

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO. 00-857B
METRO CODE CHAPTER 7.01 TO)	
CONVERT THE EXCISE TAX LEVIED)	Introduced by the Regional
ON SOLID WASTE TO A TAX LEVIED)	Environmental Management
UPON TONNAGE ACCEPTED AT)	Committee of the Metro Council
SOLID WASTE FACILITIES AND)	
MAKING OTHER RELATED)	
AMENDMENTS)	

WHEREAS, Metro has set a Regional Recovery Rate goal for solid waste of 56 percent by the year 2005; and

WHEREAS, reduction of solid waste in the region is of the utmost importance and should be a priority in Metro's solid waste fee system; and

WHEREAS, Metro needs a stable funding source for its charter mandated responsibilities; and

WHEREAS, Metro needs to respond to recent consolidation within the solid waste industry; and

WHEREAS, newer processing facilities include both wet and dry waste components; and

WHEREAS, the purpose of this ordinance is to further waste reduction and provide stability and predictability in the setting of solid waste fees during the Metro budget cycle; and

WHEREAS, Metro imposes an excise tax for the use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, the tax is currently imposed as a percentage of the payment charged by Metro or by the operator of such solid waste facilities; and

WHEREAS, to enable Metro to fulfill its missions, it is desirable to change the method by which the tax on solid waste is imposed from the current method using a percentage of the payment charged for disposal to a method under which the tax is imposed upon each ton of solid waste disposed at solid waste facilities; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) "Cleanup Material Contaminated By Hazardous Substances" means solid waste resulting from the cleanup of release of hazardous substances into the environment, including petroleum contaminated soils and sandbags from containment of chemical spills provided that such substances are derived from nonrecurring environmental cleanup activity. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(d) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Oregon Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

(e) "Inert" shall have the meaning assigned thereto in Metro Code 5.01.010(t).

(f) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

(g) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(h) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

(i) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(j) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(k) "Processing Residual" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(l) "Facility Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(m) "Regional Recovery Rate" shall have the meaning assigned thereto in ORS 459A.010(4)(a).

(n) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010 including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010 that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

(o) "Source Separate" or "Source Separated" or "Source Separation" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(p) "Source-separated recyclable material" or "Source-separated recyclables" shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(q) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

(r) "Useful material" shall have the meaning assigned thereto in Metro Code Section 5.01.010(ww).

(s) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of solid waste system facilities and each solid waste facility licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2000, and for each fiscal year thereafter subject to Section 4 of this ordinance, the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue of \$5,700,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter.

(e) (1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste

system facilities, (ii) inert materials, and (iii) Cleanup Materials Contaminated by Hazardous Substances, shall be the amount that results from dividing the net excise tax revenue amount set forth in sub-section (d) by the amount of solid waste tonnage which the Executive Officer reports to the Council under sub-section (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be the district's excise tax rate on solid waste during the subsequent Metro fiscal year.

- (e) (2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By December 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Metro Council stating the following:

- (1) For the twelve-month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to section 7.01.050(a) of this chapter, and
- (2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

Year	<u>Regional Recovery Rate</u>
1999	43%
2000	46%
2001	48%
2002	50%
2003	52%
2004	54%
2005	56%

The result of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e)(1).

(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount

resulting from reducing the Excise Tax due by the percentage reduction corresponding with the Facility Recovery Rates provided on the following table:

Excise Tax Credit Schedule		
Facility Recovery Rate		Excise Tax Credit
From Above	Up To & Including	
0%	25%	0%
25%	30%	4%
30%	35%	10%
35%	40%	20%
40%	45%	33%
45%	100%	45%

SECTION 3. Section 4 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 4. Consumer Price Index Adjustment

Commencing with the Metro fiscal year beginning July 1, 2001, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

SECTION 5. Section 6 of this Ordinance is added to and made a part of Metro Code chapter 7.01.

SECTION 6. Budgeting of Excess Revenue:

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the net excise tax revenue amount set forth in Section 7.01.020 (d) as adjusted by Section 4 of this Ordinance, such additional revenue shall be apportioned as follows:

- (a) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Section 7.01.020(c) during the period of the two most recent Metro fiscal years. The budgeting or expenditure of

all such funds within this account shall be subject to review and approval by the Metro Council.

