

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADDING) ORDINANCE NO. 88-276B
SECTION 5.01.085 TO THE METRO)
CODE RELATING TO [LONG-TERM]) Introduced by the Council
FRANCHISE AGREEMENTS) Solid Waste Committee

WHEREAS, Chapter 5.01 of the Code of the Metropolitan Service District provides procedures and conditions for authorizing franchise agreements for solid waste disposal facilities; and

WHEREAS, The Council of the Metropolitan Service District has determined that in order to authorize [long-term] franchise agreements for major components of the solid waste disposal system it is necessary to provide for alternative procedures and conditions for such agreements as deemed appropriate by the Council; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

A new Section 5.01.085 is hereby added to Chapter 5.01 of the Metro Code to read as follows:

5.01.085 [Long-Term] Franchises for Major Disposal System Components

(a) Consistent with the provisions of the Solid Waste Management Plan, the Council may authorize franchise agreements governing the operation of components of the solid waste disposal system found by the Council to be major components of the system. Prior to authorizing a franchise agreement pursuant to this Section, the Council shall by resolution state the Council's intent to authorize such an agreement, describe the system component which will be the subject of the agreement, describe other terms and conditions deemed necessary by the Council and establish the procedures to be followed by the Council in authorizing any such agreement. The procedures for authorizing any such agreement shall at a minimum meet the requirements of subsection 5.01.085(d).

(b) If the Council elects to authorize a franchise agreement pursuant to this Section the procedural terms and conditions set forth in the resolution stating the intent to authorize an agreement shall govern the approval of any franchise agreement subsequently authorized by the Council. Sections 5.01.060, Application; 5.01.070, Issuance; 5.01.080, Term; 5.01.090 Transfer of Franchise; and 5.01.100, Appeals, of this Chapter, shall not be applicable to such franchise agreements.

(c) Any franchise agreement authorized by the Council pursuant to this Section may contain [any] such substantive terms and conditions as the Council deems appropriate. To the extent a franchise agreement authorized by this Section specifically provides to the contrary the provisions of Sections 5.01.120, Responsibilities of Franchisees; 5.01.130, Administrative Procedures for Franchisees; 5.01.140, Franchise Fees; 5.01.150, User Fees; 5.01.180, Determination of Rates; 5.01.190, Enforcement of Franchise Provisions, Appeal; 5.01.200, Right to Purchase; and 5.01.210, Penalties, of this Chapter shall not apply.

(d) Prior to authorizing any franchise agreement pursuant to this section the Council shall establish procedures for receiving applications, review of such applications and criteria to be utilized in determining which, if any, application should be approved.

All applications shall provide information regarding the ownership and legal structure of the applicant, the ownership and legal structure of the property owner of the proposed site location, the status of any required permits from the DEQ and other regulatory bodies including local land use authorities and such other information as the District may find necessary or appropriate. Incomplete or insufficient applications may not be accepted.

All applications shall be investigated and reviewed by the Executive Officer who shall make a recommendation to the Council regarding each applicant.

In determining whether to authorize a franchise agreement the Council shall consider whether the applicant has satisfied the criteria established by the Council for the approval of such franchise agreements. The Council may reject any and all franchise applications. Nothing in this chapter shall be construed as creating a duty on the part of the District to approve any application for a franchise. Criteria utilized shall at a minimum address the following issues and such other issues as the Council finds appropriate.

1. Compliance with the District's Solid Waste Management Plan.
2. The proximity of existing and planned solid waste disposal facilities to the proposed site.
3. The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.

4. The capacity of existing and planned solid waste disposal facilities.
5. The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
6. The hauling time to the proposed facility from waste generation zones established by the District.

(e) Franchise agreements authorized by this section shall at a minimum contain provisions requiring the franchisee to obtain public liability insurance policies in a minimum amount of \$500,000 or such greater amount as the District may require and naming the District, its employees and agents as additional named insureds; such surety bonds as the District may require; restrictions on the transfer or assignment or subcontracting out of the franchise or change in control of the franchisee; reports to the District as found appropriate; waste reduction plans of the franchisee and such other terms and conditions found appropriate or necessary by the District.

ADOPTED by the Council of the Metropolitan Service District
 this 22nd day of December, 1988.



 Mike Ragsdale, Presiding Officer

ATTEST:



 Clerk of the Council

DBC/gl
 ord501b.dan

I certify this ordinance was not vetoed
 by the Executive Officer.

 1/6/89

 Clerk of the Council Date

CHAPTER 5.01

DISPOSAL SITE FRANCHISING

SECTIONS:

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5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "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.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "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.

(h) "Executive Officer" has the same meaning as in Code Section 1.01.040.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

(m) "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.

(n) "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.

(o) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

(p) "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.

