



Fall 2009 Revisions
ADMINISTRATIVE RULES
Business Solid Waste, Recycling and Compostables

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*For additional copies, for copies of the rules governing Residential collection, Commercial collection, for any electronic copies, or large-type copies, contact the Bureau of Planning and Sustainability at 503-823-7202, or email wasteinfo@ci.portland.or.us



PART 1.0, SCOPE OF RULES Administrative rules contained within this document are intended to articulate the standards and expectations for business 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 Bureau of Planning and Sustainability [*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 or 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 Bureau of Planning and Sustainability (BPS) 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, BPS shall notify those associations by regular mail, fax or electronic mail of its intent to review the rules, and invite those associations to comment. BPS shall by regular mail, fax or electronic mail send a notice of the initial public hearing to the same associations not less than ten days 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, BPS staff shall send notice of the rule to all Neighborhood Associations, Neighborhood Business Associations, persons on the BPS 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 BPS

Part 5.0, Business Standards

Part 5.1, Definitions

See also Definitions in Portland City Code Section 17.102.020.

1. **"Assessment"** means a civil penalty assessed for an Infraction as provided in City Code Chapter 17.102 or in the franchise.
2. **"BPS"** means the Bureau of Planning and Sustainability.
3. **"Business"** is any commercial entity, including industrial and institutional, non profit organizations and government facilities, 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"** means to accept, accumulate, store, process, transport, market or dispose of.
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"** and **"Compostable"** means yard debris, food scraps and food soiled paper when source separated for controlled biological decomposition. Compostable material shall not include food soiled paper containing plastic or other materials that inhibit controlled biological decomposition.
8. **"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.
9. **"Customer"** means a person that has arranged the collection of solid waste, recyclable or compostable materials, excluding residential collection service covered by a franchise. Where several businesses share containers and service, customer refers only to the person that arranges for the service.
10. **"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.
11. **"Director"** means the Director of the Bureau of Planning and Sustainability, or the Director's authorized representative, designee or agent.
12. **"Disposal"** means landfilling, illegal dumping, burning, municipal waste incineration, and mixed waste composting.
13. **"Food Soiled Paper"** means paper products that cannot be recycled into paper products or that have been in contact with organic materials to the degree that they would not be able to be recycled into paper products. Food soiled paper includes, but is not limited to, used paper table covers, used napkins, and waxy corrugated cardboard. Food soiled paper includes otherwise recyclable paper

that has been in contact with food to the degree that it is not recyclable into paper products, but does not include unsoiled cardboard boxes, newspaper, or office paper.

14. **"Food Scraps"** 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 scraps include, but are 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. Food scraps do not include large amounts of oils and meats which are collected for rendering, fuel production or other reuse applications.
15. **"Food Scraps Generating Business"** means businesses and institutions whose waste is composed of a large amount of food scraps and food soiled paper. 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.
16. **"Generator"** means an entity which uses the solid waste, recycling and/or compostables collection service and containers arranged for by a customer.
17. **"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.
18. **"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 17.102.100.
19. **"Metro"** means the metropolitan service district responsible for regional solid waste management and planning within Multnomah, Washington and Clackamas counties.
20. **"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.
21. **"Owner,"** with respect to the obligation to provide recycling for a condominium or cooperatively owned development, means the owners' association or its equivalent.
22. **"Per Day,"** shown as "D" 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 day, regardless of the number of customers affected by the infraction (e.g., collection schedule).
23. **"Per Incident,"** shown as "I" 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 customer basis.
24. **"Per Month,"** shown as "M" 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, or convenience of recycling systems at multifamily).
25. **"Permittee"** means any person granted a commercial collection permit under the provisions of Portland City Code.

