



ADMINISTRATIVE RULES

Commercial Solid Waste, Recycling and Compostables

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PART 1.0, SCOPE OF RULES Administrative Rules contained within this document are intended to articulate the standards and expectations for commercial solid waste, recyclables and compostables collection as authorized in the City Code, Chapter 17.102.

PART 2.0, ADOPTION AND REVISION OF ADMINISTRATIVE RULES

- A. Director's Authority to Adopt Rules. Under authority of the City Code, Chapter 17.102, the Director of the Office of Sustainable Development [*hereinafter* Director] is authorized to adopt rules, procedures and forms to implement provisions of that Chapter which regulate the collection and disposal of commercial solid waste, compostables and recycling in the City of Portland.
- B. Adoption and Revision of Rules.
1. Any rule adopted or revised according to the authority of the City Code shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
 2. The Office of Sustainable Development (OSD) shall give notice of the public review process to all neighborhood associations that are recognized by the City Office of Neighborhood Involvement (ONI) and all neighborhood business associations that are on ONI's mailing list. At least 60 days in advance of the anticipated adoption date, OSD shall notify those associations by regular mail, fax or electronic mail of its intent to review the rules, and invite those associations to comment. OSD shall by regular mail, fax or electronic mail send a notice of the initial public hearing to the same associations not less than ten before the scheduled hearing.
 3. During the public review, the Director or the Director's designee shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.
 4. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.
 5. Notwithstanding paragraphs a., b., c. and d. of this section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of such interim rule, OSD staff shall send notice of the rule to all Neighborhood Associations, Neighborhood Business Associations, persons on the OSD list of parties interested in Commercial Administrative Rules, and Permittees, giving the language of the rule change, describing the purpose of the rule, and inviting comments to be sent to OSD

Part 4.1, Definitions

See also Definitions in Portland City Code Section 17.102.020.

1. **"Assessment"** means a civil penalty assessed for an Infraction.
2. **"OSD"** means the City of Portland's Office of Sustainable Development, Solid Waste and Recycling staff.
3. A **"Business"** is any commercial entity, including industrial and institutional, but not including Multifamily Complexes or commercial entities which occupy less than 50 percent of the floor area of a Residence.
4. **"Calendar Quarter"** means the segment of a calendar year from January 1 through March 31, from April 1 through June 30, from July 1 through September 30 or from October 1 through December 31.
5. **"Collect"** or **"collection"** includes accept, accumulate, store, process, transport, market or dispose of as required by City regulations, Metro, state and federal law.
6. **"Commercial"** means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units.
7. **"Compostable Material"** means food waste and food soiled paper when source separated for controlled biological decomposition.
8. **"Compostable"** and **"Compostables"** have the same meaning as Compostable Material.
9. **"Composting"** means the series of activities, including separation and processing, by which compostable materials are recovered from or otherwise diverted from the solid waste stream for controlled biological decomposition. Composting includes composting of source separated organics but not composting of mixed waste.
10. **"Customer"** means an entity that has arranged for garbage service to be provided by a Permittee in exchange for compensation, excluding residential service covered by a Franchise. Where several businesses share garbage containers and service, "Customer" refers only to the entity that arranges for the service.
11. **"Day"** for purposes of designating an Infraction means a single Infraction consists of the failure to comply with the rule any number of times during a single 24-hour period, regardless of the number of Customers affected by the Infraction (e.g., violating nighttime collection restrictions). Generally, Saturdays, Sundays and legal holidays are excluded.
12. **"Director"** means the Director of the Office of Sustainable Development, or the Director's designee.
13. **"Disposal"** means landfilling, illegal dumping, burning, municipal waste incineration, and mixed waste composting.
14. **"Food soiled paper"** means paper products that can not now be recycled or that have been in contact with organic materials to the degree that they would not be able to be recycled. Food soiled paper includes but is not limited to used paper cups and plates, used paper table covers, used napkins, and waxy corrugated cardboard. Food soiled paper includes recyclable paper that has been in contact with food to the degree that it is not recyclable, but does not include unsoiled cardboard boxes, newspaper, or office paper.

15. **"Food Waste"** means all waste from meats, fish, and vegetables, which attends or results from the 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 or dairy products, meats, vegetable and meat trimmings, grains, breads and dough, incidental amounts of edible oils, and organic waste from food processing. It does not include large amounts of oils and meats commonly provided to a renderer.
16. **"Food Waste Generating Business"** means businesses and institutions whose waste is composed of a large amount of food waste. It includes but is not limited to restaurants, grocery stores or food markets, hotels with catering operations, institutions with cafeterias, caterers, central kitchens or commissaries, bakeries, produce wholesalers and food processors. It does not include businesses that produce only incidental amounts of food waste in the course of doing business, such as employee lunches.
17. **"Generator"** means an entity which uses the Solid Waste, Recycling and/or Compostables collection service and containers arranged for by a Customer.
18. **"Independent Commercial Recycler"** means a person who collects only Recyclable and/or Compostable Materials from non-Residential sources for the purpose of Recycling or Composting, and who does not collect Solid Waste.
19. **"Incident"**, for purposes of designating an Infraction, means a single Infraction consists of the failure to comply with the rule on an individual act, occurrence or Generator basis.
20. **"Infraction"** means a failure to comply with City Code or rules promulgated thereunder. Infractions may be appealed to the City of Portland Code Hearings Officer pursuant to City Code Section 17.102.230.
21. **"Metro"** shall mean the Metropolitan Service District encompassing Multnomah, Washington and Clackamas counties, as provided for under ORS Chapter 268 (2001).
22. **"Month"**, for purposes of designating an Infraction, means a single Infraction consists of the failure to comply with the rule at least once and up to any number of times during a single, continuous 30-day period, regardless of the number of Customers or, in the case of an Infraction by a Generator or Customer, number of tenants, affected by the Infraction (e.g., inadequate vehicle identification markings on pages 9 and 29, or convenience of recycling systems at multifamily, 12.b on page 25).
23. **"Multifamily Complex"** or **"Multifamily"** means any multidwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or houseboat moorages. Multifamily also includes certified or licensed residential care housing, such as adult foster care homes or group homes.
24. **"Owner,"** with respect to the obligation to provide recycling for a condominium or cooperatively-owned development, means the owners' association or its equivalent.
25. **"Permittee"** means a business entity that holds a valid Commercial Solid Waste Collection Permit from the City of Portland.
26. **"Processing"** means an operation where collected Source-Separated recyclable or compostable materials are sorted, graded, cleaned, shredded, ground, densified or otherwise prepared, treated or converted for end use markets.

27. A "**Quick Form**" is a type of Recycling Plan Form produced by OSD, giving a specified list of materials which must be recycled by a specific type of Business.
28. "**Recyclable Material**" includes, but is not limited to, aerosol cans, aluminum, aseptic packaging (drink boxes), corrugated cardboard and kraft paper, glass bottles and jars, magazines, ferrous and nonferrous scrap metals, gable top paper cartons, motor oil, newspaper, office paper, scrap paper, plastic bottles including milk jugs, steel "tin" cans, telephone directories, yard debris, cooking grease, wood, rubble. As specified in ORS 459A.010(4)(f), certain manufacturing waste is not considered "Recyclable Material."
29. "**Recyclable**" and "**Recyclables**" have the same meaning as Recyclable Material.
30. "**Recycling**" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream, (1) for use in the form of raw materials in the manufacture of new products other than fuel and (2) in the case of Source Separated wood waste which has no material use, for use as fuel. "Recycling" includes controlled biological decomposition of Source Separated yard debris but not composting of mixed waste or of paper products, except waxed papers or paper products contaminated with putrescibles by the generator.
31. "**Recycling Plan Form**" means the form provided by OSD on which a Customer makes a commitment to comply with the City's recycling requirement, specifying which materials they will recycle and what type of entity will collect the Recyclables.
32. "**Residence**" means any dwelling unit in the Franchise Territory that is a four-plex or smaller, regardless of whether it has subscribed for waste collection, or has waste collection, in individual cans, carts or containers. Multifamily dwellings such as apartment complexes, condominiums, mobile home parks, or houseboat moorages with four units or fewer on the same tax lot are considered as "Residences". Fraternities/sororities are also considered as "Residences". "Residence" does not include any multi-dwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as condominiums, mobile home parks, or houseboat moorages, nor does "Residence" include certified or licensed residential adult foster care homes. "Residence" does not include any dwelling where over 50% of the entire building is being used for business purposes. Agreements between owners of residences purporting to provide for the collection of solid waste and recyclables on a combined basis do not alter the status of each dwelling unit as a "Residence" for purposes of these Rules.
33. "**Residential**" means of or pertaining to "Residence".
34. "**Self-haul**," when used in reference to Solid Waste and/or Recyclable and/or Compostable Materials generated by a Commercial entity, means the collection and transportation of such material where an owner or employee of the entity hauls the material rather than hiring a Permittee or Independent Commercial Recycler to perform this function.
35. "**Solid Waste**" has the meaning given in ORS 459.005, but excluding the following materials which the ORS definition includes:
- a. Sewage sludge, septic tank and cesspool pumpings or other sludge;
 - b. Discarded or abandoned vehicles;
 - c. Recyclable Material or Yard Debris which is Source Separated and set out for recycling purposes.

36. **"Source Separate"** means that the person who last uses Recyclable or Compostable Material separates the material from solid waste and keeps the Recyclable or Compostable Material separate from Solid Waste.
37. **"Yard Debris"** means leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length. Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, animal waste, food and household Solid Waste are not considered Yard Debris.