(q) "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.

(r) "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.

(s) "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:

- (1) Hazardous wastes as defined in ORS 459.410, and
- (2) Radioactive wastes as defined in ORS 469.300, and
- (3) 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
- (4) Explosives.

(t) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.

(u) "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 collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(v) "User Fee" means a user fee established by the District under ORS 268.515.

(w) "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. (Ordinance No. 81-111, Sec. 2)

5.01.020 Findings and Purpose:

(a) 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.

(b) 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 chapter to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS ch. 268 in order to:

(1) 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.

(2) 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.

- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) 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.
- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery. (Ordinance No. 81-111, Sec. 3)

5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) 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 5.01.040 of this chapter.

(b) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.

(c) 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 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter. (Ordinance No. 81-111, Sec. 4; amended by Ordinance No. 87-217, Sec. 1)

5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

(1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.

(2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.

(3) Recycling drop centers.

(4) 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.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) are not putrescible;
- (B) have been source separated;
- (C) are not and will not be mixed by type with other solid wastes; and
- (D) are 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.

(6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.

(7) 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.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 4.07.180 (Determination of Rates) subsection 5.01.070(f), and Section 4.07.130, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1). (Ordinance No. 81-111, Sec. 5; amended by Ordinance No. 82-136, Sec. 1)

5.01.050 Administration: The Executive Officer shall be responsible for the administration and enforcement of this chapter. (Ordinance No. 81-111, Sec. 6)

5.01.060 Applications:

(a) 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.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

(1) 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.

(2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.

(3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.

(4) 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.

(5) A duplicate copy of the DEQ disposal site permit application and any other information required by or submitted to DEQ pursuant to ORS ch. 459.

(6) 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 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.

(7) Proof that the applicant has received proper land use approval.

(8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter 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.

(d) An incomplete or insufficient application shall not be accepted for filing. (Ordinance No. 81-111, Sec. 7; amended by Ordinance No. 82-136, Sec. 2)

5.01.070 Issuance of Franchise:

(a) Applications filed in accordance with Section 5.01.060 shall be reviewed by the Executive Officer. The Executive Officer or his/her 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 chapter, the Code, DEQ permit and franchise agreement.

(b) 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.

(c) 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:

- (1) The proximity of existing and planned solid waste disposal facilities to the proposed site.
- (2) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
- (3) The capacity of existing and planned solid waste disposal facilities.
- (4) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
- (5) The hauling time to the proposed facility from waste generation zones established by the District.

(d) 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.

(e) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:

- (1) Enter into a written franchise agreement with the District,
- (2) 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
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) Name the District as an additional insured in the insurance policy required by Section 5.01.060(b)(3).

(f) 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.

(1) 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.

(2) 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.

(g) In addition to the authority contained in Section 5.01.070(f) (1), for the purposes of this chapter, 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 Code Chapter 2.05. However, a request for a contested case hearing shall not stay action under this subsection. (Ordinance No. 81-111, Sec. 8; amended by Ordinance No. 82-136, Sec. 3)

5.01.080 Term of Franchise:

(a) 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.

(b) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 5.01.070(b), 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. (Ordinance No. 81-111, Sec. 9)

5.01.090 Transfer of Franchises:

(a) 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 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.

(b) 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.

(c) 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. (Ordinance No. 81-111, Sec. 10)

5.01.100 Appeals: Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the Council's suspension modification or revocation or refusal to issue, renew or transfer a franchise or to grant a variance, as follows:

(a) Except as provided in subsection (c) 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.

(b) 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.

(c) 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. (Ordinance No. 81-111, Sec. 11)

5.01.110 Variances:

(a) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this chapter 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:

(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or

(2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or

(3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.

(b) 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.

(c) 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 2.05.

(d) 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. (Ordinance 81-111, Sec. 12)

5.01.120 Responsibilities of Franchisees: A franchisee:

(a) Shall provide adequate and reliable service to the citizens of the District.

(b) 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.

(c) 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 chapter and the terms and conditions of the franchise.

(d) 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.

(e) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 5.01.070(e) 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.

(f) 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.

(g) Shall comply with all provisions of this chapter, the Code, ORS ch. 459, DEQ permit and franchise agreement.

(h) 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.

(i) 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 chapter.

(j) 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.

(k) 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.

(l) 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. (Ordinance No. 81-111, Sec. 13)

5.01.130 Administrative Procedures for Franchisees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

(1) 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.

(2) 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.

(3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.

(4) 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.

(b) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:

(1) Name and address of the franchisee.

(2) District registration number.

(3) Month and year of each report.

(4) Number of truckloads received daily.

(5) Daily number of cars, pickups, trailers, and other small hauling vehicles.

(6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads.

(7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).