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. **"Recyclable Material" and "Recyclable"** 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 and other materials as may be designated by the City.
28. **"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 for use in the following: (1) in the form of raw materials in the manufacture of new products other than fuel; and (2) as fuel in the case of source separated wood waste which has no other material use.
29. **"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 from a commercial entity where an owner or employee of the entity hauls the material rather than hiring a permittee or independent commercial recycler to perform this function.
30. **"Solid Waste"** has the meaning given in Oregon Revised Statutes but does not include the following materials:
- a. Sewage sludge, septic tank and cesspool pumpings or other sludge;
 - b. Discarded or abandoned vehicles.
31. **"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.
32. **"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 5.2, Recycling and Solid Waste Requirements for Commercial Customers, Generators and Self-haulers

A. GENERAL REQUIREMENTS

All businesses and multifamily complexes must separate recyclable materials from mixed waste and set out these materials for recycling collection as described below. BPS monitoring of compliance will be accomplished through reviewing information reported by businesses' and multifamily, as well as through BPS inspections of onsite recycling and waste systems. The following general requirements apply:

1. Businesses and multifamily complexes must separate recyclable materials from mixed waste and set out for recycling collection a minimum of 75% of their waste. Businesses and multifamily complexes failing to recycle a minimum of 75% will be given the opportunity to demonstrate to BPS why they are unable to meet the requirement. BPS shall work with businesses and multifamily complexes to address their limitations and increase recycling to the maximum extent practicable. The presence of minor and incidental amounts of recyclables or compostables in waste disposal containers shall not constitute a failure to meet this requirement. **(B/M)***
2. Businesses and multifamily complexes shall separate recyclable materials from mixed waste and set out these materials for recycling collection in such a manner as to prevent contamination of the recyclable and, where applicable, compostable materials. **(B/M)***
3. Businesses tenants in buildings where garbage collection is provided as part of the rental or lease agreement shall use the collection system for recyclables and compostables made available by the property owner or manager. **(B/M)***
4. Businesses that separate glass for recycling collection must keep it separate from all recyclable paper. Multifamily complexes must keep glass separate from all other recyclable materials. **(B/M)***

B. BUSINESS RECYCLING REQUIREMENTS

1. Materials to be recycled.
 - a. All businesses shall recycle all paper and containers. **(A/M)***
 - b. Food scrap generating businesses shall collect food scraps and food soiled paper for composting. Beginning with the largest food scrap generating businesses, BPS shall determine which businesses are subject to this requirement based on estimates of the amount of food scraps generated. **(A/M)***
1. To be in compliance with the recycling requirements, businesses shall adopt best management practices established by BPS. The universal best management practices listed below are required of all businesses. BPS may also establish supplemental best management practices for businesses to implement as needed to come into compliance or if a business wishes to further improve recycling and waste prevention. **(A/M)***

- a. Correctly label all interior and all exterior recycling and composting containers and provide accurate signs and instructions that identify the materials the business must recycle.
 - b. Establish, at minimum, a two-sort recycling service where glass is collected in one container and all other recyclables are collected in another container.
 - c. Make internal and external recycling containers at least as conveniently located as garbage containers.
 - d. Conduct training of new employees/new tenants and educate all employees/tenants at least once annually.
 - e. Establish waste hauling, property management, and janitorial services that enable businesses to meet waste prevention and recycling goals.
 - f. Management to review and sign off on best management practices committed to at a business, and designate a point of contact for the City of Portland for all recycling and waste prevention activities within the business.
 - g. Prevent total waste (including both trash and recycling) generated as measured by reducing weight, container sizes and/or frequency of collection.
3. Responsibilities of property owners and managers.
- 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 collection system for its business tenants for garbage, recyclables and compostables that meets the applicable best management practices listed above. **(A/M)***
 - 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 and distributed by the customer to each tenant business. **(B/M)***
 - 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, and distributed by the customer to each tenant business. **(B/M)***
 - d. Where a customer provides janitorial services to its business tenants, the contract for janitorial services shall include recycling services that meet the best management practices listed above and support the collection system for recyclable and compostables materials. **(B/I)***
 - e. The customer shall maintain and support communication between the providers of waste hauling, property management and janitorial services to identify and resolve problems related to the collection system for recyclable and compostable materials. **(B/M)***
 - f. At least once a year, the customer shall conduct training and distribute to all tenants information about how to use the onsite collection system. Property owners and managers shall provide new tenants with this information within 30 days of tenant move-in. **(C/M)***
4. Reporting requirements. All businesses and customers with business tenants shall report annually to BPS on the status of implementing required universal best management practices. BPS may request additional information or conduct a site visit to verify the results