(b) If at the end of any fiscal year, the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.012.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter

(c) Any remaining excess revenue over the amounts apportioned in (a) and (b) of this section shall be placed in the account established in (a).

SECTION 7. Metro Code Section 7.01.050 is amended to read:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

- (1) Persons, users and operators whom the district is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the district or to an operator constitute a donation, gift or bequest for the receipt of which neither the district nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the district for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the district for any purpose other than solid waste disposal, use of a Metro ERC facility, or use of the Metro Washington Park Zoo.
- (6) Users of the following facilities:
 - (A) Facilities that are certified, licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to

the requirements of Metro Code Section 5.01.125(a) as amended by Metro Ord. 00-866;

- (B) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;
 - (C) Licensed yard debris processing facilities or yard debris reload facilities;
 - (D) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.
- (7) Persons making payments to the district on behalf of the Metro Washington Park Zoo for the following purposes:
- (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the district agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the zoo;
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the zoo that is not held on the grounds of the zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the zoo where the event is sponsored and conducted by a nonprofit organization approved by the council and the primary purpose of which is to support the zoo and the proceeds of the event are contributed to the zoo;
 - (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the district for admission to the zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the zoo train shall be subject to tax regardless of whether payment is received

from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

- (8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.
- (9) A tire processor which is regulated pursuant to Metro Code chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.
- (10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a district facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

SECTION 8. Section 9 of this Ordinance is added to and made a part of Metro Code chapter 7.01

SECTION 9. Effective Date and Effect of Initiative Passage.

This Ordinance shall be effective on December 1, 2000, *provided that* during the State of Oregon General Election conducted on November 7, 2000, no amendment to the Oregon Constitution is adopted by the people which prohibits the imposition, adoption or levy of any new tax, fee or charge without first obtaining voter approval. If during such election, such an amendment is adopted by the people of the State of Oregon, the provisions of this

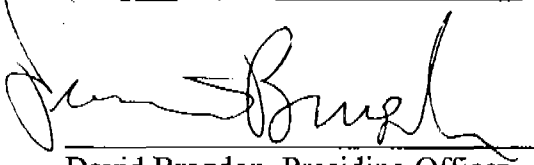
Ordinance shall not become effective and the provisions of Metro Code Chapter 7.01 in effect as of June 1, 2000 shall remain in full force and effect.

SECTION 10. Section 11 of this Ordinance is added to and made a part of Metro Code chapter 7.01

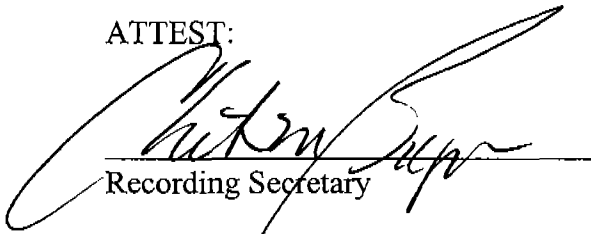
SECTION 11. Council Review of Ordinance Effect

Between March 1, 2002 and March 31, 2002, the Metro Council shall conduct a review of the impacts and effects of this ordinance on the Metro Solid Waste System and shall conduct at least one public hearing regarding any such impacts and effects.


ADOPTED by the Metro Council this 15th day of June, 2000.


David Bragdon, Presiding Officer

ATTEST:


Recording Secretary

Approved as to Form:


Daniel B. Cooper, General Counsel

OGC/MDF/kaj/06/20/2000
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CONVERT THE EXCISE TAX LEVIED)	Introduced by the Regional
ON SOLID WASTE TO A TAX LEVIED)	Environmental Management
UPON TONNAGE ACCEPTED AT)	Committee of the Metro Council
SOLID WASTE FACILITIES AND)	
MAKING OTHER RELATED)	
AMENDMENTS)	

WHEREAS, ~~the State of Oregon Metro~~ has set a ~~recycling~~ Regional Recovery Rate goal for solid waste of 56 percent by the year 2005; and

WHEREAS, ~~recycling reduction~~ of solid waste in the region is of the utmost importance and should be a priority in Metro's solid waste fee system; and

