

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE RELATING TO SOLID)	ORDINANCE NO. 81-111
WASTE DISPOSAL; PROVIDING FOR)	
DISPOSAL FRANCHISING; AMENDING)	Introduced by the
CODE SECTION 4.03.020; AND)	Regional Services
REPEALING CODE CHAPTERS 4.02)	Committee
AND 4.04.)	

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Short Title

This Ordinance shall be known as the "Metro Solid Waste Disposal Franchise Ordinance" and may be so pleaded; it shall be cited herein as "this Ordinance."

Section 2. Definitions

As used in this Ordinance, unless the context requires otherwise:

- (1) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this Ordinance.
- (2) "Code" means the Code of the Metropolitan Service District.
- (3) "Council" has the same meaning as in Code Section 1.01.040.
- (4) "DEQ" means the Department of Environmental Quality of the state of Oregon.
- (5) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.
- (6) "District" has the same meaning as in Code Section 1.01.040.
- (7) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.
- (8) "Executive Officer" has the same meaning as in Code Section 1.01.040.
- (9) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.
- (10) "Franchisee" means the person to whom a franchise is granted by the District under this Ordinance.

- (11) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.
- (12) "Person" has the same meaning as in Code Section 1.01.040.
- (13) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.
- (14) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.
- (15) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.
- (16) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.
- (17) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.
- (18) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.
- (19) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; provided that this definition does not include:
- (a) Hazardous wastes as defined in ORS 459.410, and
 - (b) Radioactive wastes as defined in ORS 469.300, and
 - (c) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and

(d) Explosives.

- (20) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.
- (21) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collecton route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.
- (22) "User Fee" means a user fee established by the District under ORS 268.515.
- (23) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

Section 3. Findings and Purpose

- (1) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities.
- (2) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this Ordinance to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS chapter 268 in order to:
- (a) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
 - (b) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
 - (c) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
 - (d) Prohibit rate preferences and other discriminatory practices.
 - (e) Ensure sufficient flow of solid waste to District's resource recovery facilities.
 - (f) Maximize the efficiency of the District's Solid Waste Management Plan.

- (g) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.
- (h) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

Section 4. Prohibited Activities

Except as provided in this Ordinance, it shall be unlawful:

- (1) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee or exempted by Section 5 of this Ordinance.
- (2) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.
- (3) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or exempted by Section 5 of this Ordinance except by written authority of the Executive Officer.
- (4) For a franchisee to charge any rate not established by the Council or Executive Officer under this Ordinance.

Section 5. Exemptions

- (1) The following are exempt from the provisions of this Ordinance governing franchisees:
 - (a) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
 - (b) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
 - (c) Recycling drop centers.
 - (d) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure

from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivatives at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

- (e) Persons who process, transfer or dispose of solid wastes which:
 - (i) are not putrescible;
 - (ii) have been source separated;
 - (iii) are not and will not be mixed by type with other solid wastes; and
 - (iv) will be reused or recycled.

For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.

- (f) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
 - (g) Temporary transfer stations or processing centers established and operated by a local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.
- (2) Notwithstanding Section 5(1) (b) of this Ordinance, the District shall comply with Section 16 (User Fees), Section 19 (Determination of Rates) Subsection 8(6), and Section 14, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 7(2) (a).

Section 6. Administration

The Executive Officer shall be responsible for the administration and enforcement of this Ordinance.

Section 7. Applications

- (1) Applications for a franchise or for transfer of any interest in, modification, expansion, or renewal of an existing franchise shall be filed on forms provided by the Executive Officer.
- (2) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (a) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
 - (b) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
 - (c) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amount of not less than \$500,000 for each occurrence, \$300,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts.
 - (d) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
 - (e) A duplicate copy of the information required by or submitted to DEQ pursuant to chapter 459, Oregon Revised Statutes.
 - (f) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 20(5) of this ordinance if the franchise is revoked or franchise renewal is refused.
 - (g) Proof that the applicant has received proper land use approval.
 - (h) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.
- (3) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this Ordinance under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied provided, however, an abbreviated application form provided by

the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

- (4) An incomplete or insufficient application shall not be accepted for filing.

Section 8. Issuance of Franchise

- (1) Application filed in accordance with Section 7 shall be reviewed by the Executive Officer. The Executive Officer or his designated representative may make such investigation as the Executive Officer deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this Ordinance, the Code, DEQ permit and franchise agreement.
- (2) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.
- (3) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises. If the Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:
 - (a) The proximity of existing and planned solid waste disposal facilities to the proposed site.
 - (b) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.

- (c) The capacity of existing and planned solid waste disposal facilities.
 - (d) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
 - (e) The hauling time to the proposed facility from waste generation zones established by the District.
- (4) If the Council does not act to grant, or deny, a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The one hundred twenty (120) days will not begin until the Executive Officer has accepted the application as complete and ready for processing.
- (5) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:
- (a) Enter into a written franchise agreement with the District,
 - (b) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and
 - (c) Submit proof that the applicant has public liability insurance, including automotive coverage, in the amount of not less than \$500,000 for each occurrence, \$300,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts.
 - (d) Name the District as an additional insured in the insurance policy required by Section 7(2)(c).
- (6) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise.
- (a) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. Whenever possible the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.