reported by a business or customer and provide additional assistance if needed. If implementation of the universal best management practices is insufficient to meet recycling requirements, BPS may require a business to implement and report on additional supplemental best management practices. Failure to accurately report on the status of implementing best management practices is an infraction. **(B/I)***

5. Mixed Dry Waste: Except for mixed dry waste at construction/demolition sites, as listed ~~above~~ under Part 4.2 C.6. Disposal Prohibition, the customer shall not arrange for any recycling system which involves mixing recyclables with solid waste for post-collection separation. **(A/M)***
6. Where an affected customer, or construction site general contractor or property owner or manager, 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.
7. If compostable materials are improperly prepared or stored in such a manner as to create pest or odor problems that pose a potential public health and safety concern, the City may require the customer or generator to remedy the problem so that collection of the compostable materials may continue. The customer or generator shall work with the City and the permittee or independent commercial recycler to remedy the pest or odor problem caused by the improperly prepared or stored compostable materials. Failure to remedy a pest or odor problem caused by the improper preparation or storage of compostable materials is an infraction. **(B/I)***

C. RECYCLING AT MULTIFAMILY COMPLEXES

- a. Multifamily complexes must set up recycling systems that are convenient to tenants, for all materials that can be recycled in Portland's residential curbside system, excluding used motor oil and yard debris. The recycling containers at a multifamily complex shall be placed in a location or locations at least as convenient to tenants as the garbage receptacles, including trash chutes, insofar as is practical given space limitations. **(B/M)***
- b. Multifamily complexes shall have a two-sort system, where glass is collected in one container and all other recyclables are collected in another container.
- c. A Multifamily complex owner shall make all reasonable efforts to ensure the provision of central collection containers for a two-sort system. The central collection containers shall be used for the collection of all of the recyclable materials listed under Part 4.2 C.5.b. Recyclable Materials to be Collected from Businesses and Multifamily Complexes except motor oil and yard debris. Failure to provide such recycling at a multifamily complex is considered an infraction by the owner of the complex. **(A/M)***
- d. If it is not feasible to provide a central collection system for recyclable materials at a multifamily complex, the owner shall provide a two-sort collection system that utilizes individual recycling roll carts for each tenant. City-approved recycling containers of less than 18-gallon capacity shall be provided to each tenant for the collection of glass.
- e. If neither option of central collection or recycling roll carts is feasible at a multifamily complex, an owner may choose to provide recycling through a two-sort system that utilizes City-approved recycling containers of less than 18-gallon capacity to

residents. In such case, the system shall meet the conditions listed below. Failure to meet these conditions is considered an infraction by the owner of the complex.

(A/M)*

- f. The property owner must provide at least two bins to each unit, must label each bin to identify the unit it belongs to, and must ensure the bins are replaced if lost or damaged. At least one bin shall be used for the collection of glass.
 - 1. In these bins, residents shall be offered the opportunity to set out all the same clean and separated materials that are offered for collection under the Residential Franchise, excluding motor oil and yard debris.
 - 2. Residents must be provided with weekly collection of the materials in the bins, at convenient set-out locations.
- g. In evaluating compliance with the preceding paragraphs, BPS will consider how the inherent limitations of a multifamily site (including space and layout) affect the possibility of providing recycling according to BPS specifications.
- h. 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. **(C/M)***

D. RECYCLING AT BUILDING PROJECTS

- 1. 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 at least 75% of the 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.
- 2. 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. On these forms the 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. These forms must be returned to BPS 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. Where a building project is valued at \$50,000 or more, including construction and demolition phases, the general contractor is required to recycle all the following materials generated at the site:
 - a. Wood;
 - b. Corrugated cardboard;
 - c. Metal
 - d. Rubble (concrete/asphalt), and
 - e. Land clearing debris.

