City of Portland Bureau of
Planning and Sustainability
Sam Adams, Mayor | Susan Anderson, Director

**Effective Date: July 21, 2012**

# ADMINISTRATIVE RULES
## Business Solid Waste, Recycling and Composting

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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 business solid waste, recycling and composting 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.

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. **"Paper and Containers"** 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, newspaper, office paper, scrap paper, plastic bottles including milk jugs, steel "tin" cans, and telephone directories and other materials as may be designated by the City. The City of Portland will maintain a materials list that shall be available at the BPS office and on the BPS website.

23. **"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).

24. **"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.

25. “**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).

26. "**Permittee**" means any person granted a commercial collection permit under the provisions of Portland City Code.

27. "**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.

28. "**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.

29. "**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.

30. "**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.

31. "**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.

32. "**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.

33. “**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 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 must separate all paper and containers from mixed waste and set out for recycling collection. Businesses failing to recycle all paper and containers will be given the opportunity to demonstrate to BPS why they are unable to meet the requirement. BPS shall work with businesses to address their limitations and increase recycling to the maximum extent practicable. **(D/M)***

2. Businesses and shall separate paper and containers 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. **(D/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. **(D/M)***

4. Businesses that separate glass for recycling collection must keep it separate from all recyclable paper. **(B/M)***

### B. BUSINESS RECYCLING REQUIREMENTS

1. Materials to be recycled.

   a. All businesses shall recycle all paper and containers. **(D/M)***

   b. Food scrap generating businesses shall separate all food scraps and food soiled paper from mixed waste and set out for collection (e.g. compost, animal feed, or where possible, human consumption). BPS shall determine which businesses are subject to this requirement based on estimates of the amount of food scraps generated. **(D/M)***

2. To be in compliance with the recycling requirements, a business shall not have any recycling in their mixed waste and, if applicable, no food scraps.
   If these conditions are not met, the Business will be responsible for implementing the following best management practices established by BPS. 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. **(D/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. Make internal and external recycling containers at least as conveniently located as garbage containers.

c. Conduct training of new employees/new tenants and educate all employees/tenants.

d. Establish waste hauling, property management, and janitorial services that enable businesses to meet waste prevention and recycling goals.

e. 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.

3. All Businesses are required to prevent total waste (including both trash and recycling) generated as measured by reducing weight, container sizes and/or frequency of collection.

4. 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)***

5. Reporting requirements. All businesses and customers with business tenants shall report as requested to BPS on the status of implementing required best management practices. BPS

may request additional information or conduct additional site visits to verify the results reported by a business or customer and provide additional assistance if needed. If implementation of the 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)***

6. Mixed Dry Waste: Except for mixed dry waste at construction/demolition sites, as listed 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)***

7. 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.

8. 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. CONTAINERS USED BY THE GENERAL PUBLIC

1. For those Businesses that have collection areas where the public (non-employees) are throwing regulated materials directly into waste containers on a business's property, the City recognizes the challenge of capturing all recyclables. Those specific containers are exempt from the Business Recycling Requirements, however, all other areas of the Business still must comply.

## D. RECYCLING AT MULTIFAMILY COMLPEXES

1. 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)***

2. Multifamily complexes shall have a two-sort system, where glass is collected in one container and all other recyclables are collected in another container.

3. 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)***

4. 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.

5. 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)***

6. 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.

   a. 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.

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

7. 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.

8. 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)***

## E. <u>RECYCLING AT BUILDING PROJECTS</u>

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.

## F. BUSINESS CONTAINER STORAGE SPACE REQUIREMENTS

1. Authority: These rules establish standards for space requirements for storage of containers of solid waste, recycling or compostables in new construction and when major alterations are made to existing buildings.

2. Applicability: During the application of a building or site development permit for the new construction or major alteration of a building(s) on commercial properties, the following prescriptive method shall be used to ensure adequate storage is available on site and out of the public right of way for garbage, recyclables and compostables. The standards do not supersede additional requirements of any local, state or federal authority; including other City of Portland rules and regulations. All building plans submitted for review shall illustrate and note where the containers will be stored on the commercial property. If an existing building undergoing a major alteration cannot meet the prescriptive size requirements because of zoning, property constraints, or other regulations, the applicant may request approval of an alternate minimum size through the Bureau of Environmental Service's technical review process, outlined in the current edition of the Stormwater Management Manual.

3. Prescriptive Method: The following table is a minimum prescriptive standard for new construction or major alteration of a building(s) on a commercial property. For mixed-use buildings, the minimum storage area shall be the sum of the requirements for each occupancy type in the building. The storage area may be combined into one space, or separated into smaller storage areas. Each storage area shall comply with all other City of Portland or other applicable requirements. These are minimum requirements.