- (b) In emergency situations, to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to modification or revocation by the Council.
- (7) In addition to the authority contained in Section 8(6)(a), for the purposes of this ordinance, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Section 12. However, a request for a contested case hearing shall not stay action under this subsection.

Section 9. Term of Franchise

- (1) The term for a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.
- (2) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 8(2), provided that the franchisee files an application for renewal not less than one hundred twenty (120) days prior to the expiration of the franchise term, together with a statement of material changes in its initial application for the franchise and any other information required by the Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise.

Section 10. Transfer of Franchises

- (1) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with Section 7 and has been granted. The proposed transferee must meet the requirements of this Ordinance.
- (2) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within ninety (90) days after filing of a complete application, the application shall be deemed granted.
- (3) The term for any transferred franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

Section 11. Appeals

Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 5.02 upon the Council's suspension modification or revocation or refusal to issue, renew or transfer a franchise or to grant a variance, as follows:

- (1) Except as provided in subsection (3) of this Section, the Council's refusal to renew a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (2) The Council's refusal to grant a variance, or to issue or transfer a franchise shall be effective immediately. The franchisee or applicant may request a hearing on such refusal within sixty (60) days of notice of such refusal.
- (3) Upon a finding of serious danger to the public health or safety, the Executive Officer may suspend a franchise or the Council may refuse to renew a franchise and such action shall be effective immediately. If a franchise renewal is refused effective immediately, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing.

Section 12. Variances

- (1) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this Ordinance to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

- (a) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
 - (b) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
 - (c) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.
- (2) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council within sixty (60) days after receipt of the variance request.
 - (3) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 5.02.
 - (4) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

Section 13. Responsibilities of Franchisees

A franchisee:

- (1) Shall provide adequate and reliable service to the citizens of the District.
- (2) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.
- (3) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for compliance with this Ordinance and the terms and conditions of the franchise.
- (4) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each franchisee for possible review by the Executive Officer.

- (5) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 8 (5) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (6) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.
- (7) Shall comply with all provisions of this Ordinance, the Code, ORS chapter 459, DEQ permit and franchise agreement.
- (8) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.
- (9) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this Ordinance.
- (10) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.
- (11) Shall if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.
- (12) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection.

Section 14. Administrative Procedures for Franchisees.

- (1) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:
 - (a) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.
 - (b) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee shall reconcile the bank account each month.
 - (c) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
 - (d) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.
- (2) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:
 - (a) Name and address of the franchisee.
 - (b) District registration number.
 - (c) Month and year of each report.
 - (d) Number of truckloads received daily.
 - (e) Daily number of cars, pickups, trailers, and other small hauling vehicles.
 - (f) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompact, minimum loads and special loads.
 - (g) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 16 (5).

- (h) Signature and title of the franchisee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a franchise or penalties as provided in Section 22.
- (3) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or if no return is made by the franchisee, to ascertain and determine the amount required to be paid.
- (4) Fees and charges owing to the District from the franchisee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid.

Section 15. Franchise Fee

- (1) The Council shall establish an annual franchise fee which it may revise at any time upon thirty (30) days written notice to each franchisee and an opportunity to be heard.
- (2) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.
- (3) The franchisee shall pay the franchise fee in the manner and at the time required by the District.

Section 16. User Fees

- (1) Notwithstanding Section 5(1) (b) of this Ordinance, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District.
- (2) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.
- (3) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.
- (4) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

- (5) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectable provided that an affidavit is filed with the District stating the name and amount of each uncollectable charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account thereafter, in whole or in part, is collected, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.
- (6) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

Section 17. Reports from Collection Services

Upon request of the Executive Officer, a solid waste collection service shall file periodic reports with the District, containing information required by the Executive Officer.

Section 18. Rate Review Committee

- (1) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.
- (2) Initially, three members shall serve two-year terms and two members shall serve one-year terms, in order to provide continuity in Rate Review Committee membership. Thereafter, Rate Review Committee members shall serve two-year staggered terms.
- (3) The members of the Rate Review Committee shall be as follows:
 - (a) One Certified Public Accountant with expertise in cost accounting and program auditing.
 - (b) One Certified Public Accountant with expertise in the solid waste industry or public utility regulation.
 - (c) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.
 - (d) Two members of the public.
- (4) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee.

Section 19. Determination of Rates

- (1) No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this Ordinance shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.
- (2) When the Council grants a franchise, it shall establish the rate(s) to be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this Section.
- (3) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendaton to the Executive Officer. The Executive Officer shall forward the Committee's recommendaton along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.
- (4) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:
 - (a) Operating and nonoperating revenues.
 - (b) Direct and indirect operating and nonoperating expenses including franchise fees.
 - (c) Nonfranchise profits.
 - (d) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.
 - (e) Any other factors deemed relevant by the Council.
- (5) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 19, paragraph (3):
 - (a) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
 - (b) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or
 - (c) In the event the District exercises its right to control the flow of solid waste as provided in Section 8(6) or 8(7).