5. 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 that reports to 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 is considered an Infraction subject to an assessment. **(A/M)**
6. The general contractor or property owner, shall ensure the provision of clearly marked recycling containers and storage space for the amount of each recyclable material that accumulates between collections.

E. OTHER

1. 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.

2. Misrepresentation

- a. The customer and generator shall not represent to tenants or employees that placing recyclables into any solid waste container is an acceptable method of handling recyclables or provide any information that is contrary to the requirements of Part 4.4 (Customer and Generator Requirements), except for mixed dry waste at construction/demolition sites, as listed above,
- b. The customer and generator shall not represent that materials collected as recyclables are actually being recovered if the customer or generator knows that the material is not actually being recovered. This applies whether or not the material in question is listed in these administrative rules as a recyclable that permittees are required to collect.
- c. Misrepresentation of the proper separation or actual disposition of recyclables is a failure to comply with this rule. **(B/M)***

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

43. Graffiti. Their owners shall maintain containers and carts so as to be free of graffiti. Within ten days of receipt of notice from BPS or from the City Office of Neighborhood Involvement (ONI) of any container with graffiti, the entity owning the container shall remove the graffiti or give the city graffiti manager written permission to do the graffiti removal. Permittees and

*For an explanation of infractions and assessment amounts, see Part 5.3C

independent recyclers are allowed to charge the owner of the container or cart for the cost of replacing or cleaning the container or cart. **(D/M, per container)***

54. Recycling containers provided by BPS are to be serviced directly by the permittee, and should not be used by the customer or generator to transport recyclable materials to a container serviced by the permittee. Compostable containers provided by BPS may be used by the customer or generator to transport compostable materials to a container serviced by the permittee. BPS does not provide permittees, customers or generators any containers for collecting or storing yard debris or solid waste. **(D/M, per container)***

F. CITY INSPECTION

1. In evaluating whether a customer or generator is in compliance with the above provisions has occurred, BPS may conduct an inspection of the premises and consider:
 - a. The presence, location and capacity of solid waste, recycling and compostables collection containers;
 - b. The presence and quantities of recyclables in recycling containers, compostables in compostables containers or either in solid waste containers;
 - c. The presence of signs, flyers, container labels and other information which promotes recycling and composting;
 - d. Discussion with employees, tenants, managers and owners, janitorial service providers, permittees, and independent commercial recyclers;
 - e. Other evidence as necessary to assess compliance.
2. Such inspections are only for purposes of providing assistance with and enforcement of solid waste, recycling and compostables collection regulations.

Part 5.3A Business Compliance and Enforcement: Customers, Generators and Self-haulers

A. INITIAL INQUIRY

1. To ensure compliance with these rules by businesses and multifamily complexes, BPS may ask a permittee to verify services provided to the customer to determine whether the require recycling and/or compostables systems required by code or these rules are in place and being used on the customer's property.
2. BPS 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. BPS 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. BPS may visit a premises in order to verify whether the required recycling and compostables collection system is in place and being used and required best management practices have been implemented. BPS will not issue a Notice of Potential Noncompliance without contacting the affected business, multifamily complex, or construction site general contractor or property owner. Refusal to allow entry shall serve as the basis for the Director to apply for and obtain an administrative warrant as provided in City Code Chapter 17.102.
5. Assignment of Responsibility. Where BPS 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, BPS 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. DELIVERY OF NOTICES.