(8) 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 5.01.210.

(c) 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.

(d) 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. (Ordinance No. 81-111, Sec. 14)

5.01.140 Franchise Fee:

(a) 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.

(b) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.

(c) The franchisee shall pay the franchise fee in the manner and at the time required by the District. (Ordinance No. 81-111, Sec. 15)

5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, 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. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(b) 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.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) 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.

(f) 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. (Ordinance No. 81-111, Sec. 16; amended by Ordinance No. 86-214, Sec. 1)

5.01.160 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. (Ordinance No. 81-111, Sec. 17)

5.01.170 Rate Review Committee:

(a) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.

(b) 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.

(c) The members of the Rate Review Committee shall be as follows:

(1) One Certified Public Accountant with expertise in cost accounting and program auditing.

(2) One Certified Public Accountant with expertise in the solid waste industry or public utility regulation.

(3) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.

(4) Two members of the public.

(d) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee. (Ordinance No. 81-111, Sec. 18)

5.01.180 Determination of Rates:

(a) No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this chapter 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.

(b) At the time the Council grants a franchise, or after 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.

(c) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation 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.

(d) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:

- (1) Operating and nonoperating revenues.
- (2) Direct and indirect operating and nonoperating expenses including franchise fees.
- (3) Nonfranchise profits.
- (4) 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.
- (5) Any other factors deemed relevant by the Council.

(e) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 5.01.180(c):

- (1) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
- (2) 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
- (3) In the event the District exercises its right to control the flow of solid waste as provided in Section 5.01.070(f) or 5.01.070(g). (Ordinance No. 81-111, Sec. 19; amended by Ordinance No. 82-136, Sec. 4)

5.01.190 Enforcement of Franchise Provisions; Appeal:

(a) 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.

(b) 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:

(1) Violated this chapter, the Code, ORS ch. 459 or the rules promulgated thereunder or any other applicable law or regulation; or

(2) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;

(3) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so;

(4) Misrepresented the gross receipts from the operation of the franchised site, facility or station;

(5) Failed to pay when due the fees required to be paid under this chapter; or

(6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise Ordinance.

(c) Except as provided in subsection (d) 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.

(d) 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 chapter, the Executive Officer may in accordance with Code Chapter 2.05 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 Chapter 2.05.

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

(1) 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.

(2) 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 5.01.060(b)(6) of this chapter. (Ordinance No. 81-111, Sec. 20; amended by Ordinance No. 82-136, Sec. 5)

5.01.200 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. (Ordinance No. 81-111, Sec. 21)

5.01.210 Penalties:

(a) Each violation of this chapter 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.

(b) In addition to subsection (a) of this section, any violation of this chapter 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. (Ordinance No. 81-111, Sec. 22)

5.01.220 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. 81-111, Sec. 25)



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 7.3

DATE: December 8, 1988 Meeting Date Dec. 22, 1988
TO: Metro Council
FROM: Councilor Gary Hansen ^{GH.}
Chair, Council Solid Waste Committee
RE: SOLID WASTE COMMITTEE REPORT ON DECEMBER 22, 1988, COUNCIL
AGENDA ITEM

Agenda Item No. 7.3 Consideration of Ordinance No. 88-276B, for the Purpose of Adding Section 5.01.085 to the Metro Code Relating to Franchise Agreements

Committee Recommendation

The Solid Waste Committee recommends Council adoption of Ordinance No. 88-276B. This action taken December 6, 1988.

Discussion

A public hearing was held by the Solid Waste Committee on November 15, 1988. No one appeared to testify.

The Committee discussed the importance of having flexibility in the ordinance to address various types of solid waste facilities. Action taken under Section 5.01.085 must be consistent with the provisions of the Solid Waste Management Plan. The Committee suggested a definition be included in the ordinance for "Long-term Franchise."

On November 29, 1988, the Solid Waste Committee had a public hearing. No one appeared to testify. Consideration of Ordinance No. 88-276B was deferred to December 6, 1988.

The Solid Waste Committee held another public hearing on December 6, 1988. No one appeared to testify.

Revisions made to the ordinance by General Counsel, at the request of the Committee, include the following:

1. References to "Long-term" have been eliminated.
2. Additional language has been added to delineate that conditions for franchise agreements authorized by the new section would be as "deemed appropriate by the Council."
3. Language has been added to make mandatory certain portions of the present procedural requirements for franchises.

METRO COUNCIL
December 8, 1988
Page 2

4. Minimum substantive requirements regarding insurance, surety bonds, change of control, etc., are now listed as areas that must be addressed in any franchise agreements.

The Council will retain flexibility in being able to deal with each of these issues as it deems fit on a case-by-case basis. However, the Council would not be able to totally disregard including any of the above provisions in a franchise agreement.