Section 20. Enforcement of Franchise Provisions; Appeal

- (1) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise as provided in this Section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise, the Executive Officer shall notify the franchisee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise be suspended, modified or revoked.
- (2) The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee has:
 - (a) Violated this Ordinance, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
 - (b) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;
 - (c) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so.
 - (d) Misrepresented the gross receipts from the operation of the franchised site, facility or station; or
 - (e) Failed to pay when due the fees required to be paid under this Ordinance.
- (3) Except as provided in subsection (4) of this section, the Council's revocation, modification or suspension of a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.
- (4) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this ordinance, the Executive Officer may in accordance with Code Section 5.02 immediately suspend the franchise and may take whatever steps may be necessary to abate the danger. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the

affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Section 5.02.

(5) Upon revocation or refusal to renew the franchise:

(a) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.

(b) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 7(2)(f) of this ordinance.

Section 21. Right to Purchase

The District may purchase or condemn any real or personal property or any interest therein of the franchisee. If such purchase or condemnation occurs upon revocation or termination of the franchise, valuation of the real and personal property purchased or condemned shall not include any sum for the value of the franchise or any other intangible value.

Section 22. Penalties

(1) Each violation of this Ordinance shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00). Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(2) In addition to subsection (1) of this Section, any violation of this Ordinance may be enjoined by the District upon suit in a

court of competent jurisdiction and shall also be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day for each day of violation.

Section 23. Repealer

- (1) The provisions of Chapters 4.02 and 4.04 of the Code shall apply to disposal sites, processing facilities or transfer stations operating under a District Certificate or agreement on the effective date of this Ordinance until the final decision of the Council on the application for a franchise.
- (2) Except as provided in this section, Chapters 4.02 and 4.04 of the Code are repealed.

Section 24. Amendment

- (1) Code Section 4.03.020 (User Fees) is hereby amended to read:

"The following user fees shall be collected and paid to the District by the operator of each solid waste disposal site:

- (a) Noncompacted solid waste: 20¢ per cubic yard delivered or \$1.33 per ton
 - (b) Compacted solid waste: 34¢ per cubic yard delivered or \$1.33 per ton
 - (c) All material delivered in private cars, stationwagons, vans, single and two-wheel trailers, trucks with rated capacities of less than one (1) ton: 20¢ per cubic yard with a minimum charge of 45¢ per load
 - (d) User fees for solid waste delivered in units of less than a whole cubic yard shall be determined and collected on a basis proportional to the fractional yardage delivered. (For example, 4-1/2 cubic yards of noncompacted solid waste would require a user fee of 90¢.)"
- (2) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete and broken asphaltic concrete used at a landfill for cover, diking or road base and for which no dumping charge is made shall be exempt from the user fees.

Section 25. Acceptance of Tires at a Disposal Site:

- (a) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted if the Disposal Site's Franchise Agreement allows such acceptance.

(b) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria: the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(c) The test shall be as follows:

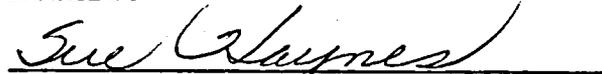
- (1) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and
- (2) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container. (Ordinance No. 58, Sec. 5)

Section 26: This Ordinance shall take effect on the 3rd day of October, 1981.

ADOPTED by the Council of the Metropolitan Service District
this 3rd day of September, 1981.


Presiding Officer

ATTEST:


Clerk of the Council

TA/gl/2417B/209

A G E N D A M A N A G E M E N T S U M M A R Y

Ord 81-111

TO: Metro Council
FROM: Regional Services Committee
SUBJECT: Disposal Franchise Ordinance

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Adopt the attached Disposal Franchise Ordinance including the amendments proposed by staff, which repeals Chapters 4.02 and 4.04 of Metro's Solid Waste Code.
- B. POLICY IMPACT: The Disposal Franchise Ordinance gives Metro the authority to franchise disposal sites, transfer stations, resource recovery facilities and processing centers within the District. Franchise authority enables the District to:
- Set rates at all franchised facilities;
 - Establish geographical service zones for franchised facilities; and
 - Establish exclusive franchises thereby limiting the number of solid waste facilities.

The Ordinance also strengthens Metro's flow control authority by enabling the District to direct wastes away from franchised facilities and eliminates current operational and environmental requirements which duplicate those of the Department of Environmental Quality.

Facilities which could be franchised upon the adoption of the Ordinance currently include two limited use disposal sites: H. G. LaVelle, Inc., and Nash Pit; as well as three processing centers: Forest Grove Disposal, Marine Drop Box and Metropolitan Disposal Corporation. St. Johns Landfill and Rossman's Landfill are excluded from Metro's franchise authority by State law.

- C. BUDGET IMPACT: The total projected budget increase for administration of the disposal franchise program in lieu of administration of Metro's current certificate program is approximately \$10,000 to \$15,000.
- D. Adoption of the Disposal Franchise Ordinance is consistent with Metro's Five Year Operational Plan.

II. ANALYSIS:

- A. BACKGROUND: The Council held a public hearing on the Ordinance on August 6, 1981. An individual giving testimony at the hearing recommended two amendments to the

Ordinance. The first amendment is to Subsection 5(2) and would require District owned and operated facilities to be subject to Subsection 8(6) which is the flow control section of the Ordinance. The second amendment is to Subsection 8(6)(a) and (b) and would require an equal proportion of solid waste to be diverted from each franchised site whenever possible should it become necessary to direct waste to the recourse recovery facility.