Part 4.2, Permittees: Solid Waste Collection

A. SOLID WASTE COLLECTION REQUIREMENTS

1. Permit Required. Any person collecting commercial Solid Waste within the Portland Urban Services Boundary must obtain a commercial waste collection permit from the City of Portland Office of Sustainable Development. Each Permittee must hold a valid City of Portland Business License, or submit to OSD its Application for Portland Business License Exemption, as approved by the City's License Bureau. Collecting commercial Solid Waste within the Portland Urban Services Boundary without a valid permit, or when a permit has been suspended (see Part 4.2, C.6.b. Safety Fitness rating, below), is an Infraction. **(Infraction Assessment \$500 for the first Day; see Commercial Compliance and Enforcement, Part 4.7.D, on the last two pages of this document, for explanation)**
2. Permittees Obligation to attend City meetings. The Permittee shall attend occasional mandatory meetings scheduled by OSD. OSD will provide Permittees with reasonable advance notice of mandatory meetings by facsimile, postal mail or (effective 4/1/04) email. **(Infraction Assessment \$200 for the first Incident)**
3. Email:
 - a. Permittees shall have electronic mail (email) by April 1, 2004. The email must be capable of both sending and receiving documents including opening and sending attachments in MS Word and Excel. Permittee must provide OSD with one primary email address. **(Infraction Assessment \$200 for the first Month)**
 - b. Effective April 1, 2004, where a communication is sent between OSD and a Permittee, it shall be sent by email to the primary email address provided to OSD by the Permittee as required above, or to the OSD email address wasteinfo@ci.portland.or.us. Notices sent between OSD and Permittees 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.
4. Response Time to OSD Staff Calls or Email. Unless prevented by Force Majeure, Permittees must respond to calls or (effective 4/1/04) email received from OSD within 24 hours of receipt of the call or (effective 4/1/04) email, or, if the day after the incoming call or email is not a business day, then by noon of the following business day. **(Infraction Assessment \$200 for the first Incident)**
5. Maintaining Passage on Public Streets. To the greatest extent practicable, the Permittee shall avoid stopping of collection vehicles while collecting Solid Waste, or placing of drop-boxes, in a manner that blocks the passage of other vehicles or pedestrians on public streets or sidewalks. **(Infraction Assessment \$200 for the first Incident for vehicles; \$200 for the first Day for drop boxes)**
6. Hours of Collection. At a multifamily account, the Permittee shall not make solid waste collections between 10 p.m. and 6 a.m., unless the Customer has requested in writing that collection be made during that time. This restriction does not apply where multifamily is part of a mixed use building, where other commercial accounts are being served. **(Infraction Assessment \$200 for the first Day with Day defined on a per Customer basis.)**
7. Nighttime noise and OSD Support for Termination of Service Agreements. A Permittee's refusal to attempt to reduce noise in a manner acceptable to the Customer constitutes the only potential grounds for OSD support of termination of a Customer's service agreement as described below.
8. OSD Support for Termination of Service Agreement. Permittees may enter into services agreements, oral or written, with Customers. If a Customer finds that the Permittee is refusing to

attempt to reduce noise between 10 p.m. and 6 a.m. where there have been complaints about that nighttime noise, the Customer may act to terminate the agreement and seek the support of OSD. In such case, the Customer shall notify the Permittee in writing of the specific failure to make efforts to reduce nighttime noise. If the failure still exists after a period of at least 30 days, or if the Permittee has not taken reasonable steps to correct the failure, the Customer may give the Permittee 30 days notice of termination of the entire service agreement. Failure to make efforts to reduce nighttime noise, after requests by the Customer, shall serve as the only valid basis for OSD to concern itself with a Customer's terminating any services agreement. A Permittee's refusal to abide by such a termination notice shall constitute an Infraction subject to an Assessment. **(Infraction Assessment \$200 for the first Incident)**

9. Removal of containers. Where a Customer has terminated service, following applicable procedures described in these rules or a service agreement, it is an Infraction for a Permittee to leave Solid Waste containers provided by the Permittee in place at the Customer's location for more than 40 calendar days after the Customer has given written notice of termination. **(Infraction Assessment \$200 for the first Incident)**

10. Customer Responsibility.

a. Customers are responsible for providing adequate and safe collection space and access for containers.

b. Generators are responsible for placing infectious wastes in appropriate containers. Generators should not place these items into containers for collection with solid waste, Compostables or recyclables.

- B. HAZARDOUS WASTES. Permittee shall comply with all Federal, State and Metro regulations applicable to the collection and disposal of hazardous wastes.

C. EQUIPMENT STANDARDS

1. Cleanup on Route. The Permittee shall 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 Generator. **(Infraction Assessment \$200 for the first Incident)**
2. Prevention of Leaking and Spilling Loads. The Permittee shall ensure that all solid waste 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, 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. **(Infraction Assessment \$200 for the first Day where Day is defined on a per vehicle basis)**
3. Covers for Open-body Vehicles. The Permittee shall ensure that every open-body collection vehicle has a cover which shall be either an integral part of the vehicle or a separate cover for the vehicle. This cover shall be used while in transit, except when the body is empty, and during the transportation of bulky wastes, including but not limited to stoves, refrigerators and similar "white goods." **(Infraction Assessment \$400 for the first Day where Day is defined on a per vehicle basis.)**

4. Vehicle Identification.

a. The Permittee shall ensure that all Solid Waste collection vehicles bear a Metro identification tag. **(Infraction Assessment \$300 for the first month** where Month is defined on a per vehicle basis)

b. All Solid Waste collection vehicles shall be clearly identified by displaying the Permittee's name and telephone number prominently and conspicuously on both sides of the vehicle. Where a Permittee has acquired used vehicles, or changed its business name, that Permittee must update the vehicle identification within 45 days. In this case, that Permittee shall ensure that the phone number on the vehicle will refer callers to the Permittee currently using the vehicle. **(Infraction Assessment \$300 for the first Month** with Month defined on a per vehicle basis)

5. Container Identification. The Permittee shall clearly identify all of its Solid Waste collection containers, including compactors, by displaying the Permittee'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. The Permittee shall mark every Solid Waste container of 10 cubic yards and greater capacity (generally "drop-boxes") using an identification system that gives each container a unique number or number/letter combination to enable tracking the location of containers that are found placed in a public right-of-way. **(Infraction Assessment \$200 For the first Month** with Month defined on a per container basis)

6. Compliance with Driving and Transportation Laws and Compliance with Metro and DEQ Requirements.

a. Permittee shall comply with all applicable federal, state and local laws and regulations relating to driving, transportation, and waste, compostable, and recyclable materials collection and disposal.

b. When any Permittee has been prohibited from operating its collection vehicles due to an unsatisfactory safety fitness rating from either the U.S. Department of Transportation or the Oregon Department of Transportation, OSD will suspend that Permittee's Commercial Collection Permit until the Permittee has been reinstated with a satisfactory or conditional rating. In addition, OSD will not issue a commercial collection permit to any company that has been prohibited from operating its collection vehicles due to an unsatisfactory rating at the time of initial application, or annual permit renewal each July 1st. This provision also applies if:

- (1) the Permittee;
- (2) any person who will be directly engaged in the management or operation of the Permittee; or,
- (3) any person who owns a five percent or greater interest in the Permittee,

has previously owned or operated as a Permittee that has received such an unsatisfactory safety fitness rating that was not reinstated within a reasonable period of time with a satisfactory or conditional rating.

c. Appeal Provision. For appeal of a Denial, Suspension or Revocation, as provided in C.6., see Section F, Appeal Of Denial, Suspension or Revocation Of Commercial Permit of Part 4.7A, Commercial Compliance and Enforcement: Permittees.

7. Safety and Maintenance. All collection equipment must be maintained and operated in compliance with all local and state statutes, ordinances and regulations including compliance with regulations related to the safety of the collection crew and the public.

D. **COMPLIANCE WITH ZONING ORDINANCES.** All parking, storage and maintenance facilities shall comply with all applicable zoning ordinances and any other applicable local and state statutes, ordinances and regulations. Areas for parking, repair, storage or cleaning of vehicles or equipment shall not be located in areas zoned as residential under local zoning ordinances, unless approved in writing by the Office of Planning and Development Review.

E. **RECORD KEEPING**

Permittees shall keep records allowing each weight slip received for solid waste disposed from a drop box of ten cubic yards or larger capacity to be specifically identified in relation to a Customer billing name, service date and address and invoice. These records shall be kept for two years from the date of disposal. **(Infraction Assessment \$300 for the first Incident, with Incident defined as one weight slip)**

F. **RECYCLING SERVICES**

Permittees must offer recycling and, effective 120 days after City Council adoption of a Food Waste Collection Plan, compostables collection service and a Recycling Plan Form, including any Quick Form applicable to the Customer, to all Customers, as described below under Part 4.3, D, [Recycling] Promotion and Education. Rules related to the collection of recyclables and compostables are found in the "Recycling Collection Requirements" section.

G. **ACCESS FOR INSPECTIONS AND DELIVERY OF NOTICES**

1. The Permittee shall make all company premises, facilities and records related to their solid waste and recycling collection services (including, but not limited to: offices, vehicles, storage areas, nonfinancial records, records pertaining to the origin of any solid waste collected by the Permittee, receipts for sale or delivery of collected Recyclables or Compostables, Customer lists and Customers' Recycling Plan Forms, including Quick Forms and all records related to vehicle maintenance and safety which are required under PUC Motor Carrier Requirements and Regulations and Chapter 767 of the Oregon Statutes) available for inspection by OSD Solid Waste and Recycling employees, within 24 hours of OSD notice by telephone. Such inspections are only for purposes of enforcing solid waste and recycling regulations, and are restricted to normal business hours. During normal business hours, the Permittee shall make all company premises and facilities accessible to OSD personnel for delivery of any written notices. The 24-hour period excludes Saturdays, Sundays and legal holidays. Collection vehicles must be accessible for inspections during the normal operating hours for collection, in addition to normal business hours. The requirement for a 24-hour notice period shall not apply to OSD inspection of (1) containers stored in the public right-of-way or (2) a container or vehicle in response to a specific complaint that the Permittee is allegedly disposing recyclables or compostables with solid waste. **(Infraction Assessment \$400 for the first Day)**
2. The Permittee shall provide OSD with an after-hours telephone number to be used only in emergencies. **(Infraction Assessment \$200 for the first Month)**
3. The Permittee shall notify OSD of anticipated changes in addresses and phone numbers 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 OSD in writing no less than ten business days prior to such change. **(Infraction Assessment \$300 for the first Month)**
4. The Permittee shall notify OSD in writing of changes in company contact persons and responsible officials within one week after such changes **(Infraction Assessment \$200 for the first Month).**

5. All Permittees must have at their office location facsimile (fax) capability not requiring advance notice in order to receive messages and must provide their fax number to OSD. **(Infraction Assessment \$200 for the first Month)**

H. COMMERCIAL SERVICE CHARGES

Consistent with ORS 459A.070, if a Customer Source Separates recyclable material - and makes it available for reuse or recycling - Permittees 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. **(Infraction Assessment \$500 for the first Incident** with Incident defined on a per Customer basis.) This provision does not affect charges for the collection of Compostables.