WHEREAS, Metro needs a stable funding source for its charter mandated responsibilities; and

WHEREAS, Metro needs to respond to recent ~~centralization~~ consolidation within the solid waste industry; and

WHEREAS, newer processing facilities include both wet and dry waste components; and

WHEREAS, the purpose of this ordinance is to further ~~recycling~~ waste reduction and provide stability and predictability in the setting of solid waste fees during the Metro budget cycle; and

WHEREAS, Metro imposes an excise tax for the use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, the tax is currently imposed as a percentage of the payment charged by Metro or by the operator of such solid waste facilities; and

WHEREAS, to enable Metro to fulfill its missions, it is desirable to change the method by which the tax on solid waste is imposed from the current method using a percentage of the payment charged for disposal to a method under which the tax is imposed upon each ton of solid waste disposed at solid waste facilities; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) Cleanup Material Contaminated By Hazardous Substances means solid waste resulting from the cleanup of release of hazardous substances into the environment, including petroleum contaminated soils and sandbags from containment of chemical spills provided that such substances are derived from nonrecurring environmental cleanup activity. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(ed) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Metro Washington Park Oregon Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

(d) "Facility Retrieval Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(e) "Inert" shall have the meaning assigned thereto in Metro Code 5.01.010(t).

(def) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

(efg) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(fgh) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal.

Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

(ghi) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(hij) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(jk) "Processing Residual" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(kl) "Facility Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(m) "Regional Recovery Rate" shall have the meaning assigned thereto in ORS 459A.010(4)(a).

(hn) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010 including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010 that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

(mo) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(np) "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(jeq) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

(r) "Useful material" shall have the meaning assigned thereto in Metro Code Section 5.01.010(ww).

(kps) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). ~~Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district.~~ The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

~~(e) In lieu of taxes imposed under (a) of this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of \$1.76 per ton of putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste.~~

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities and each solid waste facility licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is

collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2000, and for each fiscal year thereafter subject to Section 34 of this ordinance, the tax rate imposed and calculated under this section shall be sufficient to generate at least \$5,700,000 in excise tax revenue net excise tax revenue of \$5,700,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter.

(e) The excise tax rate for each ton of solid waste exclusive of source separate recyclable materials accepted at the solid waste system facilities shall be the amount that results from dividing the amount set forth in sub-section (d) by an amount that is equivalent to the sum of the solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, during the twelve month period ending on December 31 of each year, as further adjusted by the Executive Officer under sub-section (f). Subject to subsection 7.01.020(b), the rate so determined shall be the district's rate excise tax on solid waste during the subsequent Metro fiscal year.

(e)(1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, and (iii) Cleanup Materials Contaminated by Hazardous Substances, shall be the amount that results from dividing the net excise tax revenue amount set forth in sub-section (d) by the amount of solid waste tonnage which the Executive Officer reports to the Council under sub-section (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be the district's excise tax rate on solid waste during the subsequent Metro fiscal year.

(e)(2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By June 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Council stating the amount of solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, for the twelve month period ending the previous December 31. Based upon the tonnage amount set forth in such written report, the Executive Officer at the same time shall calculate the amount of such solid waste tonnage that would have been generated during the previous calendar year if the solid waste recovery rates corresponding for each calendar year set forth on the following schedule had been achieved:

<u>Year</u>	<u>Recovery Rate</u>
<u>2000</u>	<u>46%</u>

<u>2001</u>	<u>48%</u>
<u>2002</u>	<u>50%</u>
<u>2003</u>	<u>52%</u>
<u>2004</u>	<u>54%</u>
<u>2005</u>	<u>56%</u>

The product of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e) of this section.

(f) By December 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Metro Council stating the following:

“(1) For the twelve-month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to section 7.01.050(a) of this chapter, and

“(2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

<u>Year</u>	<u>Regional Recovery Rate</u>
<u>1999</u>	<u>43%</u>
<u>2000</u>	<u>46%</u>
<u>2001</u>	<u>48%</u>
<u>2002</u>	<u>50%</u>
<u>2003</u>	<u>52%</u>
<u>2004</u>	<u>54%</u>
<u>2005</u>	<u>56%</u>

The result of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e)(1).