These amendments were discussed at the August 11, 1981 Regional Services Committee meeting. After a careful consideration of their impact, the Committee opposed the amendments for the following reasons:

Amendment One

It is not necessary to require District facilities to be subject to the flow control section (8(6)) since Metro already has flow control authority over its own facilities. Also, the requirement that District facilities be subject to 8(6)(a) and (b) means that the District would have to provide notice to itself before diverting waste from its own facilities. This is a meaningless, unnecessary and duplicative requirement.

Amendment Two

Proportional diversion of waste from all facilities would be an expensive and impractical for the following reasons:

- Enforcing proportional diversion of waste from all sites would be complicated and would require a large staff commitment.
- Although Some sites may not accept solid waste suitable for burning in the resource recovery process, the District would be required to divert waste from those sites anyway.
- Since some sites may be far away from the resource recovery facility, transport costs would be increased if waste had to be diverted from these.
- The District should not limit its flow control options without prior knowledge of: the type and location of sites that will be in existence when resource recovery is on line; the nature and quantity of material they receive; their capacity; environmental condition; etc.

For the reasons given above, the Regional Services Committee recommends that the Council not accept the proposed amendments.

Five housekeeping amendments to the Disposal Franchise Ordinance have been prepared by staff and are included in the ordinance.

The first amendment is to delete the language in Subsection 5(1)(e). This subsection exempts landfill sites accepting food wastes which were franchised by a county or owned by a city on March 1, 1979 from the provisions of the ordinance. Since this exemption is a reiteration of state law it is unnecessary to repeat it in the Disposal Franchise Ordinance. Also, by including the exemption in the ordinance, Metro's options concerning the possible control of the operation of Rossman's Landfill are limited.

The second amendment is to Subsection 7(3) and provides that sites operating under a District Certificate or agreement upon the effective date of the ordinance will continue operating under the conditions of their site certificate or agreement until the Council's decision to grant or deny their franchise application. This amendment is necessary to assure that Metro has regulatory control over sites in operation during the time period between the effective date of the ordinance and the Council's issuance or denial of the franchise application.

The third amendment adds language to Subsection 19(1) which clarifies the original intent of the Subsection. The intent of 19(1) is to prohibit sites operating under a District Certificate upon the adoption date of the ordinance from charging rates not established by the Council or an interim rate set by the Executive Officer. This requirement protects the public from erratic or indiscriminate price increases between the time the ordinance is adopted and the time franchises are granted by the Council.

The fourth amendment is to Subsection 19(3) and is also intended to clarify the original intent of the language. This amendment gives the Council the option of setting a rate, if necessary, during the time period before the formal rate review process can be completed.

The fifth amendment broadens the qualifications of one of the Certified Public Accountant members of the Rate Review Committee. The amendment states that the CPA member may have expertise in public utility regulation or the construction industry as well as experience in the solid waste industry (see Subsection 18(3)(b)). Since Subsection 18(4) precludes a committee member from being affiliated with the solid waste industry, it may be difficult to find a CPA with relevant solid waste experience who is not affiliated with the industry.

- B. ALTERNATIVES CONSIDERED: Adopt the Disposal Franchise Ordinance or retain present Code language. Adoption of the Disposal Franchise Ordinance is preferable to retaining the current Solid Waste Code since it strengthens Metro's flow control, eliminates certificate application requirements which duplicate DEQ, establishes geographical zones for disposal facilities and allows Metro to establish disposal rates which are fair and equitable to the public.
- C. CONCLUSION: The Regional Services Committee recommends adoption of the Disposal Franchise Ordinance which amends the Solid Waste Code.

TA/srb
3971B/252
08/21/81

A G E N D A M A N A G E M E N T S U M M A R Y

TO: Metro Council
FROM: Regional Services Committee
SUBJECT: Disposal Franchise Ordinance

I. RECOMMENDATIONS:

- A. ACTION REQUESTED: Recommend that the Council repeal chapters 4.02 and 4.04 of Metro's Solid Waste Code and adopt the Disposal Franchise Ordinance.
- B. POLICY IMPACT: The Disposal Franchise Ordinance gives Metro the authority to franchise disposal sites, transfer stations, resource recovery facilities and processing centers within the District. Franchise authority enables the District to:
- Set rates at all franchised facilities;
 - Establish geographical service zones for franchised facilities; and
 - Establish exclusive franchises thereby limiting the number of solid waste facilities.

The Ordinance also strengthens Metro's flow control authority by enabling the District to direct wastes away from franchised facilities and eliminates current operational and environmental requirements which duplicate those of the Department of Environmental Quality.

Facilities which could be franchised upon the adoption of the Ordinance currently include two limited use disposal sites: H. G. LaVelle, Inc., and Nash Pit; as well as three processing centers: Forest Grove Disposal, Marine Drop Box and Metropolitan Disposal Corporation. St. Johns Landfill and Rossman's Landfill are excluded from Metro's franchise authority by State law.