The Solid Waste Committee voted 4 to 0 to recommend Council adoption of Ordinance No. 88-276B. Voting aye: Councilors Gardner, Hansen, Kelley and Ragsdale.

GH:RB:pa
RAYB.027



METRO

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Portland, OR 97201-5398
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November 10, 1988

The Honorable Gary Hansen
Chair, Council Solid Waste Committee
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Councilor Hansen:

Re: Ordinance No. 88-276

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Corky Kirkpatrick
Deputy Presiding
Officer
District 4

Richard Waker
District 2

Jim Gardner
District 3

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Ordinance No. 88-276 would add a new Section 5.01.085 to the Metro Code to allow the Council to authorize long-term franchises for major solid waste disposal system components in a manner different from the procedures and conditions contemplated by Chapter 5.01 in general.

New Section 5.01.085(a) allows the Council to, by resolution, state the Council's intent to authorize a franchise agreement for a major component of the solid waste disposal system, describe the system components which would be the subject of the agreement, describe other terms and conditions deemed necessary by the Council, and establish the procedures to be followed by the District in authorizing any such agreement.

One requirement of proposed Section 5.01.085 is that the action taken be consistent with the provisions of the Solid Waste Management Plan (SWMP). As adopted by the District, the new SWMP provides that an East Transfer Station may be owned and operated by a private entity if the Council applying Plan Policy 13.0 determines that it is appropriate to do so. If private ownership is selected then a competitive process to select the private entity is required by the adopted plan. (See Plan Section IV-5-B)

Subsection 5.01.085(b) provides that the sections of Chapter 5.01 relating to applications for franchises, issuance of franchises, term of franchises, and appeals would not be applicable to long-term franchise agreements. Rather, the Council would adopt procedures and criteria at the time it adopted a resolution declaring its intent to enter into a long-term agreement.

Subsection 5.01.085(c) provides that the sections of the franchise code containing substantive requirements for franchises need not apply to the extent that the Council

The Honorable Gary Hansen
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authorized a franchise agreement which specifically provided to the contrary. This allows the Council to vary from such requirements when it desires to but otherwise leaves these requirements in place.

This report contains below a detailed discussion of specific sections of the Code and why it may be appropriate to either delete certain provisions in their entirety from a future franchise agreement or provide for substantively different terms and conditions.

Due to a word processing error, two sections referred to in subsection 5.01.085(c) in Ordinance No. 88-276 were inadvertently deleted. Enclosed is a substitute Ordinance No. 88-276A which would reinsert a reference to two provisions relating to User Fees and Determination of Rates.

Analysis of Chapter 5.01:

What follows is a detailed analysis of the provisions of Code Chapter 5.01.

A copy of the Code Chapter is attached. Sections .010, .020, .030, .040 and .050 provide for general Definitions, Findings and Purpose, Prohibited Activities, Exemptions, and Administration. These provisions are not referred to in Ordinance No. 88-276 in that they are not inconsistent with the grant of a long-term franchise and need not be varied from or waived.

Applications:

Section 5.01.060 relates to Applications for franchise agreements. The effect of Ordinance No. 88--276 is to override the provisions of Section 5.01.060 when the grant of a long-term franchise is contemplated.

Subsection 5.01.060(a) provides that applications shall be on forms provided by the Executive Officer. Subsection 5.01.060(b) provides for the content of the application forms. The existing forms could be the basis for a form for receiving competitive proposals for the East Transfer Station. However, it is necessary to provide that this section is not applicable in order to allow the use of an "application" different from the current standard form. Many of the existing requirements should be appropriately included in any application utilized. Information regarding bonds, insurance requirements, ownership structure, DEQ permits, land ownership, and land use approvals are obviously appropriate. More detailed information might be required by the District in these areas. The requirement for

insurance which is presently limited to \$300,000 in coverage would probably need to be increased to a larger amount. The District should retain flexibility to tailor the content of information requested to go beyond the present Code requirements.

Subsection 5.01.060(c) refers to sites that were operating at the time the franchise ordinance was adopted in 1981 and is inapplicable.

Subsection 5.01.060(d) provides that incomplete applications should not be accepted. This is obviously appropriate and can be utilized as a requirement.

Issuance:

Existing Code Chapter Section 5.01.070 relates to the issuance of franchise agreements. Subsection (a) thereof calls for the Executive Officer to make investigations on applications. This is appropriate and could easily be incorporated in any procedures adopted by the District.

Subsection 5.01.070(b) relates to the Executive Officer making recommendations to the Council about applications. It needs to be overridden in that it is appropriate for the Executive Officer to make a recommendation as to which of the competing applications should be approved. However all applicants cannot be approved.