(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e) or (f) for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

<u>Excise Tax Credit Schedule</u>	
<u>Recovery Rate</u>	<u>Excise Tax Credit</u>

<u>From Above</u>	<u>Up To & Including</u>	
<u>0%</u>	<u>20%</u>	<u>0%</u>
<u>20%</u>	<u>25%</u>	<u>4%</u>
<u>25%</u>	<u>30%</u>	<u>10%</u>
<u>30%</u>	<u>35%</u>	<u>20%</u>
<u>35%</u>	<u>40%</u>	<u>33%</u>
<u>40%</u>	<u>100%</u>	<u>45%</u>

(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount resulting from reducing the Excise Tax due by the percentage reduction corresponding with the Facility Recovery Rates provided on the following table:

<u>Excise Tax Credit Schedule</u>		
<u>From Above</u>	<u>Up To & Including</u>	<u>Excise Tax Credit</u>
<u>0%</u>	<u>25%</u>	<u>0%</u>
<u>25%</u>	<u>30%</u>	<u>4%</u>
<u>30%</u>	<u>35%</u>	<u>10%</u>
<u>35%</u>	<u>40%</u>	<u>20%</u>
<u>40%</u>	<u>45%</u>	<u>33%</u>
<u>45%</u>	<u>100%</u>	<u>45%</u>

SECTION 3. Section 4 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 4. Consumer Price Index Adjustment

Commencing with the Metro fiscal year beginning July 1, 2001, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

SECTION 5. Budgeting of Excess Revenue

~~Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the amount set forth in Section 7.01.020 (e) as adjusted by Section 4 of this Ordinance, such additional revenue shall be placed in an account within the General Fund specifically created to receive such revenue. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.~~

SECTION 5. Section 6 of this Ordinance is added to and made a part of Metro Code chapter 7.01.

SECTION 6. Budgeting of Excess Revenue:

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the net excise tax revenue amount set forth in Section 7.01.020 (d) as adjusted by Section 4 of this Ordinance, such additional revenue shall be apportioned as follows:

(1) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve Account established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Section 7.01.020(c) during the period of the two most recent Metro fiscal years. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.

(2) If at the end of any fiscal year, the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.012.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter

(3) Any remaining excess revenue over the amounts apportioned in (1) and (2) of this section shall be placed in the account established in (1).

SECTION 7. Metro Code Section 7.01.050 is amended to read:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

- (1) Persons, users and operators whom the district is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the district or to an operator constitute a donation, gift or bequest for the receipt of which neither the district nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the district for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the district for any purpose other than solid waste disposal, use of a Metro ERC facility, or use of the Metro Washington Park Zoo.

~~(6) An operator of a solid waste facility certified, licensed, or franchised under chapter 5.01 of this Code, other than any disposal sites or transfer stations owned, operated or franchised by the district, provided that such operator performs resource recovery or performs operations limited to transfer of yard debris.~~

(6) Users of the following facilities:

- (i) Facilities that are certified, licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a) as amended by Metro Ord. 00-866;
- (ii) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;
- (iii) Licensed yard debris processing facilities or yard debris reload facilities;
- (iv) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.

- (7) Persons making payments to the district on behalf of the Metro Washington Park Zoo for the following purposes:
- (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the district agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the zoo;
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the zoo that is not held on the grounds of the zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the zoo where the event is sponsored and conducted by a nonprofit organization approved by the council and the primary purpose of which is to support the zoo and the proceeds of the event are contributed to the zoo;
 - (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the district for admission to the zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.
- (8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.
- (9) A tire processor which is regulated pursuant to Metro Code chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2).

This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

(10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a district facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

SECTION 8. Section 9 of this Ordinance is added to and made a part of Metro Code chapter 7.01

SECTION 9. Effective Date and Effect of Initiative Passage.

This Ordinance shall be effective on December 1, 2000, provided that during the State of Oregon General Election conducted on November 7, 2000, no amendment to the Oregon Constitution is adopted by the people which prohibits the imposition, adoption or levy of any new tax, fee or charge without first obtaining voter approval. If during such election, such an amendment is adopted by the people of the State of Oregon, the provisions of this Ordinance shall not become effective and the provisions of Metro Code Chapter 7.01 in effect as of June 1, 2000 shall remain in full force and effect.