I. NIGHTTIME NOISE

The provisions found under E, Nighttime Noise, in Part 4.3, Permittees: Recycling Collection Services, shall apply in assigning and educating drivers, and modifying equipment and collection times for recycling routes, with the exception of the provision related to glass recycling. Infractions for violations in Solid Waste operations accrue separately from those in Recycling Collection.

Part 4.3, Permittees: Collection Services for Recyclables and Compostables

A. REQUIREMENTS FOR COLLECTION OF RECYCLABLES AND COMPOSTABLES

1. Service Responsibility. The Permittee shall offer collection service for recyclables and compostables, for all materials as listed below, to all its solid waste Customers and shall make known the availability of this service to all its Customers. For a Permittee to fail to offer and provide such collection for any material as listed below shall be considered an Infraction. **(Infraction Assessment \$500 for the first Incident**, with Incident defined as one Customer, one instance of hauler failure to offer and provide collection of one or more listed materials.)

Any Business or any other person may sell or exchange at fair market value its own recyclable materials which are Source Separated for reuse or recycling. It shall be considered an Infraction if a Permittee states or implies that a Customer is required by the City to use the Permittee for any or all recycling collection services. **(Infraction Assessment \$500 for the first Incident**, with Incident defined as one Customer, one instance of hauler misinformation)

2. Subcontracting. A Permittee may subcontract with another company for Recycling and Compostable collection, so long as the subcontractor holds either a current Commercial Permit or current Independent Recycler Registration from OSD.
3. Hours of Collection. At a multifamily account, the Permittee shall not collect recyclables or compostables between 10 p.m. and 6 a.m., unless the Customer has requested in writing that collection be made during that time. This restriction does not apply where multifamily is part of a mixed use building, where other commercial accounts are being served by the same Permittee. **(Infraction Assessment \$200 for the first Day)**
4. Maintaining Passage on Public Streets. To the greatest extent practicable, the Permittee shall avoid stopping of collection vehicles while collecting Recyclable or Compostable materials, or placing of drop-boxes, in a manner that blocks the passage of other vehicles or pedestrians on public streets or sidewalks. **(Infraction Assessment \$200 for the first Incident** for collection vehicles; and **\$200 for the first Day** for drop boxes)
5. Nighttime Noise and Termination of Services Agreement. A Permittee's refusal to attempt to reduce nighttime noise in a manner acceptable to the Customer constitutes grounds for OSD support for termination of a Customer's service agreement as described above under Part 4.2, A.8.
6. Distribution of Recycling Plan Forms. Permittees must provide a Recycling Plan Form to every Customer upon making any agreement, oral or written, new or renewed, to provide waste collection services to the Customer. **(Infraction Assessment \$400 for the first Incident)**. Where a Customer's single account covers multiple service locations, the Permittee shall provide the Customer with one Recycling Plan form to complete for each location. Where a Permittee collects Solid Waste generated at its own business or multifamily operations, the Permittee shall complete a Recycling Plan Form for each location of operations.
7. Recycling Collection Schedules and Locations.
 - a. Recycling and compostables collection schedules and pickup locations shall be mutually agreed upon by the Permittee and the Customer.
 - b. See also D., Promotion and Education (page 15).
8. Handling of Glass and Other Recyclable Materials.

- a. For Customers or Generators who source separate glass for recycling, the Permittee shall provide a collection system which does not provide for glass to be mixed with paper.
 - b. Effective July 1, 2004, where glass has been Source Separated from solid waste by the Customer or Generator, the Permittee shall keep glass separate from all paper types on the collection vehicle and maintain the separation of the glass from all types of paper when unloading for processing or end use markets. (**Infraction Assessment \$400** for the first Incident with Incident defined on a per Customer basis.)
9. Recyclable Material to be Collected from Businesses. The Permittee shall pick up the following recyclable materials set out for collection by the Generator, so long as the materials are prepared and separated in a manner mutually acceptable to the Permittee and the Customer.
- a. Aerosol cans.
 - b. Aluminum.
 - c. Aseptic packaging [drink boxes]
 - d. Corrugated cardboard and kraft paper.
 - e. Gable top paper cartons.
 - f. Glass bottles and jars.
 - g. Magazines.
 - h. Metals: Ferrous and nonferrous scrap.
 - i. Newspapers.
 - j. Paper: office paper including white and colored ledger and computer.
 - k. Paper: scrap paper, may include envelopes, fax paper, blueprints, brochures, and other miscellaneous papers.
 - l. Plastic bottles, including milk jugs.
 - m. Steel "tin" cans.
 - n. Telephone directories.
 - o. Yard debris
10. Compostable Material to be collected from businesses. (Effective 120 days after City Council adoption of a Food Waste Collection Plan) The Permittee shall pick up food waste and food soiled paper, and other source separated organics, from Food Waste Generating Businesses that are required by City regulations to separate organics, so long as the materials are prepared and separated in a manner mutually acceptable to the Permittee and the Customer.
11. Recyclable Material to be Collected from Multifamily Complexes. The Permittee shall pick up the following materials set out for collection at Multifamily Complexes so long as the materials are properly prepared. Materials that are prepared according to these descriptions are to be considered properly prepared. Unless a Multifamily Complex Customer and a Permittee agree to provide an individual bin system at a specific complex, the Permittee shall provide collection containers for a two-sort system, where glass is collected in one container and all other recyclables are collected in another container, **effective July 1, 2005**. Provision by a Permittee of any other sort system **after that date** is an Infraction (**Infraction Assessment \$200 for the first Incident** with Incident defined on a per Customer basis.).
- a. Aerosol cans, emptied but not flattened, with plastic lids removed but with the nozzle still in place.
 - b. Aluminum. Including aluminum cans, containers and foil with organics removed.
 - c. Aseptic packaging [drink boxes]. Straws removed and not included. Containers emptied and flattened.

- d. Corrugated cardboard and kraft paper. Flattened, bundled, placed in a container or otherwise secured. Any single piece or bundle placed for manual collection is limited in size to 36" in any direction. Includes brown paper bags. It is not the Permittee's responsibility to flatten corrugated cardboard boxes.
- e. Glass bottles and jars. Rinsed and whole. Caps, lids, rings and labels may remain on the bottles. The following items shall not be collected: drinking glasses, cookingware, plate glass, safety glass, light bulbs, ceramics and non-glass materials.
- f. Magazines. Bagged, securely tied or placed in a recycling container, includes magazines and catalogs printed substantially on glossy paper. Mailing labels are acceptable.
- g. Metals: ferrous and nonferrous scrap. Any single piece or bundle is limited to 30" in size in any direction and 30 lb. Appliances, car parts, lead acid batteries and bicycles are not included.
- h. Gable top paper Cartons. Including milk and cream, juice and coffee creamer products, emptied, rinsed and flattened.
- i. Motor oil. In leak proof, see-through, unbreakable plastic containers of not more than one gallon each, with a screw-on cap. Used motor oil shall be collected from Multifamily Customers including trailer parks and campgrounds, but need not be collected when generated by a non-dwelling source, or from Customers who are institutions, businesses, industrial or other non-Multifamily Customers.
- j. Newspapers. Bagged, securely tied, or placed in a recycling container, not contaminated with other materials.
- k. Paper, scrap. Placed in a paper bag and kept separate from other recyclables in the recycling container. Includes household mail, cardboard boxes, paper bags, cereal boxes (without liners), shoe boxes, envelopes (sticky labels and windows are acceptable), writing paper, computer paper, fax paper, white ledger, colored ledger, copier paper, paper egg cartons, paper labels from cans, paper cores (without paper towels or bathroom tissue), construction paper, blue print paper, manila file folders, index cards, post-it notes, tablet paper or backs, gift wrap (without foil), greeting cards (no foil), and white or colored paper bags. A sticky label on an otherwise acceptable paper is also to be accepted.
- l. Plastic bottles including milk jugs. Rinsed, caps removed and the caps not included with recyclables; labels need not be removed.
- m. Steel "tin" cans. Rinsed; need not be flattened or have labels removed.
- n. Telephone directories.
- o. Yard Debris. Leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length. Not included are branches exceeding those dimensions, dirt, stumps, metal, rocks, ashes, animal waste, food and household Solid Waste.

OSD reserves the authority to add other materials to the above lists, such as, but not limited to, film plastics or other plastics. Permittees may collect other recyclables not listed above.

- 12. Disposal Prohibition. The Permittee is responsible for transporting and delivery of collected materials for recycling and composting. The Permittee shall ensure that all collected recyclables are delivered to a processor or broker of recyclable materials or to an end use market. The Permittee

shall ensure that all collected Yard Debris and Compostable materials are delivered for beneficial use, including

- a. composting by a facility that has a current Metro compost license, an Oregon Department of Environmental Quality compost permit or registration, or is licensed as a composter by the State of Washington, or
- b. a reload facility licensed by Metro, or
- c. for animal feed by facilities regulated by the Oregon Department of Agriculture or the Washington State Department of Agriculture, or
- d. use as hog fuel in the case of woody waste.

The Permittee shall be prohibited from delivering, or causing to be delivered, any collected recyclable or compostable materials for disposal, except by prior arrangement with OSD. Placement of properly prepared recyclables or compostables which have been separated and set out for recycling or collection for composting, into any solid waste container, including the solid waste compartment of a collection vehicle, for any length of time, shall constitute a failure to comply with this rule. **(Infraction Assessment \$500 for the first Incident with Incident defined on a per Customer basis)** This rule does not prohibit use of collection technologies whereby Source Separated Recyclables or Compostables and Solid Waste are routinely collected by a single vehicle and loaded into separate compartments on that vehicle.