Minimum Storage Area Table

Minimum Storage Area for Garbage, Recycling and Food Waste Containers on Commercial Properties (square feet). Storage area based on the Oregon Structural Specialty Code's current occupant load table factors.

| Occupant Load | Non-food Occupancies | Food [b] Occupancies | Multifamily (more than 4 units) | Education |
|---|---|---|---|---|
| **1-59** | 1.3 sq. ft. per occupant | 100 sq. ft. | Properties containing more than 4 units that house occupants overnight for sleeping purposes shall use a minimum of 7 sq. ft. per sleeping unit. 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. | a. Elementary Schools use 150 sq. ft. min.<br><br>b. Middle Schools use 200 sq. ft. min.<br><br>c. High Schools use 235 sq. ft. min. |
| **60-124** | 1.2 sq. ft. per occupant | 1.7 sq. ft. per occupant | | |
| **125-199** | 150 sq. ft. | 200 sq. ft. | | |
| **200-349** | 150 sq. ft. | 250 sq. ft. | | |
| **350-500** | 200 sq. ft. | 300 sq. ft. | | |
| **501+** | All properties that exceed 500 occupants require a letter or plans stamped by a design professional registered in the State of Oregon determining anticipated garbage, recycling and food waste consumption and area needed on property for collection. Plans shall include required area. | | | |

a. Detached container enclosures/areas shall be sized based on the type of occupancies and occupant loads of the building(s) using the containers.

b. Grease/oil waste by food occupancies is considered a recyclable and is accounted for in the food occupancy size factors

## G. 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. 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 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)*

4. 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)*

## H. 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 premise in order to verify whether the required recycling and compostables collection system is in place and being used. 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).

6. Waiver. A one-time, six (6) month waiver of the Business Recycling Requirement is available upon request. Before the extension is granted, the Business shall submit in writing an explanation of:
   a. why the City's suggested solutions do not work for the Business, and
   b. a plan on how they will be in compliance at end of extension.

## 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 food scrap collection system and achieving participation.

## D. BPS INVESTIGATION OF ALLEGED INFRACTIONS

BPS 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 a 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. FOLLOW-UP AFTER INVESTIGATION

1. Determining the Offender(s). In its investigation, BPS shall make a determination regarding responsibility for noncompliance among the business, the property owner, the permittee and/or the independent commercial recycler. Responsibility for noncompliance and resulting assessments shall follow this determination.

2. Letter of Noncompliance. If, after its investigation, BPS determines that there is a condition of noncompliance, BPS shall issue a letter of noncompliance to the responsible party(s). BPS will notify the property owner as identified in the county assessment records as well as any other persons who reasonably appear to have an interest.

3. The letter of noncompliance shall give the responsible party(s) a period of 30 days from the date of the letter to achieve compliance. During this time (compliance period), the offender(s) and other interested parties may request assistance from BPS in identifying solutions that remedy the CROW condition.

4. Extensions of Compliance Period. BPS may grant an extension beyond the initial 30 days to achieve compliance if the offender(s) has undertaken a good faith effort to come into compliance. The extension period cannot extend beyond 90 days after BPS issues the initial letter of noncompliance.

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

## C. LIMITED TERM EXTREME ECONOMIC HARDSHIP EXEMPTION

1. If BPS determines that the business or property owner is a responsible party for the violation, they are entitled to apply for a limited term extreme economic hardship exemption (exemption).

2. Exemptions, either initial or renewal, will be for a period of one year. Property or business owners may re-apply for one additional exemption at the expiration of the initial granted exemption.

3. Eligibility for Exemption

   a. The applicant (Applicant) must be an owner of the business or property that is in violation of CROW requirements and identified as a responsible party for the violation.

   b. To apply for an extreme economic hardship, the applicant must demonstrate that they have considered all reasonable options for correcting the violation and explain why none is viable. It is at BPS' discretion whether this requirement has been met.

   c. A business / property owner who does not meet both of these requirements is not eligible to apply for an exemption. BPS shall take enforcement action at the end of the compliance period.

4. A property that has had an open CROW case after April 1, 2008 is not eligible for an initial exemption but may apply for a one-time renewal exemption.

5. The merits of each application for a hardship exemption will be considered individually.

6. Initial Application

   a. An application for hardship will be considered when complete. All materials must be received by BPS by the end of the initial 30 day compliance period or, if applicable, by the end of the extended compliance period granted by BPS. Incomplete applications or applications received after the end of the compliance period will not be considered and the business or property will immediately be considered to be in a state of non-compliance at the end of the compliance period.

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

      1) Application Fee. BPS shall charge a processing fee to all applicants. The fee amount is listed in the fee schedule included in these administrative rules. All application fee payments shall be final. No payments will be returned, regardless of whether the exemption is approved or disapproved.