Subsection 5.01.070(c) similarly deals with criteria for Council review of applications and needs to be overridden in this context. In particular, the criteria for granting an exclusive franchise are inappropriate since the type of exclusive franchise contemplated in the existing Code is a franchise where the applicant receives the sole right to operate a given type of facility within a specific territory. As discussed later, there is no guarantee of volume or flow attached to the existing type of exclusive franchise. It may be appropriate to make such commitments or guarantees at least on a limited basis. In addition, other criteria would need to be reviewed to determine whether they are appropriate.

Subsection 5.01.070(d) provides for a limited time period for the Council to act, grant or deny a franchise and provides that a temporary franchise is deemed granted if the Council does not so act within 120 days after the filing of a completed application. While the District will probably want to make its decision within such a time frame, it would be an unnecessary legal complication to include such a commitment.

The Honorable Gary Hansen
November 10, 1988
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The grant of a temporary franchise in this context is either a meaningless act or creates an enormous potential liability for Metro.

Subsection 5.01.070(e) contains substantive requirements for the applicant to follow once the franchise is approved. It provides for a 10-day time period for the consummation of a franchise agreement. It probably will be appropriate to provide a two-step process in which the District first selects the applicant deemed "best," and then provides for a short time period for the District to negotiate with the applicant a final franchise agreement for Council approval. At the time the formal agreement is approved by the District, a time limit for the actual signing of the agreement is appropriate.

Subsection 5.01.070(f) restricts the franchisee's rights to receive types or quantities of waste during the term of the franchise and provides for authority for the District to divert flows of waste away from any franchised facility. In the case of a long-term franchise for a major transfer station, this section is probably inappropriate. It was clearly designed with the prospect of the Oregon City burner in mind and provided a mechanism to ensure that the District could honor any financial commitments it had made for the financing of the burner. It may be appropriate to give greater guarantees to the operator of a major facility in order to protect the operator's ability to obtain reasonable financing that would produce the lowest possible rates for the District.

Subsection 5.01.070(g) also provides for the diversion of waste away from any facility and should be considered a subject for further discussion prior to the issuance of any franchise agreement.

Term:

Section 5.01.080 relates to term. Subsection (a) limits the term of a franchise to five years or less. This is obviously an area which needs to be addressed.

Subsection 5.01.080(b) gives criteria for renewal of franchise agreements. This provision needs to be modified in light of the revisions to subsection (a) that will be necessary. The existing provision has no cross-reference to the exclusivity criteria contained in 5.01.070 or flow control. Further, there should be no need for a contested case hearing in the event of a non-renewal of a major franchise agreement in that the franchise agreement itself could provide for procedures to

be followed dealing with any expectation of renewal and rights of the parties.

Transfer:

Section 5.01.090 relates to the transfer of franchises to others after they are granted. It is appropriate to consider a variance to these procedures as the procurement process is developed. Any transfer would need to be approved consistent with the process and criteria utilized for the initial grant of a franchise. Ordinance No. 88-276 as drafted does not allow for an override of this section. I recommend that a reference to this section be added to subsection 5.01.085(b).

Appeals:

Section 5.01.100 provides for an appeal process for any applicant who is refused a franchise. It would be inappropriate to continue this section in effect for a major franchise in that by granting a due process right of an appeal the District would be creating a possible expectation of the grant of a franchise and leaving itself open to potential damage claims. I believe it would be more appropriate to provide that whatever decision the Council makes as a result of any franchising process be deemed final and an act of legislative discretion.

Variances:

Section 5.01.110, Variances, is left untouched by Ordinance No. 88-276. Ordinance No. 88-276 creates separate authority for granting variances far broader than those which limit variances granted by section 5.01.110.

Responsibilities:

Section 5.01.120 enunciates 12 different specific duties of franchisees. Subsection (a) in one sentence attempts to define the service requirements for the franchisee. Service requirements need to be greatly expanded in order to cover all of the concerns of the District. Subsection 5.01.120(b) provides for a right to discontinue service upon 90 days notice to the District. Receiving a notice that the only transfer station in the east watershed was closing in 90 days would obviously create a concern for the District. It would be appropriate to establish a more substantive provision in the agreement covering the operator's right, if any, to discontinue service.

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Subsection 5.01.120(c) relates to subcontracting and assignments. I believe it would be appropriate to enunciate restrictions regarding the qualifications of any prospective assignee or subcontractor. This area also needs to be made consistent with any restrictions on the outright transfer of a franchise.

Subsection 5.01.120(d) relates to refusal of service by the operator. The section is inapplicable in that the SWMP requires that Metro will control the gate of such a facility. This issue needs to be addressed as a component of service requirements in general.

Subsection 5.01.120(e) relates to insurance. As discussed above the amounts should be higher.

