

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING)	Ordinance No. 89-304
SECTION 5.01.085 OF THE METRO CODE)	
RELATING TO MAJOR DISPOSAL SYSTEM)	Introduced by Mike Ragsdale
COMPONENTS)	Presiding Officer

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 did on December 22, 1988 adopt Section 5.01.085 which added provisions to authorize franchise agreements for major components of the solid waste disposal system and to provide alternative procedures and conditions for such agreements as deemed appropriate by the Council; and

WHEREAS, Section 5.01.085(d) of the December 22, 1988 amendment stated that the Council shall establish procedures for receiving and reviewing applications and criteria to be utilized in determining which, if any, application should be approved; now therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY
ORDAINS:

A definition for "Major Disposal System Component" shall to be added to Section 5.01.010 to read as follows:

- (1) "Major Disposal System Component" means a "Disposal Site", "Processing Facility", "Resource Recovery Facility" or "Transfer Station" which receives or processes a minimum of 50,000 tons per year of "Solid Waste", or which is determined by the Council to be critical to the efficient functioning of the solid waste system.

New Section 5.01.086, 5.01.087, 5.01.088, 5.01.089, and 5.01.101 are hereby added to Chapter 5.01 of the Metro Code to read as follows:

Application and Review Procedures for Proposed Major Disposal System Components:

(a) Applicants for a Major Disposal System Component franchise, or for any transfer of interest in, modification, expansion or renewal of an existing Major Disposal System Component franchise shall file an application as provided for under Section 5.01.085 on forms provided by the Executive Officer. Each applicant shall in addition provide:

(1) Proof that the applicant can obtain a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement in the event such surety is required by the District. In determining the amount of any 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 \$500,000 or such greater amount as the District may require 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. Any such policies shall name the District, its agents and employees as additional named insureds.

(4) If the applicant is not an individual, a list of stockholders holding more than five percent (5%) if a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five percent (5%) 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 agreed to be bound by the provision 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) The name and business address of the owner of the facility property if other than the applicant.

(9) Copies of any agreements or contracts between the applicant and the property owner.

(10) A narrative statement describing in detail the consistency of the applicant's facility with the provisions of the Regional Solid Waste Management Plan.

(11) A detailed description of the type, quantity and source(s) of waste proposed to be received by the facility.

(12) The ultimate planned disposition point of residues or waste leaving the facility (if applicable) and the planned mode of transport.

(13) The type and number of vehicles expected to utilize the facility either to deliver waste or to pick up or transport waste or residue.

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

5.01.087 Issuance of Major Disposal System Component Franchise:

(a) Applications filed in accordance with Section 5.01.085 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 either:

(1) deny the application, or;

(2) formulate recommendations for approval of the franchise application and provide information on the applicant's qualifications, 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) If the Executive Officer does not deny the application or recommend approval within 90 days of receipt of a complete application (in the absence of notice to the applicant specifying the need and purpose of additional time for processing) the application may be forwarded to the Council for consideration and designated as "No Recommendations".

(c) 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 facility 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 recommended for approval by the Executive Officer within one hundred twenty (120) days after the filing of a complete application, the application shall be deemed granted unless the Executive Officer notifies the applicant that more time is 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. Applicants will receive notice of the commencement of the one hundred twenty (120) day period.

(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 as may be required 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 \$500,000 or such greater amount as the District may require 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 its agents and employees as additional named insureds in the insurance policy required by Section 5.01.086.

(f) The granting of the 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 except as may be provided in the Franchise Agreement.

(g) In emergency situations, to ensure a sufficient flow of solid waste to any of the District's resource recovery facilities, the Council or the Executive Officer may, notwithstanding any condition in the franchise agreement to the contrary, 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.

(h) In addition to the authority contained in Section 5.01.087 (f), for the purpose of this chapter, the Executive Officer or the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste which the franchisee may receive 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.

5.01.088 Term of Franchise:

(a) The term for a new or renewed Major Disposal System Component franchise shall be the site longevity or such period as may be determined by the Council. 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) The franchise shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 5.01.087 (b)(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.

5.01.089 Transfer of Franchises:

(a) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its Major Disposal Facility Component franchise to another person unless an application therefore has been filed in accordance with Section 5.01.085 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 (90) days after filing of a complete application, the application shall be deemed approved unless the applicant is notified of the need for additional time for evaluation and determination.

(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.

5.01.101 Appeals: Any Major Disposal System Component applicant or franchisee whose application is recommended for approval by the Executive Officer is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the Council's suspension, modification, revocation or refusal to approve or transfer a franchise or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, the Council's decision not 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.

ADOPTED by the Council of the Metropolitan Service District this

_____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

Not Considered

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