      2) Consideration of all Reasonable Alternatives. The applicant must submit a list of all actions considered in attempting to comply with the CROW requirement and the specific reason why each is not capable of achieving compliance within the compliance period. Applicant shall provide documentation of each alternative sufficient for BPS to evaluate its merits. Such documentation may consist of items such as names, dates and contact information for people consulted in an attempt to

achieve compliance, for example, the owner of a neighboring business who was asked if they would share collection service with the applicant and the reason given for refusal.

3) Applicant must submit three bids from licensed contractors for construction work that would meet the minimum storage space requirements as shown in Subsection 5.2 F of BPS' Business Solid Waste, Recycling and Compostables Administrative Rules. Bids must be dated no more than 60 days prior to the submission of the application

4) Applicant must submit copies of the previous three years federal tax returns filed by the business or property owner identified by BPS as a responsible party for the violation to document financial hardship.

c. Ruling on Application.

1) Applicant's gross income average (GIA) will be determined by averaging the gross income from the previous 3 years as stated in their federal tax returns submitted to BPS as part of their application materials.

2) Applicant will be categorized as a "small business" if the business, or the applicant? GIA is less than $680,000.

3) Applicant qualifies for an exemption if the lowest bid submitted for meeting the space requirements is:
   a) More than 4% of their GIA if they are a "small business" as defined in this section of the rules
   b) More than 5% of their GIA if they are not a "small business" as defined in this section of the rules

4) BPS will issue its determination on the application within 30 calendar days of receipt of completed application.

5) The hardship exemption shall be for a period of 12 months, effective on the day that the decision is issued by BPS.

6) If the application is denied, the applicant is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the mailing of BPS' rejection of the application unless the applicant submits a request for an appeal as described in Subsection 5.3B D.11 of these administrative rules.

7. Renewal Application

a. A business or property owner who has a current exemption may apply for one additional exemption that would take effect upon the expiration of the initial one.

b. The application for renewal will be considered when complete. All materials must be received by BPS at least 60 days prior to the expiration of the initial exemption. Incomplete applications or applications received less than 60 days prior to the expiration of the initial exemption will not be considered and the business or property will immediately be considered to be in a state of non-compliance at the end of the initial exemption.

c. Renewal Exemption Application Requirements. Applications for a renewal exemption must include all of the following:

1) Application Fee. BPS shall charge a processing fee to all applicants. The fee amount is listed in the fee schedule included in these administrative rules. Payment of the application fee is final, regardless of the final determination upon the application.

2) Progress Summary. The applicant must submit a list of all actions taken in an attempt to comply with the CROW rules since the time their initial exemption was granted, including the specific reason why applicant was unable to achieve compliance within the initial exemption period.

3) Applicant must submit three bids from licensed contractors for construction work that would meet the minimum storage area for garbage, recycling and food waste containers as determined in Subsection 5.2 F of BPS' Business Solid Waste, Recycling and Compostables Administrative Rules. Bids must be dated no more than 60 days prior to the submission of the application.

4) Applicant must submit copies of the previous three years federal tax returns filed by the business or property owner identified by BPS as a responsible party for the violation to document financial hardship.

d. Upon receipt of a complete application package, BPS shall schedule a public hearing and will mail a notice of the applicant's request, including the time, date and location of the hearing, to the recognized organization(s) in which the property is located, to self-identified interested parties and to all organizations recognized by the City's Office of Neighborhood Involvement that are within 400 feet of the property.

e. Ruling on Application.

1) Applicant's gross income average (GIA) will be determined by averaging the gross income from the previous 3 years as stated in the federal tax returns submitted to BPS as part of the application materials.

2) Applicant will be categorized as a "small business" if their GIA is less than $680,000.

3) Applicant qualifies for an exemption if the lowest qualified bid submitted for meeting the space requirements is:
   a) More than 6% of their GIA if they are a "small business" as defined in this section of the rules
   b) More than 7% of their GIA if they are not a "small business" as defined in this section of the rules

4) BPS will issue a written determination within 30 calendar days of the public hearing. BPS will mail notice of the decision to the recognized organization(s) in which the property is located, to all recognized organizations within 400 feet of the property and to any person who submitted comments at the public hearing or in writing prior to the hearing.

5) Exemptions will be limited to 12 months, starting on the day that the initial exemption is granted, and expiring one year later.

6) If the application is denied, the property is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the expiration of the initial exemption unless the applicant submits a request for an appeal as described in Subsection 5.3.B.C.11 of these administrative rules.

f. A business or property owner is eligible for no more than one renewal exemption. At the expiration of a renewal exemption, the property will be in a state of non-compliance and subject to immediate enforcement action.

8. BPS may confirm the authenticity and/or accuracy of any of the claims or documents in the application process. BPS may request that the applicant provide additional information or documentation to support the application. BPS will either approve or deny an exemption based on the materials submitted in the application. BPS may also refer to other City records, such as any City maintained case history.