- C. BUDGET IMPACT: The total projected budget increase for administration of the disposal franchise program in lieu of administration of Metro's current certificate program is approximately \$10,000 to \$15,000.
- D. Adoption of the Disposal Franchise Ordinance is consistent with Metro's Five Year Operational Plan.

II. ANALYSIS:

- A. BACKGROUND: The Regional Services Committee reviewed the Disposal Franchise Ordinance on April 7, 1981, held a public hearing on that Ordinance on May 13, 1981, again reviewed the Ordinance on June 10, 1981 and recommended that it be forwarded to Council on July 7, 1981.

As a result of discussions on the ordinance by the Regional Services Committee two issues of special interest emerged. Although the Regional Services Committee took specific stands on these two issues, the Committee directed that they be discussed before the full Council for a final resolution.

The first issue involves Subsection 13(12). Some segments of the solid waste industry fear that franchisees with a vested interest in a hauling business may give reduced rates to their own collection business. To answer this concern the Regional Services Committee in Section 13(12) prohibited any person with vested interest in a solid waste collection business from operating a franchised solid waste disposal site or resource recovery facility; or any transfer station or processing center which accepts waste from companies other than their own. An alternative solution to this problem is proposed by Counselor Jane Rhodes in her attached minority report.

The second issue concerns who should grant, issue, modify, revoke, suspend or transfer franchises and grant variances to the Ordinance--the Council or the Executive Officer. The draft of the franchise ordinance originally reviewed by the Regional Services Committee gave the Executive Officer this authority. The Regional Services Committee directed staff to revise the ordinance so that the Council has the authority to perform these functions. The main argument in favor of the Executive Officer granting franchises is that this act can be considered an administrative function. The argument in favor of the Council granting franchises is that it gives the public, franchisees and applicants for a franchise the opportunity to directly influence the decision-making body responsible for issuing franchises.

- B. ALTERNATIVES CONSIDERED: Adopt the Disposal Franchise Ordinance or retain present Code language. Adoption of the Disposal Franchise Ordinance is preferable to retaining the current Solid Waste Code since it strengthens Metro's flow control, eliminates certificate application requirements which duplicate DEQ, establishes geographical zones for disposal facilities and allows Metro to establish disposal rates which are fair and equitable to the public.
- C. CONCLUSION: Metro staff recommends adoption of the Disposal Franchise Ordinance which amends the Solid Waste Code.



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: July 21, 1981
To: Metro Council
From: Councilor Jane Rhodes
Regarding: Minority Report to the Regional Services
Committee Position on Subsection 13(12) of
the Disposal Franchise Ordinance

BACKGROUND

During early discussions of the draft Disposal Franchise Ordinance some members of the solid waste industry who serve on the Solid Waste Policy Alternatives Committee (SWPAC), brought up an issue the industry is concerned about regarding preferential rates at solid waste facilities. Some segments of the industry fear that the operator of a solid waste facility, with a vested interest in a collection business, could achieve an unfair competitive advantage by charging reduced rates to their own company. SWPAC responded to the industry's concern by adding language to the the Disposal Franchise Ordinance which would require the District to operate the gatehouse of franchised sites whose operator has an interest in collection. Since Metro employees would be stationed at the gatehouse and handle all cash transactions and billings, the opportunity for the franchisee to charge reduced rates to their own or any other company is eliminated.

After reviewing the Disposal Franchise Ordinance including the gatehouse language proposed by SWPAC, the Council directed staff to delete the gatehouse clause and replace it with language prohibiting any franchisee from having a vested interest in a collection business. SWPAC reviewed the Council's language on June 8, 1981, and approved it with an amendment which exempts transfer stations and processing centers who receive waste collected only by the franchisee's own hauling business. This amended prohibition was approved by the Regional Services Committee on July 7, 1981, and is contained in subsection 13(12) of the Disposal Franchise Ordinance.

MINORITY REPORT

I am opposed to the prohibition endorsed by the Regional Services Committee on July 7, 1981. The concern of the solid waste industry, as expressed by the SWPAC committee, is

Memorandum
July 21, 1981
Page 2

eliminating the possibility of a franchisee from charging their own collection company preferred rates. The gatehouse alternative adequately addresses their concern. Prohibiting horizontal integration between the hauling and collection industry constitutes unnecessary government intervention in private enterprise. The gatehouse alternative is the fairest solution of the problem, would be acceptable to the greatest number of concerned parties, and minimizes government involvement in private enterprise.

I urge you to eliminate the prohibition in Section 13(12) of the Disposal Franchise Ordinance and adopt the attached amendment which requires the District, at the expense of the franchisee, to operate the gatehouse of franchised sites whose operator has a vested interest in collection.