13. Unauthorized Collection of Recyclable or Compostable Materials.

- a. All Recyclable or Compostable Materials placed in a recycling container provided by any collector, whether a Permittee or a registered Independent Commercial Recycler, shall be considered owned by and be the responsibility of that collector. Without permission of that collector no person shall collect Recyclable or Compostable Materials placed by the Customer in such a recycling container. **(Infraction Assessment \$500 for the first Incident)**
- b. All Recyclable or Compostable Materials placed in a recycling container provided by a Business or Multifamily Complex shall be considered owned by and be the responsibility of that provider. Without permission of that provider no person shall collect Recyclable or Compostable Materials placed in such a recycling container. **(Infraction Assessment \$500 for the first Incident)**

14. Containers.

- a. Containers provided by the Permittee for recyclables or compostables, including compactors, shall be clearly labeled, including the Permittee's name and phone number, an indication of the material to be placed in the container and the word "recycling" or "recyclable" or "food waste" or the "chasing arrows" recycling symbol. In the case of compactors, this labeling shall be clearly visible to users and located on the surface adjacent to the feed opening. If this surface is not part of the equipment provided by the Permittee, then the Permittee is not responsible for the labeling. **(Infraction Assessment \$200 for the first Month with Month defined on a per Customer basis)**
- b. Recycling or compostables containers purchased and made available by OSD for Permittees to distribute to Commercial Customers (including the containers known as Blue Business Bins) shall be distributed as specified by OSD. These containers remain the property of the City and are to be distributed only to Commercial Customers within the Portland Urban Services Boundary. City-purchased recycling or compostables containers are to remain with the Customer when the Customer changes service providers, unless the Customer specifically requests that the new service provider use a different system. The containers are to be used to contain only recyclables or compostables. **(Infraction Assessment \$400 for the first Incident)** In instances where an Assessment is imposed on a Permittee for improper distribution or use of these containers, OSD may also require the Permittee to return to OSD some or all of the containers provided to the

Permittee and to continue to provide recycling or compostables containers to Customers without a related rate increase. **(Infraction Assessment \$400 for the first Incident)**

c. Upon the request of a Customer, the Permittee shall provide recycling or compostables containers without charge in the size range of the OSD-provided containers whether or not the Permittee possesses any OSD-provided containers at the time. **(Infraction Assessment \$400 for the first Incident)**

d. The Permittee shall mark every recycling or compostables container of 10 cubic yards and greater capacity (generally "drop-boxes") using an identification system that gives each container a unique number or number/letter combination to enable tracking the location of, and enforcement of City street use regulations for, containers that are found placed in a public right-of-way. **(Infraction Assessment \$200 for the first Month with Month defined on a per container basis)**

e. The Permittee shall collect all properly prepared materials as listed above and shall leave at the point of collection any reusable containers provided by the Customer, the Generator, or OSD, and any protective covers used to keep material dry. Used motor oil containers do not have to be left at the point of collection.

f. Where there are containers provided by someone other than a Permittee, the Permittee shall be responsible for any damage caused by the Permittee to those reusable containers and protective covers in the course of collection, except from weather or normal wear and tear. **(Infraction Assessment \$200 for the first Incident)**

g. Multifamily containers: Where a Multifamily Customer elects to provide recycling bins for each individual living unit, rather than central collection areas serving multiple units, the Permittee shall provide a minimum of one bin per living unit, unless the Customer requests two bins per unit. If the Customer requests two bins per unit, the Permittee shall provide the additional bins at no charge. **(Infraction Assessment \$200 for the first Month)**

15. Removal of containers

Where a Customer has terminated service, following applicable procedures described in these rules or a service agreement, it is an Infraction for a Permittee to leave Recycling or Yard Debris or Compostables containers owned by the Permittee in place at the Customer's location for more than ten calendar days after the Customer has given written notice of termination. **(Infraction Assessment \$200 for the first Day)**

16. Improperly Prepared Recyclable or Compostable Materials. The following procedures shall be followed when the Permittee encounters Recyclables or Compostables not prepared or placed as mutually agreed upon by Permittee and Business Customer, or, in the case of a Multifamily Customer, when the Permittee encounters improperly prepared material, materials that the Permittee does not routinely collect (not including any materials listed in Section A.9 – A.11. of Part 4.3, Permittees: Recycling Collection Services) or materials set out in an improper location.

a. The Permittee is not required to collect such material.

b. If the Permittee chooses to collect materials that have been set out for recycling or for collection for composting but are improperly prepared or placed, the Permittee shall not mix the material with solid waste, but shall ensure that the material is delivered for recycling or composting. **(Infraction Assessment \$500 for the first Incident with Incident defined on a per Customer per collection basis)**

c. If the Permittee declines to collect any materials for the above-listed reasons, the Permittee shall notify the Customer of the problem no later than the Customer's next business day.

d. When a Permittee so notifies a Customer of rejection of a container of recyclable or compostable materials as improperly prepared, the Permittee shall offer the Customer or Generator the choice of sorting the materials or otherwise correcting the preparation problem, or of having the container of material disposed as solid waste using space available in the Customer's or Generator's regular solid waste container, or at an extra charge if no space is available. A Permittee's not offering these choices shall be considered an Infraction. **(Infraction Assessment \$400 for the first Incident with Incident defined on a per Customer basis)**

e. If the Customer or Generator chooses the Disposal option, the Customer or Generator must place the rejected materials into a solid waste container or truck or specifically request the Permittee to do so. For the Permittee to dispose of rejected materials without being requested by the Customer or Generator constitutes an Infraction. The existence of a standing agreement wherein a Customer authorizes a Permittee to dispose of improperly prepared recyclables or compostables whenever they are encountered does not make such disposal acceptable under City Code and these Rules. **(Infraction Assessment \$500 for the first Incident)**

17. Where a Permittee encounters Recyclable or Compostable Materials that are not in a Solid Waste container (including plastic trash bags) and are not otherwise identified as Solid Waste, the Permittee shall not collect the Recyclables but shall contact the Customer to discuss the Customer's intention for handling the Recyclables. For a Permittee to collect such Recyclables and treat them as Solid Waste is an Infraction. **(Infraction Assessment \$500 for the first Incident)**

B. SYSTEM AND EQUIPMENT REQUIREMENTS

1. Safety and Maintenance. All recycling collection equipment must be maintained and operated in compliance with all local and state statutes, ordinances and regulations including compliance with regulations related to the safety of the collection crew and the public.

All recycling or compostables collection equipment shall be covered or otherwise secure to prevent material from blowing, leaking or falling out during transit. All collection equipment must also be constructed, loaded, operated and maintained in such a manner to reduce to the greatest extent practicable dripping or leaking of 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. **(Infraction Assessment \$200 for the first Day with Day defined on a per vehicle basis)**

2. Identification.

a. All recycling or compostables collection vehicles shall be clearly identified by displaying the Permittee's current name and telephone number prominently on both sides of the vehicle. Where a Permittee has acquired used vehicles, or changed its business name, the Permittee must update the vehicle identification within 45 days. In this case, that Permittee shall ensure that the phone number on the vehicle will refer callers to the Permittee currently using the vehicle. OSD may exempt specific vehicles in cases where a Customer seeks confidentiality for documents to be rendered unreadable (e.g., by shredding) before they are recycled. **(Infraction Assessment \$300 for the first Month with Month defined on a per vehicle basis)**

b. Where a collection vehicle is designed and being used to collect both source-separated Recyclables or Compostables and Solid Waste in separate compartments in one vehicle, the vehicle

shall be so identified prominently and conspicuously on both sides of the vehicle. **(Infraction Assessment \$200 for the first Day** with Day defined on a per vehicle basis)

- C. **COMPLIANCE WITH ZONING ORDINANCES.** Any processing and storage of recyclable or compostable materials shall be undertaken in a location suitable and adequate for such activity. Processing and storage facilities shall comply with all applicable zoning ordinances and any other applicable local and state statutes, ordinances and regulations. Areas for parking, repair, storage or cleaning of vehicles or equipment shall not be located in areas zoned as residential under local zoning ordinances, unless approved in writing by the Bureau of Development Review.

D. **PROMOTION AND EDUCATION.**

1. The Permittee shall distribute basic recycling collection information, and, after City Council adoption of a Food Waste Collection Plan and where the Customer is a Food Waste Generating Business, compostables collection information, to every new Customer, and former Customer being reinstated after six months or more without service from that Permittee, within seven days of sign-up, and to all existing Customers at least annually, and every time the Permittee changes the preparation/collection system. The Permittee shall provide the Customer with information verifying the specific preparation instructions agreed upon by the Permittee and that Customer, along with any material provided by OSD. Failure to distribute this information according to these provisions is an Infraction subject to an Assessment. **(Infraction Assessment \$400 for the first Incident** with Incident defined on a per Customer basis)

The Permittee's basic information piece must be approved in advance by OSD. The Permittee's piece must include at a minimum the following:

- a. A statement that the Permittee is able to provide recycling or compostables collection services for all materials listed above under A.9. and A.10, above (or A.11, for multifamily accounts), and including a list of those materials.
 - b. A statement that the Customer should discuss the recycling or compostables collection schedules with the Permittee, and that the Customer should not automatically set out recycling or compostables for collection on the same day as garbage collection, as it is at residences.
 - c. Reasons why recyclables and compostables should be separated from garbage.
 - d. Verification of the specific preparation instructions agreed on by the Permittee and the Customer, and, if the Customer must set out recyclables or compostables on collection day (as distinct from having a central collection area that is used by and accessible to both the Customer and the Permittee), the Customer's recycling and compostables collection schedule(s).
 - e. A Recycling Plan Form, if the Customer is new Customer for the Permittee, or is a former Customer being reinstated after six months or more without service from that Permittee.
2. In addition to distributing the above materials, Permittees shall distribute other OSD-provided education and promotion information regarding the commercial recycling program to all commercial Customers up to three times per year. The notices shall be distributed to these Customers within a reasonable time period specified by OSD, and according to other delivery instructions provided by OSD. Where the Permittee is providing solid waste and recycling collection service to Multifamily Complexes, and the OSD notice is directed at Multifamily residents, the Permittee shall obtain from OSD and provide to the Customer an adequate number of notices to be distributed to every Multifamily unit served. The Permittee shall provide the notices to the on-site manager(s) or other person(s) designated by the Customer for subsequent distribution to all units. **(Infraction Assessment \$400 for the first Incident** with Incident defined on a per Customer basis)

3. If a Customer must set out recyclables or compostables on collection day (as distinct from having a central collection area that is used by and accessible to both the Customer and the Permittee), the Permittee must notify the Customer at least one week in advance of any change in the Customer's recycling collection schedule.
4. The Permittee shall provide the above information to a recycling coordinator or an owner or manager of the company. The information may not simply be left on a garbage or recycling container.
5. In a case where the Customer asks the Permittee for assistance recycling a material that is not listed above in Section A., and the Permittee does not offer recycling collection for that material, the Permittee shall refer the Customer to Metro Recycling Information, 503-234-3000 or MRI@metro.dst.or.us, or to another recycler known to recycle that material.