Subsection 5.01.120(f) relates to an annual operating report. It would be appropriate to expand upon reporting requirements in greater detail.

Subsection 5.01.120(g) relates to compliance with other laws. This area should be expanded upon in greater detail.

Subsection 5.01.120(h) relates to correspondence between the franchisee and DEQ. It would be appropriate to include other correspondence with any governmental body relating to enforcement of environmental or operating conditions such as the City of Portland, or the Environmental Protection Agency.

Subsection 5.01.120(i) and (j) provide for an indemnification and disclaimer of liability clause. Such clauses should be included but should be rewritten in the context of a long-term agreement.

Subsection 5.01.120(k) presently requires all franchisees to implement a program based on District guidelines for reducing the amount of solid waste entering disposal sites. I believe the District may desire for this subject to be dealt with in much greater detail.

Subsection 5.01.120(l) relates to cross-ownership restrictions prohibiting haulers from engaging in the operation of transfer stations. It would be necessary at this time, in order to promote competition for the East Transfer Station, to provide for different provisions than presently contained herein. Some of the possible options are discussed in my previous correspondence to the Solid Waste Committee. This is obviously an area that the District will want to deal with some sensitivity. Likewise, it is necessary that this subsection not be applicable in the case of solid waste

industry proposals for transfer stations in Washington County.

Administrative Procedures:

Section 5.01.130 relates to administrative procedures for franchisees. Subsection (a) and (b) relate to accounting procedures and accounting statements. These are inapplicable in that Metro will operate the gate. The franchise agreement will necessarily need to address Metro's accounting to the franchisee in order to provide for a mechanism for Metro to pay the operator rather than the operator to account to Metro. Likewise, subsections 5.01.130(c) and (d) also need to be revised in the context of the specific franchise agreement arrangements to be made.

Franchise Fees:

Section 5.01.140 relates to franchise fees. It may be appropriate for this section to be the basis for a different franchise fee for the operation of this facility than any other, though it may not be necessary to do so. A reference to possibly overriding this provision is included in Ordinance No. 88-276 so that the District may take any appropriate action it wants to in this area. It is not clear to me at this time that any action to so override this section would be necessary.

User Fees:

Section 5.01.150 relating to User Fees is also referred to in Ordinance No. 88-276. This is so because with Metro operation of the gate the issue of how User Fees are collected and accounted for at the contemplated facility might need to be addressed specifically in the franchise agreement in a manner different from contemplated by the provisions of present Section 5.01.150.

Section 5.01.160 relates to reports that need to be filed by collection services. It is inapplicable to the grant of franchise.

Section 5.01.170 relates to the composition of the Rate Review Committee. This section would continue to be applicable whether rates are set by a franchisee or by Metro.

Rates:

Section 5.01.180, Determination of Rates, needs to be addressed in a franchise agreement. The establishment of the

rates may be done on a long-term basis rather than simply by annual review. The Council may want to provide for guarantees from the franchise operator that the cost of processing waste will not increase greater than a rate of inflation while still subjecting the rate structure to review for reasonableness consistent with the criteria contained in Section 5.01.180. The reason for including a reference to this section in Ordinance No. 88-276 is to allow the Council flexibility in determining how the rate structure for a long-term franchise will be determined. Tip Fees and costs need not be the same as followed in the models for operation of the Gilliam County landfill, the transportation services bid, or the existing provisions of the franchise code which virtually guarantee that an operator is protected from any inflationary pressures. Some mix of these policies may be appropriate.

Enforcement:

Section 5.01.190 relates to enforcement of franchise provisions and an appeal procedure. In that any major component of the solid waste system is one where there would be considerable impact on the public if the facility were closed, it is appropriate for the District to devise different remedy provisions to protect the public interest in the event of any default by the operator. Continued operation of the facility would be of paramount concern. Therefore, detailed provisions relating to District ownership and control in the event of default would probably be advisable. Likewise, remedies need to be tailored to give an operator every incentive to operate consistent with the franchise agreement, short of the District needing to always threaten that its only remedy is an outright takeover. Financial incentives for compliance and disincentives for noncompliance may be very appropriate and far more effective than the simple remedy of declaring default. Ordinance No. 88-276 would allow the District to tailor its remedies in a manner that would give far greater flexibility than the present provisions of this Code do. Likewise, it would be appropriate to eliminate some of the due process rights and procedural protections given the present franchise operators by the provisions of this Code in that the District's concerns and interest over a key facility in the system is far greater than its concerns over the operations of the relatively small component of the system.

Sections 5.01.200 and .210 relating to the District's right to purchase and penalties for violations should also be addressed at the same time that the District is considering what its appropriate remedies are in the event of default.