TA/srb
3710B/D3

JANE RHODES' MINORITY REPORT AMENDMENT
TO SECTION 13(12)
OF THE DISPOSAL FRANCHISE ORDINANCE

Delete the language in Section 13(12) and insert the following:

- Section 13(12) (a) In the event that any franchisee or applicant for a franchise shall, in whole or in part, own, operate, maintain, have a proprietary interest or financial association with any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District, the District shall at the expense of the franchisee or applicant for a franchise, assume operational control of the entrance gate of any disposal site or resource recovery facility of the franchisee, or applicant for a franchise or any transfer station or processing center which receives waste from any source other than the collection business with which the franchisee or applicant for a franchise is associated as indicated above.
- (b) If the District assumes operational control under this subsection, it shall comply with Section 19(1) of this ordinance.
- (c) For the purposes of this subsection, "operational control" shall mean that District employees shall be stationed at the gatehouse of the franchised site and shall allow facility users to enter and use the premises and facilities and shall determine and collect any or all fees, charges and payments from such users. Such operational control by the District may be waived by the Council upon a showing by the franchisee or franchise applicant that the volume of waste received is insufficient to justify the expense of such control. The decision of the Council on waiver requests shall be final.

CALL TO ORDER

After declaration of a quorum, the meeting was called to order by Presiding Officer Deines at 7:35 p.m. in the Council Chamber, 527 S.W. Hall Street, Portland, Oregon 97201.

1. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

There were no written communications to Council on non-agenda items at this meeting.

ORDINANCES

Presiding Officer Deines, with the Council's permission, requested that this evening's agenda order be changed so that Ordinances' testimonies can be heard earlier in the evening.

PUBLIC HEARING on Ordinance No. 81-111, An Ordinance Relating to Solid Waste Disposal; Providing for Disposal Franchising; Amending Code Section 4.03.020; and Repealing Code Chapters 4.02 and 4.04 (First Reading)

It having been ascertained that it was the consensus of the Council to do so, the Clerk read Ordinance No. 81-111 for the first time by title only.

Coun. Banzer moved seconded by Coun. Rhodes to adopt Ordinance No. 81-111.

Coun. Banzer reported that the Regional Services Committee (RSC) recommends that the Council adopt the Disposal Franchising Ordinance which repeals chapters 4.02 and 4.04 of Metro's Solid Waste Code. The Ordinance effects a transfer from the current solid waste certificate system to a franchise system. Franchise authority strengthens Metro's flow control, eliminates certificate requirements which duplicates those of DEQ and requires the District to set Solid Waste disposal rates. The development of the Ordinance has been a process of incorporating the input of many interested groups. A Subcommittee of Solid Waste Policy Advisory Committee (SWPAC) formulated the first draft of the Ordinance during the Fall of 1979 and Winter of 1980. SWPAC reviewed the Subcommittee's recommended draft and after numerous discussions and revisions forwarded the Ordinance to the RSC on May 13. RSC held a public hearing on the Ordinance and as a result of the comments that were received from the public and from some of the concerns of Council members, further revisions were made. One controversial issue was not resolved in Committee, it was Subsection 13(12), commonly referred to as the "conflict of interest" section. Some members of the Collections industry indicated to the RSC that they feared that solid waste operators, with an interest in collection, could charge their own companies a reduced disposal rate or give their own companies other special treatment.

Coun. Banzer said that Coun. Rhodes will be submitting a minority report on the Regional Services Committee stand on Subsection 13(12) and then recommended that Merle Irvine, Director of Solid Waste, outline the major features of this Ordinance.

Mr. Irvine stated that the major areas of concern in the Disposal Franchise are: 1) Establishment of rates - A Rate Review Committee will be established that will comprise 2 Public Certified Accountants, 2 members from the general public and 1 person representing local government that has financial accounting experience. The role of the Rate Review Committee will be to review the request by the various disposal facilities, processing centers and transfer stations to determine the rates that should be charged and then make recommendations to the Executive Officer and Council. The purpose of the Committee is to ensure that the rates charged at the various disposal facilities are fair and equitable. The Ordinance also allows for different rates for the various sites or the ability to establish a uniform rate throughout the entire system. 2) Overlap of authority between Metro & DEQ - (in environmental and operating standards) in the current certificate process, i.e. leachate control, gas control and methods of operating daily cover, etc. The proposed Franchise Ordinance would eliminate this duplication and would provide that the State DEQ will be the regulatory and enforcing agency in this area. This will correct a conflict that Metro currently has as the operator of the St. John's Landfill as well as regulator of other facilities. 3) Flow control - will give Metro the ability to direct material to specified sites, i.e. transfer stations, landfills and resource recovery. The ordinance also provides that the Council, upon giving notice to the franchise site, can direct material away from that franchise site to resource recovery. It will also allow the Executive Officer, in emergency situations, to divert material to the resource facility. Another important issue is that this Ordinance provides an exemption to the Franchise Ordinance for source separated material, i.e. cardboard, glass, newspaper, etc.

Coun. Rhodes, in presenting her Minority Report, said that the question of the "Gate" and how do we prevent the kind of "conflict of interest" that the haulers have been concerned about, is a question that is an important one. The Regional Services Committee decided controls needed to be placed on the franchise person to eliminate unfair advantage to the rest of the system.

She then recommended that certain language be deleted and alternate language be substituted into the Ordinance which says: That if the person who has the franchise chooses to be involved with hauling, it is that person's choice, that Metro would operate the Gate, and thereby ensure that at least the admittance fees would be carefully monitored.

Coun. Rhodes requested that those in the audience who wish to speak on this issue, do so before the Council votes on the amendment.