Any notice provided for under these rules is considered sufficient if in writing and accomplished by any of the following means: (1) delivered personally to the alleged offender's advertised business location; (2) deposited in the United States Mail, first class, postage prepaid, addressed to the alleged offender's advertised business location, or to its mailing address as found in the County Assessment and Taxation records; (3) sent by commercial courier to the alleged offender's advertised business location; (4) sent by fax transmission addressed to the alleged offender's fax number if such has been provided by the entity to BPS, or (5) sent by email to the entity's email address if such has been provided by the entity to BPS. Any such notice, communication or delivery is deemed effective and delivered upon the earliest to occur of either: (1) actual personal delivery to the alleged offender's advertised business location 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 fax transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday) or (5) the same

day as email transmission (or the first business day thereafter if emailed on a Saturday, Sunday or legal holiday).

C. FOLLOW-UP AFTER INSPECTION OF PREMISES

1. Letter of Potential Noncompliance. If, after its investigation, BPS has reason to believe that there is a condition of noncompliance, BPS 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, BPS staff will offer assistance in setting up a satisfactory recycling and/or compostables collection system and achieving participation.

D. BPS 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.

E. FINDING OF NO INFRACTION

Within 30 calendar days of an BPS determination that compliance has been achieved, BPS shall notify the alleged offender of such determination.

F. 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 BPS 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 BPS 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 BPS 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 5.3B Business Compliance and Enforcement: Containers in the Right of Way

A. PROHIBITION ON STORING CONTAINERS

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

B. AUTHORITY TO ENFORCE

The Bureau of Development Services shall serve as the enforcement agent for complaints received of containers in the public right of way.

BC. COMPLAINTS

Complaints. All complaints of containers in the public right of way shall be directed to the Bureau of Development Services for intake and processing. BDS may follow its established practices and procedures for processing complaints including receiving the complaint and completing an investigation.

CD. FOLLOW-UP AFTER INVESTIGATION

1. Determining Who is the Offender. In its investigation, BDS shall make a determination regarding responsibility for noncompliance among the business, the property owner, the permittee and/or the independent commercial recycler. Responsibility for noncompliance and resulting assessments shall follow this determination.
2. Letter of Noncompliance. If, after its investigation, BDS has reason to believe that there is a condition of noncompliance, BDS may issue a letter of noncompliance to the business and property owner. BDS may also notify the permittee or independent commercial recycler that provides the container and collection service.
3. The letter of noncompliance may give the business or property owner a period of at least 30 days from the date of the letter to achieve compliance. During this period, the business or property owner may request assistance from BDS in identifying solutions that will enable the business or property owner to come into compliance.
4. Extensions for Compliance. BDS may grant an extension beyond 30 days to the business or property owner to achieve compliance if the business or property owner is making a good faith effort to come into compliance.

5. New service. If, in its investigation, BDS determines that a permittee or independent recycler has started service with a customer and is responsible for placing containers in the right of way, BDS may refer the case to BPS for enforcement action against the responsible permittee or independent recycler prior to the completion of the compliance period.

DE. NOTICE OF ASSESSMENT

1. Form and Delivery of Notice. If, after the compliance period, it is determined that noncompliance still exists and an infraction has occurred, the Director may 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. Notice of infraction is considered effective as of the mailing date by certified mail.

F. WAIVER FOR EXTREME ECONOMIC HARDSHIP

1. Eligibility for Waiver. A customer or generator may apply for a waiver from the prohibition on storing containers in the right of way. A waiver will be granted by BPS only when a customer or generator cannot come into compliance within thirty (30) days, or within the compliance period granted by BDS, without incurring an extreme economic hardship. The claimed economic hardship must be clearly demonstrated to have been caused solely by the requirements of this rule.

The applicant must demonstrate that they have exhausted all available options for complying with the restrictions on storing containers in the right of way and that any successful measures to comply would result in an extreme economic hardship.