E. NIGHTTIME NOISE

1. All Permittees will conduct OSD-approved education sessions on ways drivers can minimize noisy operations, and shall require all drivers attend these sessions (1) before driving Permittee trucks between 10 p.m. and 6 a.m., and (2) again at least once every 365 days. OSD will help design this training. **(Infraction Assessment \$200 per driver for the first Month)**
2. All Permittees shall install, on all collection vehicles operating between 10 p.m. and 6 a.m., backup beepers which sound a quieter alarm in a quieter environment. **(Infraction Assessment \$200 for the first Incident)**
3. When a Permittee is notified by OSD of a complaint about collection for a particular customer location, the Permittee shall do all of the following. **(Infraction Assessment \$200 for the first Incident of violation of any one of these provisions.):**
 - a. Deaden the sound of any metal arm (used to hold the lid open temporarily) on any containers used at that customer location,
 - b. Discuss with the driver the possible causes and ways to alleviate nighttime noise problems at that location.
 - c. If a complaint is about glass pickup, the Permittee shall not collect glass for recycling at that location between 10 p.m. and 6 a.m., and:
 - d. If more than one complaint is received by OSD within three months about an individual driver, the Permittee shall require that driver to undergo training again within one month of the second and subsequent complaints.

Part 4.4, Permittees: Reporting

- A. GENERAL.** Permittee shall maintain records and reports as noted herein and promptly respond to periodic requests for such records and reports which are directly pertinent to the permit requirements and conditions.
- B. DELIVERY OF REPORTS.** For purposes of reporting deadlines, the delivery address for OSD is 721 NW 9th Avenue, #350, Portland, Oregon, 97209-3447 between 8 a.m. and 5 p.m. on business days excluding legal holidays. OSD fax number for reports is (503) 823-4562. OSD may provide a new mailing address or FAX number with advance notice to the Permittee. Reports may be submitted in hard copy, readable fax form, or electronically in a format provided or pre-approved by OSD. Reports faxed to any other phone number are not considered submitted.
- C. RECYCLING AND COMPOSTABLES DATA REPORTING.** Permittees shall report to OSD for each month.
1. Report Due Date:
 - a. Permittees shall collect the information on a monthly basis and submit reports for each month following each Calendar Quarter. This data shall be provided on forms supplied by OSD and received by OSD no later than the 30th day following the end of the reporting period. When the 30th day falls on a Saturday, Sunday or legal holiday, the report is due on the next business day.
 - b. Where OSD finds information to be lacking or incorrect in a recycling report, and uses FAX or phone to request the Permittee to provide corrected information, the Permittee shall respond by the deadline given in the request, the deadline being no less than five business days after the OSD request for corrected information.
 2. Report Content:
 - a. Permittees shall report the total number of commercial Customers, separated into Multifamily and Businesses.
 - b. Permittees shall report each month's tonnage for each of the recyclable or compostable materials collected from multifamily and other commercial Customers and tonnage for each of these materials sold or delivered for recycling or composting, including optional recyclables.
- D. QUARTERLY WASTE TONNAGE REPORTING.**
1. By the 30th day after the end of each Calendar Quarter, the Permittee shall complete, sign and deliver to OSD a quarterly tonnage fee report form using a form provided or approved by OSD for that Calendar Quarter. When this due date falls on a Saturday, Sunday or legal holiday, the report is due on the next business day.
 2. On this report form, the Permittee shall provide the following data concerning all tonnage of Solid Waste disposed at each Metro-approved facility during the Quarter: the total of such tonnage disposed at each facility, the total of such tonnage collected within and outside the Portland Urban Services boundary, and the total of such tonnage collected from Residential sources within the Portland Urban Services Boundary.

E. DELINQUENT REPORTS, ENFORCEMENT

1. Should a Commercial Permittee fail to submit a required report, or corrected information as requested by OSD, by the due date then OSD will send a Delinquent Notice within five business days following the due date. The Delinquent Notice will require the Permittee to send in the report, or corrected information as requested by OSD, within five business days of the date of the delinquent notice. The Notice will also require payment of a **\$50.00 service charge**, due and payable when the report is submitted.
2. Should a Commercial Permittee, after being sent the "Delinquent Notice", fail to return a required report, or corrected information as requested by OSD, within five business days of the date of the delinquent notice, then OSD shall send the Permittee an Alleged Infraction Letter on the day after the delinquent due date. The Delinquent Notice shall replace the "Initial Notice" required by Part 4.7A.B. Notice of Alleged Infraction.
3. Failure to deliver a complete, signed, accurate report, or corrected information as requested by OSD, by a deadline identified above shall constitute an Infraction **(Infraction Assessment \$300 for the first Incident)**.

F. RETENTION AND ADDITIONAL INFORMATION.

1. All data and program information necessary for the above data reporting requirements shall be retained by the Permittee for a period of two years, including market receipts for the sale or delivery of all collected recyclable or compostable materials. OSD has the right to require access to any relevant nonfinancial information from the Permittee as may be needed for the program. Information requested by OSD shall be provided or made available to OSD within ten working days of a written request, or, if OSD makes an inspection as provided in these Commercial Administrative rules governing Access for Inspections and Delivery of Notices, the information shall be made available during the inspection. **(Infraction Assessment \$400 for the first day)**
2. Upon the occasion of OSD inspection of the Permittee's premises, the Permittee shall provide OSD with access to inspect other relevant information of the Permittee as may be required for the program, including financial records necessary to verify sale or delivery of collected Recyclables or Compostables, and financial records pertaining to the origin of solid waste collected by the Permittee. **(Infraction Assessment \$400 for the first Day)**

Part 4.5, Recycling and Solid Waste Requirements for Commercial Customers, Generators and Self-haulers

A. GENERAL PRINCIPLES

All Businesses and Multifamily Complexes must separate recyclable materials from mixed waste and set out for recycling at least a minimum amount of their recyclable materials, as described below. OSD monitoring of compliance will be accomplished through Businesses' and Multifamily Complexes' completion of Recycling Plan Forms and OSD review of those forms, as well as through OSD inspections of onsite recycling and waste systems. The following general principles apply:

1. Businesses must separate recyclable materials from mixed waste and set out for recycling a minimum of 50% of their waste, given practical limitations beyond the control of the business.
2. Businesses and Multifamily Complexes that separate glass for recycling must keep it separate from all recyclable paper materials.
3. Multifamily Complexes must set up recycling systems that are convenient to tenants, for at least five recyclable materials, and to notify tenants about recycling. Effective July 1, 2005, each complex must provide recycling for all materials that can be recycled in Portland's Residential curbside system, excluding used motor oil.
4. Where a building project is valued at \$50,000 or more, including both construction and demolition phases, the general contractor is required to ensure that materials produced on the job site are recycled. Where no general contractor is named on an affected building permit, then this requirement is applicable to the property owner.

B. SPECIFIC RECYCLING REQUIREMENTS

1. Every Customer that is a Business or a Multifamily Complex, and every general contractor for a building project having a value of \$50,000 or more (including both demolition and construction phases) shall complete a City-provided Recycling Plan Form. Where a Customer's single account covers multiple service locations, the Customer shall complete one Recycling Plan Form for each location. On these forms the Customer or construction site general contractor shall list or check off the materials to be recycled at a particular address, and shall identify the type of collector for those materials. Where there is an affected building project and no general contractor is named, then this requirement is applicable to the property owner.
2. These forms must be returned to the City-permitted waste hauler servicing the Customer or, for affected construction site general contractors or property owners, then to the City of Portland's Office of Sustainable Development (OSD) at the address on the form.
3. For building projects having a total value of less than \$50,000, every contractor is asked to commit to recycle the maximum amount possible on the project.
4. A Customer may elect to complete either a Quick Form or a longer Recycling Plan Form. By choosing the longer Form, the Customer will list the specific materials generated at an address and make a commitment to recycle 50% of its waste. By choosing a Quick Form,

the Customer will make a commitment to recycle the materials preselected by OSD as appropriate for its business type.

5. The Customer, or Self-hauler, or for affected building projects, general contractor or property owner, shall ensure the provision of clearly marked recycling containers and storage space for the amount of each Recyclable that accumulates between collections.
6. Where a Customer or Generator owns any container for recyclables or compostables, including compactors, each container shall be clearly labeled, including an indication of the material to be placed in the container and the word "recycling" or "recyclable" or "food waste" or the "chasing arrows" recycling symbol. In the case of compactors, this labeling shall be clearly visible to users and located on the surface adjacent to the feed opening. It is the responsibility of the entity owning that surface to ensure that it is properly labeled.
7.
 - a. Where a Customer rents, leases or lets space to a business and includes provision of garbage collection service for any tenant as part of the rental or lease agreement, the Customer is responsible to provide a recycling and, for Food Waste Generating Businesses and effective 120 days after City Council adoption of a Food Waste Collection Plan, compostables collection system for that tenant's recyclables.
 - b. Where the space rented or leased is office space, the system should consist of at least one recycling container at each workstation, obtained by the Customer from OSD or another source, and distributed by the Customer to each tenant business.
 - c. Where the space rented or leased consists of non-office space, the system should consist of at least one recycling container at each waste container, obtained by the Customer from OSD or another source, and distributed by the Customer to each tenant business.
 - d. The recycling system provided by the Customer should also include clearly marked central containers located within the tenant's premises or as close as the tenant's central garbage pickup location, and collection service at a frequency adequate to provide ongoing capacity for all materials, as well as preparation information and a phone number for tenants to call for more information.
8. Failure of a Generator, Customer, Self-hauler or construction site general contractor to implement required recycling or compostables collection system shall be considered an Infraction. For an affected building project where there is no general contractor named on the building permit, then this requirement applies to the property owner. The presence of minor and incidental amounts of Recyclables or Compostables in waste disposal containers shall not constitute an Infraction. **(Infraction Assessment \$500 for the first Month-- See Compliance and Enforcement - Common Aspects, Part 4.7.D, on the last two pages of this document, for explanation.)**
9. If the recycling system includes the collection of glass, the Customer's system shall not provide for glass to be mixed with paper. **(Infraction Assessment \$400 For the first month)**
10. In evaluating compliance with this rule, OSD will consider how the inherent space limitations of the site affect the Customer's or Business' possibility of providing recycling or compostables containers according to OSD's specifications. In cases where storage space possibilities are limited, the Customer or Self-hauler is not required to arrange for recycling pickups more often than weekly in order to accommodate storage for the required recycling.