In conclusion, Ordinance No. 88-276 would allow the District

The Honorable Gary Hansen
November 10, 1988
Page 9

to utilize a flexible process to authorize a long-term franchise agreement through a competitive procedure. The resulting agreement could be tailored to fit the specific concerns and needs of the District and operator. The result can be an enforceable agreement that will ensure the District's interests are served.

Yours very truly,



Daniel B. Cooper
General Counsel

gl

Attachment

cc: Committee Members
Rena Cusma
Bob Martin



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

November 22, 1988

The Honorable Gary Hansen
Chair, Council Solid Waste Committee
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
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Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Dear Councilor Hansen:

Re: Ordinance No. 88-276

Enclosed please find a revised version of Ordinance No. 88-276 which is now labeled Ordinance No. 88-276B. This ordinance contains amendment prepared by the Office of General Counsel as a result of the discussion held with the Solid Waste Committee at its meeting on November 15, 1988. The revisions made to the ordinance are delineated below:

References to "long-term" have been eliminated from the title of the ordinance, the Title of the proposed Code section, and paragraph 2 of the "WHEREAS" clauses to the ordinance.

Additional language has been added to the "WHEREAS" clause to delineate that conditions for franchise agreements authorized by the new section would be as "as deemed appropriate by the Council."

Language has been added to new Section 5.01.085(a) making a reference to a new subsection 5.01.085(d), and setting forth that procedural requirements for the issuance of franchise agreements pursuant to the new section shall at a minimum meet the requirements of the new subsection (d).

A reference to 5.01.090, Transfer of Franchise, has been added to subsection (b) and the subsection has been further clarified by indicating that it refers to "procedural" terms and conditions.

Subsection (c) has been amended to clarify that it applies to substantive terms and conditions.

A subparagraph (d) has been added to make mandatory certain portions of the present procedural requirements for franchises. The new language adds the requirement that all

The Honorable Gary Hansen
November 22, 1988
Page 2

applications shall at a minimum provide information regarding the ownership and legal structure of the applicant, the ownership and legal structure of the property owner of the proposed site, the status of any required permits from DEQ and other regulatory bodies including local land use authorities, and other information the District may find necessary or appropriate. Incomplete applications must be rejected. All applications shall be investigated and reviewed by the Executive Officer who shall make a recommendation to the Council regarding each applicant. In addition the criteria specifically listed in present Code Section 5.01.070(c) have been listed as the minimum criteria to be applied by the Council, in addition, compliance with the District's Solid Waste Management Plan is also a criteria. The Council will retain the ability to add additional criteria on a case-by-case basis as the Council finds appropriate.

Further, minimum substantive requirements regarding insurance, surety bonds, restrictions on transfers, or change of control of the franchisee, reporting, and waste reduction plans are now listed as areas that must be addressed in any franchise agreement. The Council would retain flexibility in being able to deal with each of these issues as it deems fit on a case-by-case basis. However, the Council would not be able to totally disregard including any of the above provisions in a franchise agreement.

Yours very truly,



Daniel B. Cooper
General Counsel

gl

Enclosure

cc: Rena Cusma
Bob Martin

DRAFT
COPY

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADDING) ORDINANCE NO. 88-276A
SECTION 5.01.085 TO THE METRO)
CODE RELATING TO LONG-TERM) Introduced by the Council
FRANCHISE AGREEMENTS) Solid Waste Committee

WHEREAS, Chapter 5.01 of the Code of the Metropolitan Service District provides procedures and conditions for authorizing franchise agreements for solid waste disposal facilities; and

WHEREAS, The Council of the Metropolitan Service District has determined that in order to authorize long-term franchise agreements for major components of the solid waste disposal system it is necessary to provide for alternative procedures and conditions for such agreements; now, therefore,
THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

A new Section 5.01.085 is hereby added to Chapter 5.01 of the Metro Code to read as follows:

5.01.085 Long-Term Franchises for Major Disposal System Components

(a) Consistent with the provisions of the Solid Waste Management Plan, the Council may authorize franchise agreements governing the operation of components of the solid waste disposal system found by the Council to be major components of the system. Prior to authorizing a franchise agreement pursuant to this Section, the Council shall by resolution state the Council's intent to authorize such an agreement, describe the system component which will be the subject of the agreement, describe other terms and conditions deemed necessary by the Council and establish the procedures to be followed by the Council in authorizing any such agreement.

(b) If the Council elects to authorize a franchise agreement pursuant to this Section the terms and conditions set forth in the resolution stating the intent to authorize an agreement shall govern the approval of any franchise agreement subsequently authorized by the Council. Sections 5.01.060,

Application; 5.01.070, Issuance; 5.01.080, Term; and 5.01.100, Appeals, of this Chapter, shall not be applicable to such franchise agreements.