Coun. Rhodes moved, seconded by Presiding Officer (for discussion purposes) to amend Ordinance 81-111 by deleting the language in Section 13(12) and inserting the language which is presented in the Minority Report.

Presiding Officer Deines announced that a Public Hearing on Ordinance No. 81-111 is now open for testimony.

Daniel B. Cooper, Attorney representing the Oregon Drop Box Association, said that his Association endorses Section 13(12) as it is without the amendment and urges that no changes be made. The possibility of a "conflict of interest" on the part of the holder of a landfill franchise would affect the integrity, the very operation of the landfill. There are 4 basic problems that Metro is presented with where (1) the operator of the landfill might be tempted to favor his own trucks at the dumping site over the trucks of other parties, he can send his trucks to the place where the ground is firm and his competitors to the place where the ground is muddy. (2) He has the ability to circumvent Metro's surcharge on solid waste by seeing to it that his trucks enter the landfill at hours when it is unmanned and dumped unrecorded - Metro would have no record of it. (3) He has a strong temptation to give himself preferential rates or charges - his own trucks coming through the landfill may not be measured right, weighed right or billed properly. (4) He is also tempted to give himself preferential treatment when billing himself. Mr. Cooper stated that the amendment would address two of these concerns but leave the other two totally unaddressed. He then reviewed the history of the original Ordinance as it progressed through both the SWPAC and RSC meetings and once again reiterated the need to keep the language exactly as it is in the Ordinance without any amendments.

During general questions by Councilors, Mr. Cooper made reference to widely believed and alleged cheating by the previous City's landfill operators. He also stated that government bodies have difficulty in enforcing regulations so that policing and regulating violations may be impractical.

Gary Newbore, representing operators of the Nash Pit, said that his company is presently in the landfill business and they feel that it is unfair to restrict a company in one business from going into another business. Although the Nash Pit is not presently in the hauling business, they should not be restricted from that possibility, at some future date, should they wish to as it could be viewed as just another aspect of the recycling business. He said that his company has a large investment in the Pit and certainly would not jeopardize their interest by the possibility of cheating if they were to go into the hauling business. He believes that safeguards can be imposed to curtail cheating and at this time, asks that the Council adopt the Minority Report. He stated that the Ordinance's flow control issue would be a problem to his company because any facility that Metro operates is not bound by this Ordinance. If flow control is utilized to divert away material from his company's landfill or others, that wherever it is done, it should be on an equitable basis. He suggested an amendment to the Ordinance's section 8.6 A and B which says in essence: "wherever possible, solid waste should be directed away from all franchises, equally." Also an amendment to section 5.2 (that says which sections Metro does have to comply with) adds the words: "Add section 8.6 A and B to those paragraphs where appropriate.

Mr. Irvine said that the need for diversion of material and rate adjustments was discussed by Council members and since the specific costs are not known at this time, the intent is to be flexible and equitable. Therefore, Mr. Newbore's suggested amendments will be looked at by the RSC in time for the Ordinance's second reading.

John Trout, representing Collectors of Local Teamsters 281, stated that his group is in opposition to the amendment of the Minority report on 13(12) and supports the Ordinance as drafted with a total outright prohibition. In addition to the issues that Mr. Cooper has pointed out earlier, a more important issue is "competition equity." He explained that when an operator of a landfill is also in collection operation, he is in a position to shift funds from his right pocket to his left pocket in paying his disposal bills. This gives him an unfair advantage over other haulers in reducing his own collection costs.

Coun. Bonner asked Mr. Trout how haulers found out about the alleged improprieties at the City's Landfill. Mr. Trout replied that when that activity was going on, it was obvious to haulers that some trucks were not going through the gates as most haulers, but around the gates to avoid the fee (which were the Landfill operator's trucks).

As there was no further testimony, Presiding Officer Deines, closed the Public Hearing on Ordinance 81-111.

Coun. Rhodes noted that according to the present wording of this Ordinance, its administration is to be by the Council rather than staff and asked whether this is agreeable to Council. The answer was yes.

PUBLIC HEARING on ORDINANCE No. 81-112, An Ordinance Establishing Solid Waste Disposal Franchise Fees (First Reading)

It having been ascertained that it was the consensus of the Council to do so, the Clerk read Ordinance No. 81-112 for the first time by title only.

Coun. Banzer moved seconded by Coun. Rhodes to adopt Ordinance 81-112.

Coun. Banzer summarized the Disposal Franchise Fee Ordinance, pointing out that the following fees to be received, will defray the cost for administering the franchise program: \$100 annual franchise fee for franchise sites receiving waste only from their own collection company. \$300 annual franchise fee for all other sites. \$200 application fee for all other sites (for processing applications). No fee for sites currently operating under a District Certificate which will be transferred to the franchise program upon adoption of the Disposal.

Presiding Officer Deines opened the Public Hearing on Ordinance 81-112. As no one present wished to give testimony, the Hearing was closed.