9. Exemptions are neither transferable nor assignable. The exemption will terminate immediately, without any action by the City, if there is any transfer of ownership of the business or change in location.

10. Revocation of Exemption. BPS may conduct a review at any point during the exemption, and may request updated information from the applicant. BPS may revoke any exemption if BPS subsequently determines that the applicant provided inaccurate information in support of the application.

    a. It is the responsibility of the applicant to inform BPS if the tax returns submitted in their application to document hardship are amended in a way that changes the gross income such that the GIA exceeds the threshold.

    b. Changes to construction bids or new construction bids will not be considered after submission of completed application package.

    c. If BPS revokes an exemption for just cause, the property will be considered to be in a state of non-compliance and subject to immediate enforcement actions.

11. Appeal Process

    a. Any person filing an appeal, whether for decision on an initial exemption or a renewal, must do so in accordance with procedures set forth in Title 22 of the City Code except for variances as described in these administrative rules.

    b. Initial Exemption. An applicant for an initial exemption may appeal the denial of an exemption to the Code Hearings Office in accordance with the procedures set out in Chapter 22 of the Portland City Code. The appeal must be submitted to BPS within ten (10) business days of the day the notice of decision is mailed.

    c. Renewal Exemption. An applicant for an exemption renewal, or the neighborhood association where the business / property is located, may appeal BPS' decision to the

Code Hearings Office. The appeal must be submitted to BPS within ten (10) business days of the day the notice of decision is mailed.

d. Appeal Fee. If the applicant requests an appeal to the Code Hearings Office, they must include payment of the appeal fee, as stated in Subsection 5.3.B.C.11.j of these administrative rules, along with their written request for a hearing to BPS. Failure to submit a written request or the appeal fee within ten (10) business days of the day the notice of decision is mailed is jurisdictional and the appeal shall be dismissed.

e. Refund of Appeal Fee. If the Code Hearings Officer rules in favor of the applicant, BPS will refund the appeal fee within 45 days of the issuance of the Hearings Officer's Order.

f. The filing of an appeal will stay any enforcement action of the CROW requirements against the property until the appeal is determined by the Code Hearings Officer. The Code Hearings Officer will consider only the issues raised by the appellant in their written appeal.

g. If, pursuant to said appeal hearing, the denial, suspension or revocation is sustained by the Code Hearings Officer, the permittee servicing the property shall cease all collection of solid waste and/or recyclables and/or compostables in Portland no later than 15 calendar days after the order becomes final unless the Code Hearings Officer decision is appealed to circuit court by writ of review. If a denial, suspension or revocation decision is appealed to the state courts and is upheld, permittee shall cease all collection of solid waste and/or recyclables and/or compostables in Portland no later than 15 calendar days after final resolution of the judicial proceedings.

h. If the Code Hearings Officer overturns BPS' denial of an exemption, the business or property owner will be granted a one year exemption. The exemption begins on the effective date of the Hearings Officer's decision if the application is for an initial exemption, or on the day following the expiration of the current exemption if the application is for a renewal.

i. If the Code Hearings Officer overturns BPS' granting of a renewal exemption, the applicant is considered to be in a state of non-compliance and subject to enforcement actions immediately upon the expiration of the initial exemption.

j. Economic Hardship Fee Schedule. BPS may assess the following fees for the administration of the CROW Limited Term Extreme Economic Hardship Exemption program:

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

## D. 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.

## E. ORDER TO REMOVE CONTAINERS

If, after the compliance period or any other stays of enforcement, such as pending a decision after appealing to the Code Hearings Officer, it is determined that noncompliance still exists and an infraction has occurred, the Director may deliver a written notice to the business / property owner and any and all contracted permitted haulers, independent commercial recyclers or other owners or service providers of containers violating CROW rules ordering the removal of the non-compliant container(s) within ten (10) business days. Failure to comply is a violation of the City's Commercial Solid Waste, Recycling and Compostables Administrative Rules.

## Part 5.3C 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. Payment of Assessments Required or Appeal. The alleged offender shall, within ten (10) business days of BPS issuance of the written notice of Assessment, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer as set forth in Portland City Code Title 22.

2. Appeal Fee. The appellant may be assessed a fee of up to $500 at the time of their application. Failure to submit full payment of appeal fee within the time allowed to request an appeal hearing shall result in the denial of the request for an appeal hearing.

   a. Refund of Appeal Fee. If the Code Hearings Officer decides in favor of the appellant at the Code Hearing, the submitted appeal fee shall be refunded in full to the appellant.

3. 15-Day Payment Required Upon Failed 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. **(D/I)**

4. 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.

5. City May Take Legal Action to Collect Assessments. The City make 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, which 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.

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