(c) Any franchise agreement authorized by the Council pursuant to this Section may contain any terms and conditions the Council deems appropriate. To the extent a franchise agreement authorized by this Section specifically provides to the contrary the provisions of Sections 5.01.120, Responsibilities of Franchisees; 5.01.130, Administrative Procedures for Franchisees; 5.01.140, Franchise Fees; 5.01.150, User Fees; 5.01.180, Determination of Rates; 5.01.190, Enforcement of Franchise Provisions, Appeal; 5.01.200, Right to Purchase; and 5.01.210, Penalties, of this Chapter shall not apply.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1988.

Mike Ragsale, Presiding Officer

ATTEST:

Clerk of the Council

DBC/gl



METRO

Memorandum

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Date: December 27, 1988

To: Rena Cusma, Executive Officer

From: Marie Nelson, Clerk of the Council

Regarding: *gpwb for* TRANSMITTAL OF ORDINANCE NOS. 88-276, 88-278 and 88-279
FOR CONSIDERATION OF VETO

Attached for your consideration are true copies of Ordinance Nos. 88-276, 88-278 and 88-279 adopted by the Council on December 22, 1988.

If you wish to veto these ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Friday, December 30, 1988. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, these ordinances will be considered finally adopted.

I, Unette Horley, received this memo and true copies of Ordinance Nos. 88-276, 88-278 and 88-279 from the Council Clerk on December 27, 1988.

Dated: December 27, 1988

amn/gpwb
ord



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

January 5, 1989

Mr. John Kauffman, County Clerk
Clackamas County
8th and Main
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your county.

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma

- * 88-261, For the Purpose of Amending Chapter 3.01 of the Metropolitan Service District Code to Clarify Standards and Procedures for Identifying Protected Agricultural Land
- * Ordinance No. 88-263, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule for the Purpose of Additional Staffing and Capital Purchases in the Transportation Department
- * Ordinance No. 88-266, For the Purpose of Adopting the Regional Solid Waste Management Plan and Rescinding Prior Solid Waste Plan Provisions
- * Ordinance No. 88-268, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-3: Blazer Homes, Inc.
- * Ordinance No. 88-270, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule to Provide Funding for Legislative Expenditures and Increased National Association of Regional Council Dues
- * Ordinance No. 88-272, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule to Provide Funding for Increase in Oregon Laborer's Trust Health Care Premiums

John Kauffman
January 5, 1989
Page 2

- * Ordinance No. 88-273, For the Purpose of Amending Ordinance No. 88-266B (Relating to the Adoption of the Solid Waste Management Plan) By Establishing Enhancement Fees for Solid Waste Facilities and Adding Land Use Goal Findings
- * Ordinance No. 88-274, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule to Provide Funding for an Analysis for a Publicly Owned Metro East Transfer & Recycling Center
- * Ordinance No. 88-276, For the Purpose of Adding Section 5.01.085 to the Metro Code Relating to Franchise Agreements
- * Ordinance No. 88-277, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule to Reorganize Metro's Word Processing Function
- * Ordinance No. 88-278, For the Purpose of Amending Metro Code Chapter 5.02 Relating to Solid Waste Rates
- * Ordinance No. 88-279, An Ordinance Amending Chapter 2.04 of the Metro Code Relating to Metropolitan Exposition-Recreation Commission Contract Procedures

Sincerely,



A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

January 5, 1989

Mr. Charles D. Cameron
County Administrator
Washington County Courthouse
150 N. First Avenue
Hillsboro, OR 97123

Dear Mr. Cameron:

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your county.

- * Ordinance No. 88-261, For the Purpose of Amending Chapter 3.01 of the Metropolitan Service District Code to Clarify Standards and Procedures for Identifying Protected Agricultural Land
- * Ordinance No. 88-263, An Ordinance Amending Ordinance No. 88-247 Revising the FY 1988-89 Budget and Appropriations Schedule for the Purpose of Additional Staffing and Capital Purchases in the Transportation Department
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Corky Kirkpatrick
District 4

Tom DeJardin
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George Van Bergen
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Sharron Kelley
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Mike Bonner
District 8

Tanya Collier
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Executive Officer
Rena Cusma

Charles D. Cameron
January 5, 1989
Page 2

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Sincerely,



A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

January 5, 1989

Ms. Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, OR 97204

Dear Jane,

Enclosed are true copies of the following ordinances adopted by the Metro Council. Please file these ordinances in the Metro file maintained by your county.

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
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Mike Ragsdale
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George Van Bergen
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Executive Officer
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Jane McGarvin
January 5, 1989
Page 2

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Sincerely,



A. Marie Nelson
Clerk of the Council

AMN:gpwb

enclosure