Coun. Burton commented that the fees are inordinarily low, if they are indeed intended to cover the cost of administering the franchise program (assuming it includes legal fees). Merle Irvine said that the

SMITH BARNEY PRESENTATION - PROPOSED FINANCING OF RESOURCE RECOVERY FACILITY (cont'd)

Revenue per Ton (cont'd)

Private Ownership

Approx. \$5M State tax credit for 10 years. Approx. \$35M from Revenue Stabilization Fund, decreasing over a 15-year period. Approx. \$25M Energy and Material Revenue, increasing over the life of the bond. Approx. \$15M tip fee, increasing over the life of the bond, corresponding to inflation, operation and maintenance costs, etc.

Cost per Ton

100% Revenue Bond Financing (Metro Ownership)

Approx. \$55M debt service per year for the life of the bond. Approx. \$25M operation and maintenance costs over the life of the bond.

Private Ownership

Approx. \$59M debt service for first 14 years, then increasing over the life of the bond. Approx. \$22M operation and maintenance costs, increasing over the life of the bond.

Tip Fee Revenues Required

100% Revenue Bond Financing (Metro Ownership) \$206,494M

Private Ownership \$102,808M

Financial Savings

Available only under private ownership:

Depreciation	\$52,265M
Federal Tax Credits	36,531M
State Tax Credits	15,088M

Presiding Officer Deines stated there would be a short break at 8:50 PM. The meeting reconvened at 9:05 PM. Couns. Burton, Berkman and Kafoury left the building during the recess.

3.1 ORDINANCE NO. 81-111

Motion to amend Ordinance No. 81-111 to allow a franchise holder to also be a hauler and provide that Metro would run the gate under such circumstances (Rhodes/Oleson); failed by the following roll call vote:

YEAS: Rhodes, Oleson

NAYS: Williamson, Kirkpatrick, Schedeen, Bonner, Banzer, Etlinger

ABSENT: Berkman, Kafoury, Burton

3.1 ORDINANCE NO. 81-111 (cont'd)

Motion to adopt the five staff recommendation (already incorporated into the ordinance); carried unanimously. (Banzer/Williamson)

Motion to adopt Gary Newbore's amendment to Subsection 8(6) as follows (Banzer/Etlinger):

"Subsection 8 (6) (a) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days' prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchise. Whenever possible, the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste."

carried by the following roll call vote:

YEAS: Etlinger, Banzer, Bonner, Oleson, Deines
NAYS: Rhodes, Schedeen, Williamson, Kirkpatrick
ABSENT: Berkman, Kafoury, Burton

Motion to adopt Gary Newbore's amendment to Section 5(2) as follows (Banzer/Bonner):

"Subsection 5(2) Notwithstanding Section 5(1)(b) of this Ordinance, the District shall comply with Section 16 (User Fees), Section 19 (Determination of Rates), Subsection 8(6), and Section 14 (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 7(2)(a)."

carried by the following roll call vote:

YEAS: Etlinger, Banzer, Bonner, Oleson, Deines
NAYS: Rhodes, Schedeen, Williamson, Kirkpatrick
ABSENT: Berkman, Kafoury, Burton

Motion to adopt Ordinance No. 81-111, as amended; carried unanimously. (Rhodes/Deines)

3.2 ORDINANCE NO. 81-112

Motion that Ordinance No. 81-112 be adopted; carried unanimously. (Banzer/Rhodes)

2.11 RESOLUTION NO. 81-271

Motion that Resolution No. 81-271 be adopted *as amended*; carried unanimously. (Banzer/Bonner)

*Prior to the vote on the motion, Presiding Officer Deines expressed his objection to the \$12,000 amount and suggested it be increased to \$25,000.

Motion to increase the minimum to \$25,000; carried unanimously. (Williamson/Deines)

2.12 RESOLUTION NO. 81-272

Motion that Resolution No. 81-272 be adopted; carried unanimously. (Banzer/Rhodes)



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: October 7, 1981
To: Andy Jordan, General Counsel
From: Terilyn Anderson, Environmental Planner ~~TA~~
Regarding: Typographical error in the Disposal Franchise Ordinance

In reviewing Subsection 7(2)(c) and Subsection 8(5)(c) of the Disposal Franchise Ordinance, I discovered a typographical error which I would like to bring to your attention. The corrected language with the deleted typographical errors are:

Subsections 7(2)(c) and 8(5)(c):

"Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amount of not less than [\$300,000] \$500,000 for each occurrence, [\$500,000] \$300,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts."

TA:bb

*Corrections
made on ordinance
10-19-81.
Sue*

ORDINANCE NO. 81-111

TITLE AN ORDINANCE RELATING TO SOLID WASTE
DISPOSAL: PROVIDING FOR DISPOSAL FRANCHISING;
AMENDING CODE SECTION 4.03.020; AND REPEALING
CODE CHAPTERS 4.02 and 4.04.

DATE INTRODUCED August 6, 1981

FIRST READING August 6, 1981

SECOND READING September 3, 1981

DATE ADOPTED 9-3-81

DATE EFFECTIVE 10-3-81

ROLLCALL

	Yes	No	Abst.	Absent
Burton				✓
Oleson	✓			
Williamson	✓			
Berkman		MORRIS		✓
Kirkpatrick	✓			
Deines	✓			
Rhodes	✓			
Schedeen	✓			
Bonner	✓			
Banzer	✓			
Etlinger	✓			
Kafoury				✓