OSD reserves the right to determine whether the recycling or compostables collection system is sufficient.

11. Where an affected Customer, or construction site general contractor or property owner, has an agreement with their waste hauler whereby the hauler may dispose of allegedly contaminated recyclables or compostables whenever such contamination is encountered in the course of collection, that affected Customer, contractor or owner does not have a recycling system which complies with City Code and these Rules.
12. Where a Business is a tenant in a situation where someone else arranges for garbage service for its premises (the Business thereby being a "Generator" but not a "Customer" as defined in these rules), that Business shall use the recycling or compostables collection system made available by the entity that arranges for garbage service on its premises. The failure by such a Business to place recyclables or compostables in the containers provided shall be considered an Infraction unless the Business is recycling and/or ensuring the composting of at least 50% of its waste by means of an alternative program. **(Infraction Assessment \$500 for the first Month)**
13. Recycling at Multifamily
 - a. Unless a Multifamily Complex Owner and a Permittee or Independent Commercial Recycler agree to provide an individual bin system at a specific complex (see B.12.d., below), the Owner shall ensure the provision of central collection containers for a two-sort system, where glass is collected in one container and all other recyclables are collected in another container. Where such a two-sort system is provided, Multifamily Complexes shall provide recycling containers for all of the materials listed under A.11. Recyclable Material to be Collected from Multifamily Complexes under Part 4.3, Permittees: Recycling Collection Services., except Motor Oil and Yard Debris. Until July 1, 2005, the Owner also has the option of providing recycling containers for Newspaper and Scrap Paper, and at least three of the following five items: Corrugated cardboard/kraft paper, Glass (clear and green), Magazines, Plastic bottles including milk jugs, and Steel "tin" cans. Failure to provide such recycling at a Multifamily Complex shall be considered an Infraction by the Owner of the Complex. **(Infraction Assessment \$500 for the first Month)**
 - b. The recycling containers at a Multifamily Complex shall be placed in a location or locations at least as convenient to tenants as the trash receptacles, including trash chutes, insofar as is practical given space limitations. **(Infraction Assessment \$400 for the first Month)**
 - c. In evaluating compliance with the preceding paragraphs, OSD will consider how the inherent limitations of a multifamily site (including space and layout) affect the possibility of providing recycling according to OSD's specifications. In cases where storage space possibilities are significantly limited a Complex may be allowed to recycle fewer than five materials (rather than being required to arrange for recycling pickups more often than weekly in order to accommodate five materials).
 - d. At a multifamily complex, an Owner may choose to provide recycling through a system which consists of furnishing City-issued 14-gallon recycling containers to residents, rather than by providing central collection containers. These bins are available through every Permitted Commercial hauler and Independent Commercial Recycler operating in the City. In such case, the system shall meet the conditions listed below. Failure to meet these conditions shall be considered an Infraction by the Owner of the Complex. **(Infraction Assessment \$500 for the first Month)**

i. The property Owner must provide at least one bin to each unit, must label each bin to identify the unit it belongs to, and must ensure that the bins are replaced if lost or damaged. Where a single bin is provided, the property owner shall affix to it a note informing the tenant what number to call if s/he needs a second bin. If a tenant requests a second bin, the property Owner shall provide it within two weeks.

ii. In these bins, residents shall be offered the opportunity to set out all of the same clean and separated materials that are offered for collection under the Residential Franchise, excluding motor oil and yard debris.

iii. Residents must be provided with weekly collection of the materials in the bins, at convenient set-out locations.

e. Owners of Multifamily Complexes shall distribute to all tenants at least once a year information about how to use the onsite recycling system. Owners shall provide new tenants with this information within 30 days of tenant move-in. **(Infraction Assessment \$300 for the first Month)**

14. Where a building project is valued at \$50,000 or more, including both construction and demolition phases, the general contractor is required to ensure that wood, corrugated cardboard, metal, rubble (concrete/asphalt), and land clearing debris generated at the job site are recycled. At construction sites, Recyclable materials may be mixed with non-putrescible waste only if the materials are taken for post-collection sorting at a facility approved by Metro. For an affected building project where there is no general contractor named on the building permit, then this requirement applies to the property owner. Failure of the general contractor or affected property owner to recycle these materials listed on the applicable Recycling Plan Form shall be considered an Infraction subject to an Assessment **(Infraction Assessment \$500 for the first Month)**

C. CITY INSPECTION

In evaluating whether an Infraction of the above provisions has occurred, OSD may attempt to visit the premises and consider the presence and capacity of recycling and compostables collection containers, the presence and quantities of Recyclables in Recycling and Solid Waste containers, the presence of signs, flyers, stickers and other information which promotes recycling and composting, and discussion with employees, tenants and owners, Permittees and Independent Commercial Recyclers. (See Compliance and Enforcement). Such visits are only for purposes of enforcing solid waste and recycling and compostables collection regulations.

Part 4.6, Independent Commercial Recyclers

A. REGISTRATION

In order to collect recyclables or compostables from Portland Businesses or Multifamily Complexes, any Independent Commercial Recycler shall register with the City of Portland, Office of Sustainable Development (OSD). This registration shall be accomplished by the Recycler submitting to OSD a copy of the front page of its Portland Business License application or a copy of its Application for Portland Business License Exemption, and by completing a registration form provided by OSD. No OSD registration fee shall be required. Collection of recyclables or compostables within the City without so registering, or when registration has been suspended (see Part 4.6, K.4. Safety Fitness rating, below), shall be considered an Infraction subject to an Assessment. **(Infraction Assessment \$500 for the first Day - See Compliance and Enforcement - Common Aspects, Part 4.7.D, on the last two pages of this document, for explanation.)** The purpose of this registration is to enable OSD to track the quantities of material being collected for recycling and composting, and to ensure that Independent Recyclers' vehicles are maintained according to federal and state transportation safety standards.

B. DISPOSAL PROHIBITION

Disposal Prohibition. The Independent Commercial Recycler is responsible for transporting and delivery of collected materials for recycling or composting. The Independent Commercial Recycler shall ensure that all such collected materials are delivered to a processor or broker of recyclable materials or to an end use market. The Independent Commercial Recycler shall ensure that all collected Yard Debris and Compostable materials are delivered for beneficial use, including

1. Composting by a facility that has a current Metro compost license, an Oregon Department of Environmental Quality compost permit or registration, or is licensed as a composter by the State of Washington, or
2. A reload facility licensed by Metro, or
3. For animal feed by facilities regulated by the Oregon Department of Agriculture or the Washington State Department of Agriculture, or
4. use as hog fuel in the case of woody waste.

The Independent Commercial Recycler shall be prohibited from delivering, or causing to be delivered, any collected recyclable or compostable materials for disposal, except with prior approval by OSD. Placement of properly prepared recyclables or compostables which have been separated and set out for recycling or collection for composting, into any solid waste container for any length of time, or delivery of any such materials for disposal shall constitute a failure to comply with this rule. **(Infraction Assessment \$500 for the first Incident with Incident defined on a per Customer basis)**

C. REPORTING OF RECYCLING DATA

1. Independent Commercial Recyclers shall report to OSD for each calendar quarter the cumulative quantities of each recyclable and compostable material collected from the premises of all Businesses and Multifamily Complexes within Portland.
2. Quantities reported shall not include materials excluded under State law, ORS 459A.010(4)(f), which describes materials that are routinely recycled without entering the solid waste stream, such as certain manufacturing and industrial wastes.

3. This data shall be provided on forms supplied by OSD and received by OSD no later than the 30th day following the end of the reporting period. When the 30th day falls on a Saturday, Sunday or legal holiday, the report is due on the next business day.
4. Delivery of reports. For purposes of reporting deadlines, the delivery address for OSD is 721 NW 9th Avenue, #350, Portland, Oregon, 97209-3447, between 8 a.m. and 5 p.m. on business days, excluding legal holidays. OSD fax number for reports is (503) 823-4562. OSD may provide a new mailing address or FAX number with advance notice to the Independent Commercial Recycler. Reports may be submitted in hard copy or readable fax form, or electronically in a format provided or pre-approved by OSD. Reports faxed to any other phone number are not considered submitted.
5. Where OSD finds information to be lacking or incorrect in a recycling report, and uses FAX or phone to request the Independent Commercial Recycler to provide corrected information, the Independent Commercial Recycler shall respond by the deadline given in the request, the deadline being no less than five business days after the OSD request for corrected information.

