are a "small business" as defined in this section of the rules
 - b) More than 7% of their GIA if they are not a "small business" as defined in this section of the rules
 - 4) BPS will issue a written determination within 30 calendar days of the public hearing. BPS will mail notice of the decision to the recognized organization(s) in which the property is located, to all recognized organizations within 400 feet of the property and to any person who submitted comments at the public hearing or in writing prior to the hearing.
 - 5) Exemptions will be limited to 12 months, starting on the day that the initial exemption is granted, and expiring one year later.
 - 6) If the application is denied, the property is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the expiration of the initial exemption unless the applicant submits a request for an appeal as described in Subsection 5.3.B.C.11 of these administrative rules.
- f. A business or property owner is eligible for no more than one renewal exemption. At the expiration of a renewal exemption, the property will be in a state of non-compliance and subject to immediate enforcement action.
- 8. BPS may confirm the authenticity and/or accuracy of any of the claims or documents in the application process. BPS may request that the applicant provide additional



information or documentation to support the application. BPS will either approve or deny an exemption based on the materials submitted in the application. BPS may also refer to other City records, such as any City maintained case history.

9. Exemptions are neither transferable nor assignable. The exemption will terminate immediately, without any action by the City, if there is any transfer of ownership of the business or change in location.
10. **Revocation of Exemption.** BPS may conduct a review at any point during the exemption, and may request updated information from the applicant. BPS may revoke any exemption if BPS subsequently determines that the applicant provided inaccurate information in support of the application.,
 - a. It is the responsibility of the applicant to inform BPS if the tax returns submitted in their application to document hardship are amended in a way that changes the gross income such that the GIA exceeds the threshold.
 - b. Changes to construction bids or new construction bids will not be considered after submission of completed application package.
 - c. If BPS revokes an exemption for just cause, the property will be considered to be in a state of non-compliance and subject to immediate enforcement actions.

11. Appeal Process

- a. Any person filing an appeal, whether for decision on an initial exemption or a renewal, must do so in accordance with procedures set forth in Title 22 of the City Code except for variances as described in these administrative rules.
- b. **Initial Exemption.** An applicant for an initial exemption may appeal the denial of an exemption to the Code Hearings Office in accordance with the procedures set out in Chapter 22 of the Portland City Code. The appeal must be submitted to BPS within ten (10) business days of the day the notice of decision is mailed.
- c. **Renewal Exemption.** An applicant for an exemption renewal, or the neighborhood association where the business / property is located, may appeal BPS' decision to the Code Hearings Office. The appeal must be submitted to BPS within ten (10) business days of the day the notice of decision is mailed.
- d. **Appeal Fee.** If the applicant requests an appeal to the Code Hearings Office, they must include payment of the appeal fee, as stated in Subsection 5.3.B.C.11.j of these administrative rules, along with their written request for a hearing to BPS. Failure to submit a written request or the appeal fee within ten (10) business days of the day the notice of decision is mailed is jurisdictional and the appeal shall be dismissed.



- e. **Refund of Appeal Fee.** If the Code Hearings Officer rules in favor of the applicant, BPS will refund the appeal fee within 45 days of the issuance of the Hearings Officer's Order.
- f. The filing of an appeal will stay any enforcement action of the CROW requirements against the property until the appeal is determined by the Code Hearings Officer. The Code Hearings Officer will consider only the issues raised by the appellant in their written appeal.
- g. If, pursuant to said appeal hearing, the denial, suspension or revocation is sustained by the Code Hearings Officer, the permittee servicing the property shall cease all collection of solid waste and/or recyclables and/or compostables in Portland no later than 15 calendar days after the order becomes final unless the Code Hearings Officer decision is appealed to circuit court by writ of review. If a denial, suspension or revocation decision is appealed to the state courts and is upheld, permittee shall cease all collection of solid waste and/or recyclables and/or compostables in Portland no later than 15 calendar days after final resolution of the judicial proceedings.
- h. If the Code Hearings Officer overturns BPS' denial of an exemption, the business or property owner will be granted a one year exemption. The exemption begins on the effective date of the Hearings Officer's decision if the application is for an initial exemption, or on the day following the expiration of the current exemption if the application is for a renewal.
- i. If the Code Hearings Officer overturns BPS' granting of a renewal exemption, the applicant is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the expiration of the initial exemption.
- j. **Economic Hardship Fee Schedule.** BPS may assess the following fees for the administration of the CROW Limited Term Extreme Economic Hardship Exemption program:

Description	Fee Amount
Application for Exemption (initial or renewal) - non-refundable	\$250
Appeal of Denial for Exemption to Code Hearings Officer - refundable if Code Hearings Officer decides in favor of appellant	\$500

F. ORDER TO REMOVE CONTAINERS

If, after the compliance period or any other stays of enforcement, such as pending a decision after appealing to the Code Hearings Officer, it is determined that noncompliance still exists and an infraction has occurred, the Director may deliver a written notice to the business / property owner and any and all contracted permitted haulers, independent commercial recyclers or other owners or service providers of



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containers violating CROW rules ordering the removal of the non-compliant container(s) within ten (10) business days. Failure to comply is a violation of the City's Commercial Solid Waste, Recycling and Compostables Administrative Rules.



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**Part 5.3 CD Business Compliance and Enforcement:
Common Aspects**

B. PAYMENT OF INFRACTION ASSESSMENTS

1. **Payment of Assessments Required or Appeal.** The alleged offender shall, within ten (10) 44-business days of BPS issuance of the written notice of Assessment, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer as set forth in Portland City Code Title 22.



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