To demonstrate extreme economic hardship, at least one of the following must be true:

- a. Compliance would prevent the applicant from earning a reasonable economic return;
 - b. Compliance would significantly diminish the value of property;
 - c. The applicant lacks the means to finance property improvements needed to come into compliance.
2. Application. The applicant must submit a completed application form, together with documentation supporting the claim. Such materials may include, but are not limited to, the following:
 - a. For all property:
 1. Drawings of:
 - a. Building floor plan showing existing space usage;
 - b. The area outside of the building footprint, indicating private and public space;
 - c. The floor plan showing planned modifications that will bring business into compliance;
 - d. The area outside of building showing planned modifications that will bring the property into compliance;
 2. Documentation establishing the form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other organization;
 3. The amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;

4. Remaining balance on any mortgage or other financing secured by the property;
5. Estimated market value of the property;
6. A report from a licensed engineer or architect describing any construction, alteration, demolition or removal, or structural modifications necessary to comply, and discussing the structural soundness of the property and its suitability for rehabilitation.
7. An estimate from a contractor or developer identifying the materials and labor costs of any proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred;
8. The estimated market value of the property in its current condition and the estimated market value after renovation of the existing property to bring it into compliance.
9. Real estate taxes for the previous two (2) years;
10. Annual debt service, if any, for the previous two (2) years;
11. Any appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property; and,
12. All listing of the property for sale or rent, price asked and offers received, if any.

b. For income-producing property, financial statements containing the following information:

1. Annual gross income from the property for the previous two (2) years, including copies of financial documents, supported by monthly receipts, or federal or state tax returns, to support claim of extreme economic hardship;
2. Itemized operating and maintenance expenses from the previous two (2) years;
3. Depreciation deduction and annual cash flow before and after debt service, if any, for the previous two (2) years.

c. Any other information considered necessary to rendering a determination as to whether the property does yield or may yield a reasonable return to the owners.

d. Costs which are associated with any intentional or negligent failure to maintain the property in good repair shall not be considered in determining whether the property may yield a reasonable return to the owner.

3. Application Process. BPS will either approve or deny an application for a waiver based on the materials submitted in the application, as well as any case history maintained by the City. BPS may request that the applicant provide additional information or documentation to support their application.

BPS will issue a decision and notify the applicant within 30 days of receiving the application.

If an application for a waiver is denied, the applicant is considered to be in a state of non-compliance and subject to the requirements of City code and these administrative rules.

4. Conditions. Waivers are neither transferable nor assignable and will terminate immediately, without any action by the City, if there is any transfer of ownership of the business or change in location. The waiver may be granted for a period of up to two (2) years. BPS may conduct a review at any point during the waiver period and may request updated information from the applicant to determine if circumstances have changed so that the extreme economic hardship no longer exists. If such a finding is made, BPS may revoke the waiver.

5. Renewal. At the end of the waiver period the applicant may apply for a renewal. The application process is the same for a renewal as it is for an original application. The documentation submitted in a renewal application must include updated information. Whether an application is for a first-time waiver or for a renewal will not affect its consideration or influence whether or not it is approved.
6. Fee. BPS may charge a \$250 non-refundable processing fee to all applicants. Applications submitted without payment will not be processed. Payment will not be returned regardless of whether the application for a waiver is approved.

Applicants whose application is approved may be charged a \$250 non-refundable annual waiver fee. Failure to pay the fee will result in revocation of the waiver.

7. Appeal Process. Upon receiving notification that their application for a waiver has been denied, or that a previously granted waiver has been revoked, the applicant may request an appeal hearing before a Code Hearings Officer in accordance with procedures set forth in Title 22 of the City Code. This request must be delivered in writing to the offices of BPS within 10 calendar days of the posted date of the letter from BPS denying or revoking the waiver. The filing of an appeal will stay any enforcement action of the prohibition on storing containers in the right of way against the property until the appeal is determined by the Code Hearings Officer. The Code Hearings Officer will consider only the issues raised by the appellant in their written appeal. Any requests for appeal received after ten (10) calendar days will not be considered. BPS may charge a \$250 fee to applicants requesting an Appeal Hearing.