D. DELINQUENT REPORTS, ENFORCEMENT

1. Should an Independent Commercial Recycler fail to submit a required report, or corrected information as requested by OSD, by the due date then OSD will send a Delinquent Notice within five business days following the due date. The Delinquent Notice will require the Independent Commercial Recycler to send in the report, or corrected information as requested by OSD, within five business days of the date of the delinquent notice. The Notice will also require payment of a \$50.00 service charge, due and payable when the report is submitted.
2. Should an Independent Commercial Recycler, after being sent the "Delinquent Notice", fail to return a required report, or corrected information as requested by OSD, within five business days of the date of the delinquent notice, then OSD shall send the Recycler an Alleged Infraction Letter on the day after the delinquent due date. The Delinquent Notice shall replace the "Initial Notice" required by Part 4.7C.B. Notice of Alleged Infraction.
3. Failure to deliver a complete, signed, accurate report, or corrected information as requested by OSD, by the deadline identified above, shall constitute an Infraction. **(Infraction Assessment \$300 for the first Incident)**

E. RETENTION AND ACCESS TO RECORDS

1. All records necessary for providing this data shall be retained by the Recycler for a period of two years. OSD has the right to require access to any relevant nonfinancial recycling information as may be needed for the program. Information requested by OSD shall be made available to OSD within ten working days of a written request, or, if OSD makes an inspection as provided below, the information shall be made available during the inspection. **(Infraction Assessment \$400 for the first Day)**
2. The Independent Commercial Recycler shall make records related to their recycling collection services in Portland available during normal business hours for inspection by OSD personnel within 24 hours of OSD notice by telephone. The 24 hour period excludes Saturdays, Sundays and legal holidays. **(Infraction Assessment \$300 for the first Day)**

F. IDENTIFICATION

All recycling or compostables collection vehicles provided by the Independent Commercial Recycler shall be marked with the Recycler's current name and telephone number. Where an Independent Commercial Recycler has acquired used vehicles, or changed its business name, that Recycler must update the vehicle identification within 45 days. In this case, that Recycler shall ensure that the phone number on the vehicle will refer callers to the company currently using the vehicle. OSD may exempt specific vehicles in cases where a Customer seeks confidentiality for documents to be rendered unreadable (e.g., by shredding) before they are recycled. **(Infraction Assessment \$300 for the first Month with Month defined on a per vehicle basis)**

G. CONTAINERS

1. For Customers or Generators who source separate glass for recycling, the Independent Recycler shall not provide a collection system which provides for glass to be mixed with paper. **(Infraction Assessment \$400 for the first Incident)**
2. Containers provided by the Independent Commercial Recycler for recyclables or compostables, including compactors, shall be clearly labeled, including the Independent Recycler's name and phone number, an indication of the material to be placed in the container and the word "recycling" or "recyclable" or "food waste" or the "chasing arrows" recycling symbol. This information must be displayed prominently and conspicuously on at least the portion of the container that is visible when the container is being used to store materials **(Infraction Assessment \$200 for the first Month with Month defined on a per customer basis)**
3. Where there are containers provided by someone other than the Independent Commercial Recycler, the Independent Commercial Recycler shall be responsible for any damage caused by the Independent Commercial Recycler to those reusable containers and protective covers in the course of collection, except from weather or normal wear and tear. **(Infraction Assessment \$200 for the first Incident)**
4. Independent Commercial Recyclers shall mark every recycling or compostables container of 10 cubic yards and greater capacity (generally "dropboxes") using an identification system that gives each container a unique number or number/letter combination to enable tracking the location of, and enforcement of City street use regulations for, containers that are found placed in the public right-of-way. **(Infraction Assessment \$200 for the first Month with Month defined on a per container basis)**

H. UNAUTHORIZED COLLECTION OF RECYCLABLE MATERIALS

1. All Recyclable or Compostable Materials placed in a recyclables or compostables container provided by any collector, whether a registered Independent Commercial Recycler or a Permittee, shall be considered owned by and be the responsibility of that collector. Without permission of that collector no person shall collect Recyclable or Compostable Materials placed by the Customer in such a container. **(Infraction Assessment \$500 for the first Incident)**
2. All Recyclable or Compostable Materials placed in a recycling or compostables container provided by a Business or Multifamily Complex shall be considered owned by and be the responsibility of that provider. Without permission of that provider no person shall collect

Recyclable Materials placed in such a recycling or compostables container. **(Infraction Assessment \$500 for the first Incident)**

- I. **HOURS OF COLLECTION.** At a multifamily account, an Independent Commercial Recycler shall not collect recyclables or compostables between 10 p.m. and 6 a.m., unless the Customer has requested in writing that collection be made during that time. This restriction does not apply where multifamily is part of a mixed-use building, where other commercial accounts are being served. **(Infraction Assessment \$200 for the first Day)**
- J. **COMPLIANCE WITH ZONING ORDINANCES.** All parking, storage and maintenance facilities shall comply with all applicable zoning ordinances and any other applicable local and state statutes, ordinances and regulations. Areas for parking, repair, storage or cleaning of vehicles or equipment shall not be located in areas zoned as residential under local zoning ordinances, unless approved in writing by the Office of Planning and Development Review.
- K. **OTHER**
1. **Prevention of Leaking and Blowing.** All recycling or compostables collection equipment shall be covered or otherwise secure to prevent material from blowing, leaking or falling out during transit. All collection equipment must also be constructed, loaded, operated and maintained in such a manner to reduce to the greatest extent practicable dripping or leaking of 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. **(Infraction Assessment \$200 for the first Day where Day is defined on a per vehicle basis)**
 2. **Compliance with Driving and Transportation Laws and Compliance with Metro and DEQ Requirements.** The Independent Commercial Recycler shall comply with all applicable federal, state and local laws and regulations relating to driving, transportation, and waste, compostable and recyclable materials collection and disposal.
 3. **Safety and Maintenance.** All collection equipment must be maintained and operated in compliance with all local and state statutes, ordinances and regulations including compliance with regulations related to the safety of the collection crew and the public.
 4. **Safety Fitness Rating:** When any Independent Recycler has been prohibited from operating its collection vehicles due to an unsatisfactory safety fitness rating from either the U.S. Department of Transportation or the Oregon Department of Transportation, OSD will suspend that Independent Recycler's registration until the Recycler has been reinstated with a satisfactory or conditional rating. In addition, OSD will not register any company that has been prohibited from operating its collection vehicles due to an unsatisfactory rating at the time of initial application or annual registration renewal each January 1st. This provision also applies if:
 - (1) the Independent Recycler;
 - (2) any person who will be directly engaged in the management or operation of the Independent Recycler; or,
 - (3) any person who owns a five percent or greater interest in the Independent Recycler, has previously owned or operated as an Independent Recycler that has received such an unsatisfactory safety fitness rating that was not reinstated within a reasonable period of time with a satisfactory or conditional rating.

5. Appeal Provision. For appeal of Denial, Suspension or Revocation provided in K.4., see Section F, Appeal Of Denial, Suspension or Revocation of Registration As An Independent Commercial Recycler of Part 4.7C, Commercial Compliance and Enforcement: Independent Commercial Recyclers.
6. Maintaining Passage on Public Streets. To the greatest extent practicable, the Independent Recycler shall avoid stopping of collection vehicles while collecting Recyclable or Compostable materials, or placing of drop-boxes, in a manner that blocks the passage of other vehicles or pedestrians on public streets or sidewalks. **(Infraction Assessment \$200 for the first Incident for vehicles; and \$200 for the first Day for drop boxes)**

Part 4.7 A Commercial Compliance and Enforcement: Permittees

A. INITIATION OF ENFORCEMENT ACTION

OSD may initiate an enforcement action based on its own observations or on a complaint. Complaints regarding compliance with these Rules may be accepted from any source in writing, through personal visit or telephone call. OSD will maintain the confidentiality of complainants. Anonymous complaints will result in an Infraction only if OSD investigation reveals other evidence that is sufficient as a basis for its decision that an Infraction has occurred.

B. NOTICE OF ALLEGED INFRACTION

1. Initial Notice

a. Within 48 hours, exclusive of Saturdays, Sundays and legal holidays, of an OSD audit or inspection revealing a potential Infraction, OSD will notify the Permittee of the potential Infraction. Only where a potential Infraction is based on a complaint, rather than on direct OSD staff observation, will OSD notify the Permittee of the potential Infraction within 48 hours after receipt of a complaint.

b. The notification will describe the nature of the complaint and, if a representative of the Permittee is available, OSD will relate further pertinent available details regarding the alleged Infraction. Messages left on telephone recorders or answering services or sent by facsimile (fax) will be considered as successful contacts for this purpose.

c. Initial Notice for alleged Infractions of reporting deadlines will be treated as described under Part 4.4, E. Delinquent Reports, Enforcement.

2. Delivery of Notifications. Excepting alleged Infractions of reporting deadlines, within seven business days of the initial notice, OSD will send a "Notice of Alleged Infraction" to the Permittee. The Notice will set out clearly all available details that support the alleged Infraction.

3. Opportunity to Respond. The Permittee, unless otherwise arranged for reasonable cause, will be given ten business days from the date of the Notice of Alleged Infraction to provide OSD with a written explanation of the pertinent events and circumstances relative to the alleged Infraction. This information will be used by the OSD to determine if an Infraction has occurred.

C. OSD INVESTIGATION OF ALLEGED INFRACTIONS

OSD shall investigate each alleged Infraction and may contact any known complainant, witness and the Permittee before making its determination.

D. FINDING OF NO INFRACTION

Within seven business days of an OSD determination that no Infraction has actually occurred, OSD shall notify the Permittee of such determination.

E. NOTICE OF ASSESSMENT

1. Form and Delivery of Notice. If, upon investigation, it is determined that a Infraction has occurred, the OSD Director or Director's designee shall deliver a written Notice of Assessment to the offender, specifying the Infraction, the findings that support the Infraction and stating the amount of the Infraction Assessment and deadline for payment. This notice shall also include information on the procedure for requesting a hearing to appeal the determination. Where OSD can demonstrate an attempt to properly deliver the Notice, a refusal by the offender or offender's representative to receive the Notice in person, or failure of offender to accept certified mail, shall not constitute a failure by OSD to fulfill the requirement for the delivery of notice.
2. Deadline for Notice of Assessment. The Notice of Assessment must be issued by OSD within 30 calendar days of OSD notification of the offender of the occurrence of the alleged Infraction. Infractions associated with records or file keeping which are discovered more than 30 days after their occurrence are exempt from this time limit; notice will, however, occur within 30 days of the discovery by OSD.
3. Accumulation of Infractions. A Notice of Assessment may be issued for each rule and for each day or instance when the Infraction occurs. More than one Infraction, involving different rules, may be accrued simultaneously.

F. APPEAL OF DENIAL, SUSPENSION OR REVOCATION OF COMMERCIAL PERMIT

Any person receiving a notice of denial, suspension or revocation of a commercial permit shall, within 14 Business days of issuance of a written notice of the denial, suspension or revocation, cease all collection of Solid Waste and/or Recyclables and/or Compostables from Customers located in the City of Portland, or request an appeal hearing a Code Hearings Officer in accordance with procedures set forth in Chapter 22 of the City Code. The filing of an appeal of denial, suspension or revocation shall stay the effective date of the denial, suspension or revocation until the appeal is determined by the Code Hearings Officer.

If, pursuant to said appeal hearing, the denial, suspension or revocation is sustained by the Code Hearings Officer, the Permittee 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.

Part 4.7 B Commercial Compliance and Enforcement: Customers, Generators and Self-haulers

A. INITIAL INQUIRY

1. To ensure compliance with these Rules by Businesses and Multifamily Complexes, OSD may ask a Permittee to produce copies of Recycling Plan Forms submitted by the Permittee's Customers. If the Permittee is not able to produce a Form for one of the Permittee's Customers, OSD may contact the Customer in order to obtain a completed Form and to determine whether the required recycling and/or compostables system is in place and being used on the Customer's property.
2. OSD may initiate an inquiry on its own or upon receiving a complaint.
3. Receipt of Complaint. Complaints regarding compliance with these Rules may be accepted from any source, in writing, through personal visit or a telephone call. Anonymous complaints alone will not result in an Infraction. OSD may choose not to identify a complainant if its investigation reveals other evidence that is sufficient as a basis for its decision that an Infraction has occurred.
4. Inspection of Premises. OSD may visit a premise in order to verify whether the required recycling and compostables collection system is in place and being used. OSD will not issue a Notice of Potential Noncompliance without contacting the affected Business, Multifamily Complex, or construction site general contractor or property owner.
5. Assignment of Responsibility. Where OSD finds that a Customer has set up a satisfactory recycling and/or compostables collection system but that the system is not being used by Generators who use the Customer's waste disposal system, OSD will pursue the noncompliance of the Generator(s), not the Customer. (In this situation, the Generator(s) would normally be the tenants in a multi-tenant commercial building, and the Customer would be the owner or property manager. See Definitions.)

B. FOLLOW-UP AFTER INSPECTION OF PREMISES

1. Letter of Potential Noncompliance. If, after its investigation, OSD has reason to believe that there is a condition of noncompliance, OSD will notify the Business, Multifamily Complex or construction site general contractor or property owner of the potential noncompliance.
2. Assistance Period. The letter will give the Business, Multifamily Complex, or construction site general contractor or property owner an assistance period of at least 30 days from the date of the letter to achieve compliance. During this period, OSD staff will offer assistance in setting up a satisfactory recycling and/or compostables collection system and achieving participation.

C. OSD INVESTIGATION OF ALLEGED INFRACTIONS

OSD shall investigate each potential Infraction and may contact any known complainant, witness and the alleged offender before making its determination.

D. FINDING OF NO INFRACTION

Within seven business days of an OSD determination that compliance has been achieved, OSD shall notify the alleged offender of such determination.

E. NOTICE OF ASSESSMENT

1. Form and Delivery of Notice. If, after the assistance period, it is determined that noncompliance still exists and an Infraction has occurred, the OSD Director shall deliver a written Notice of Assessment to the offender, specifying the Infraction, the findings that support the Infraction and stating the amount of the Infraction Assessment and deadline for payment. This notice shall also include information on the procedure for requesting a hearing to appeal the determination. Where OSD can demonstrate an attempt to properly deliver the Notice, a refusal by the offender or offender's representative to accept the Notice in person, or failure of offender to accept certified mail, shall not constitute a failure by OSD to fulfill the requirement for the delivery of notice.
2. Accumulation of Infractions. A Notice of Assessment may be issued for each rule and for each instance when the Infraction occurs. More than one Infraction, involving different rules, may be accrued simultaneously.

Part 4.7 C Commercial Compliance and Enforcement: Independent Commercial Recyclers

A. INITIATION OF ENFORCEMENT ACTION

OSD may initiate an enforcement action based on its own observations or on a complaint. Complaints regarding compliance with these Rules may be accepted from any source in writing, through personal visit or telephone call. Anonymous complaints alone will not result in an Infraction though OSD may choose not to identify a complainant if its investigation reveals other evidence that is sufficient as a basis for its decision that an Infraction has occurred.

B. NOTICE OF ALLEGED INFRACTION

1. Initial Notice

a. Within 48 hours, exclusive of Saturdays, Sundays and legal holidays, of finding a potential Infraction, OSD will notify the Independent Commercial Recycler of the potential Infraction. Only where a potential Infraction is based on a complaint, rather than on direct OSD staff observation, will OSD notify the Independent Commercial Recycler of the potential Infraction within 48 hours after receipt of a complaint.

b. The notification will describe the nature of the offense and, if a representative of the Independent Commercial Recycler is available, OSD will relate further pertinent available details regarding the alleged Infraction. Messages left on telephone recorders or answering services or sent by facsimile (fax) will be considered as successful contacts for this purpose.

c. Initial Notice for alleged Infractions of reporting deadlines will be treated as described under Part 4.6, D. Delinquent Reports, Enforcement.

2. Mailed Notice. Excepting alleged Infractions of reporting deadlines, within seven business days of the initial notice, OSD will mail, or send by facsimile (fax), a "Notice of Alleged Infraction" to the Independent Commercial Recycler. The Notice will set out clearly all available details that support the alleged Infraction.

3. Opportunity to Respond. The Independent Commercial Recycler, unless otherwise arranged for reasonable cause, will be given ten business days from the date of the mailed Notice to provide OSD with a written explanation of the pertinent events and circumstances relative to the alleged Infraction. This information will be used by the OSD to determine if an Infraction has occurred.

C. OSD INVESTIGATION OF ALLEGED INFRACTIONS

OSD shall investigate each potential Infraction and may contact any known complainant, witness and the Independent Commercial Recycler before making its determination.

D. FINDING OF NO INFRACTION

Within seven business days of an OSD determination that compliance has been achieved, OSD shall notify the Independent Commercial Recycler of such determination.

E. NOTICE OF ASSESSMENT

1. Form and Delivery of Notice. If it is determined that an Infraction has occurred, the OSD Director shall deliver a written Notice of Assessment to the offender, specifying the Infraction, the findings that support the Infraction and stating the amount of the Infraction Assessment and deadline for payment. This notice shall also include information on the procedure for requesting a hearing to appeal the determination. Where OSD can demonstrate an attempt to properly deliver the Notice, a refusal by the offender or offender's representative to receive the Notice in person, or failure of offender to accept certified mail, shall not constitute a failure by OSD to fulfill the requirement for the delivery of notice.
2. Deadline for Notice of Assessment. The Notice of Assessment must be issued by OSD within 30 calendar days of OSD notification of the offender of the occurrence of the alleged Infraction. Infractions associated with records or file keeping which are discovered more than 30 days after their occurrence are exempt from this time limit; notice will, however, occur within 30 days of the discovery by OSD.
3. Accumulation of Infractions. A Notice of Assessment may be issued for each rule and for each instance when the Infraction occurs. More than one Infraction, involving different rules, may be accrued simultaneously.

F. APPEAL OF DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION AS AN INDEPENDENT COMMERCIAL RECYCLER

Any person receiving a notice of denial, suspension or revocation of registration as an Independent Commercial Recycler shall, within 15 calendar days of issuance of a written notice of the denial, suspension or revocation, cease all collection of Recyclables and/or Compostables within the City of Portland or request an appeal hearing a Code Hearings Officer in accordance with procedures set forth in Chapter 22 of the City Code. The filing of an appeal of denial, suspension or revocation shall stay the effective date of the denial, suspension or revocation until the appeal is determined by the Code Hearings Officer.

If, pursuant to said appeal hearing, the denial, suspension or revocation is sustained by the Code Hearings Officer, the Independent Commercial Recycler shall cease all collection of Recyclables and/or Compostables within 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, Independent Commercial Recycler shall cease all collection of Recyclables and/or Compostables in Portland no later than 15 calendar days after final resolution of the judicial proceedings.

Part 4.7 D Commercial Compliance and Enforcement: Common Aspects

A. STANDARD OF EVIDENCE.

For any Infraction under these Rules, the City must show that the preponderance of the evidence supports a finding that the Infraction has occurred.

B. DELIVERY OF NOTICES.

1. Any notice provided for under these Rules shall be sufficient if in writing and accomplished by any of the following means: (1) delivered personally to the entity being notified; (2) deposited in the United States Mail, first class, postage prepaid; (3) sent by commercial courier; or, (4) sent by facsimile (fax) transmission addressed to the entity being notified. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of either (1) actual personal delivery to the entity's office address, during normal business hours; (2) three (3) business days after depositing in the United States Mail as aforesaid; (3) one (1) business day after shipment by commercial courier as aforesaid; or (4) the same day as facsimile (fax) transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday.)

C. PAYMENT OF INFRACTION ASSESSMENTS

1. Initial Deadline for Payment or Appeal. The offender shall, within 14 business days of OSD issuance of the written notice of Assessment, pay to OSD the stated civil penalty or request an appeal hearing by a Code Hearings Officer.
2. Deadline for Payment after Appeal. If, pursuant to said appeal hearing, an Infraction Assessment is ordered, payment of said Assessment must be received by OSD or postmarked within 15 calendar days after the order becomes final.
3. Interest on Assessment. An Assessment which is not paid within the time provided shall accrue interest at the rate set by the Council until paid. OSD may take legal action to collect Assessments which are not paid when due.

D. INFRACTION CATEGORIES AND ASSESSMENTS

1. Infraction Classifications. Each rule is given an Infraction category consisting of a dollar amount which represents the seriousness of the matter. The highest amount, \$500, constitutes a "serious violation" of these Administrative Rules, as provided for in City Code Section 17.102.121, Revocation and Denial of Commercial Collection Permit.

The Infraction category also reflects whether an Infraction will be assessed on a per Day, per Incident or per Month basis (see definitions). For example, a \$500 for the first Incident designation for the rule relating to Disposal Prohibition means that a \$500 Assessment would be applied for the first single Incident of a Permittee disposing of a single Customer's properly prepared recyclables or compostables within a 365-day period. In another example, a \$400 for the first Month designation for the rule B.13.b. under "Part 4.5, Recycling Requirements for Customers" means that a single \$400 Assessment would be applied if OSD found that a Multifamily Complex owner had set up only one recycling area (rather than six areas) on a property having six trash areas, because the Infraction is for the first Month rather than per Incident. As described below under 2., the assessments increase for subsequent infractions after the first.

2. Infraction Assessment Schedule. An Infraction according to these rules shall result in an Infraction Assessment. The Assessment amounts shown throughout these rules are for the first Infraction of a given rule within a 365-day period. The amount of the Assessment for any specific Infraction will be determined by totaling the number of Infractions of the same rule that have been carried out by that company (Permittee, Independent Commercial Recycler, Customer or Generator) within the 365 days preceding the date of the occurrence of the Infraction, including the current Infraction, then multiplying that total by the Infraction amount shown in these rules.

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