If the Code Hearings Officer affirms the denial or revocation of the waiver, the property must remove any non-compliant containers within fifteen (15) calendar days of the effective date of the Hearings Officer's order.

If the Code Hearings Officer rules in favor of the appellant, the appellant is granted a one (1) year waiver beginning on the effective date of the Hearings Officer's decision. BPS will refund the \$250 Code Hearing appeal fee if the Code Hearings Officer rules in the appellant's favor. All fees, rules and responsibilities associated with a waiver granted at the time of an initial application apply to an waiver granted as a result of a Hearing Officer's Decision. At the expiration of the one (1) year waiver, appellant may apply for a renewal of the waiver.

Part 5.3 C Business Compliance and Enforcement: Common Aspects

A. STANDARD FOR MAKING DETERMINATION OF INFRACTION

In determining whether an infraction has occurred, the Director shall evaluate the totality of the circumstances related to the infraction.

B. PAYMENT OF INFRACTION ASSESSMENTS

1. Initial Deadline for Payment or Appeal. The alleged offender shall, within 14 business days of BPS issuance of the written notice of Assessment, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer.
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 BPS 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. BPS may take legal action to collect assessments which are not paid when due.

C. INFRACTION CATEGORIES AND ASSESSMENTS

1. Infraction Classifications. Each violation of a rule for which an infraction is assigned is given a dollar amount which reflects BPS's evaluation of both the seriousness of the matter and the frequency with which the violation is committed. The lowest amount, \$200, is assigned to the first occurrence of the least serious infraction while the highest amount, \$1500, is assigned to the most serious infraction on the third or subsequent occurrence. Each infraction notation consists of two letters, such as (A/I) which reflect the seriousness of the infraction.
 - a. First Letter. The first letter represents the level of assessment as show on the chart below. These range from category A-D, with category A representing the most serious and category D representing the least serious infractions.
 - b. Second Letter. The second letter reflects the classification of the standard, that is whether an infraction will be on a "Per Incident," "Per Day" or "Per Month" basis (see Definitions). The following abbreviations apply:
 - "I" means on a per incident basis;
 - "D" means on a per day basis;
 - "M" means on a per month basis, and

For example, an (A/I) designation means that a \$500 assessment (as shown under category A on the chart below) would be applied for the first single "incident" within a 365-day period but would increase to \$1500 for the third or subsequent incident within that same period.
2. **Infraction Assessment Schedule.** An infraction according to these rules shall result in an Infraction Assessment in accordance with the following schedule:

Category	First Infraction	Second Infraction	Third and Subsequent Infractions
A	\$500	\$1000	\$1500
B	\$400	\$800	\$1200
C	\$300	\$600	\$900
D	\$200	\$400	\$600

The assessment amounts shown throughout these rules are for the first infraction of a given rule within a 365-day period. If more than one infraction of the same rule occurs within a 365-day period, the corresponding infraction amount will increase for the second, third or subsequent infractions, as shown above. The total assessment will be the sum of infraction amounts. For example, three separate infractions of the same rule with an assessment category of “B” above will result in a total assessment of $\$400 + \$800 + \$1200 = \2400 .

The Director has the discretion to adjust the assessment amount when considering the following criteria:

- a. The nature and extent of the person's involvement in the violation;
- b. Whether the person was seeking any benefits, economic or otherwise, through the violation;
- c. Whether the violation was isolated and temporary, or repeated and continuous;
- d. The length of time from any prior violations;
- e. The magnitude and seriousness of the violation;
- f. The costs of investigation and remedying the violation;
- g. Whether any criminal prosecutions have occurred in regard to the violations; and
- h. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.