SECTION 10. Section 11 of this Ordinance is added to and made a part of Metro Code chapter 7.01

SECTION 11. Council Review of Ordinance Effect

Between March 1, 2002 and March 31, 2002, the Metro Council shall conduct a review of the impacts and effects of this ordinance on the Metro Solid Waste System and shall conduct at least one public hearing regarding any such impacts and effects.

ADOPTED by the Metro Council this _____ day of _____, 2000.

David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

OGC/MDF/jep 06/07/2000
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REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 00-857B, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO CONVERT THE EXCISE TAX LEVIED ON SOLID WASTE TO A TAX LEVIED UPON TONNAGE ACCEPTED AT SOLID WASTE FACILITIES AND MAKING OTHER RELATED CHANGES

Date: June 12, 2000

Presented by: Councilor Park

Committee Recommendation: At its June 7 meeting, the Committee considered Ordinance No. 00-857B and voted unanimously to send the ordinance, as amended, to the Council with a do pass recommendation. Voting in favor: Councilors Park and McLain and Chair Washington.

Background: In 1990, the Metro Council adopted Metro Code Chapter 7.01, which established a percentage excise tax on various Metro services and functions. Since its enactment, the excise tax rate and the activities that are subject to the tax have been modified several times. Currently, the tax on solid waste disposal generates about 75% of the total tax revenue, while activities at the Zoo, Convention Center and Expo Center generate most of the remaining revenue. Excise tax revenues are placed in the Metro General Fund.

Since the excise tax was enacted, the voters of the region and the state have authorized or mandated that Metro perform several new functions. These include various growth management planning activities and the management of open spaces purchased with the proceeds of the voter-approved open spaces bond measure. In addition, Metro also assumed management responsibility for the Multnomah County parks system. None of these programs included a significant source of funding, and therefore, Metro has used its excise tax to provide the necessary operating funds for these programs.

The Metro Code and the state also have established percentage goals for waste reduction and recycling from the region's wastestream. The effect of achieving these goals will be to reduce the amount of tonnage that is subject to the excise tax. Thus, because a large portion of the total excise tax collections come from solid waste tonnage there is a fundamental conflict between the need to meet the region's recycling goals and the need to provide adequate revenue to fund Metro's programs that are dependent on the excise tax.

Ordinance 00-857B seeks to address and resolve these conflicting goals. First, it replaces the percentage tax with a per ton tax. This allows all disposal tonnage to be taxed equally, regardless of the disposal facility that is used. Second, it sets an amount in the code that is to be raised by the tonnage tax based on current need. This amount would be adjusted by the rate of inflation in future years. Third, the annual tax rate will be calculated based on the previous year's tonnage adjusted for an aspirational recycling rate.

A section-by-section analysis of the ordinance is included in the attached executive summary.

The ordinance was first presented in a conceptual form at the March Solid Waste Advisory Committee (SWAC) meeting. Various drafts of the ordinance have been considered at three additional SWAC meeting and at a meeting of the Rate Review Committee.

Committee Issues/Discussion: Councilor Park gave introductory remarks concerning the goals and basic elements of the proposed ordinance. Terry Petersen, REM Director, presented background information on how the ordinance would be implemented. His presentation focused on the nature of the flat per ton tax. He explained that the initial tax would be \$4.63/ ton, effective December 1, 2000.

Petersen noted that the tax would be collected from users of the Metro transfer stations and the Forest Grove Transfer Station in the same way that the current percentage tax is collected. Material recovery facilities also would pay the tax on their residual material in the same manner that they currently pay the percentage tax. New transfer stations authorized under the transfer station service plan (see Ordinances 00-865, 00-866, and 00-867) would not be required to collect the tax, but would be required to pay the tax on their residual material. Direct haul facilities would pay the full amount of the tax, while the tax on petroleum contaminated soil would be a reduced rate of \$1 ton.

Councilor McLain asked why the tax would be collected on material that was ultimately recycled at the Metro Stations and at Forest Grove. Petersen responded that the existing tax was collected on this material and that the new ordinance sought to retain as many elements of the current collection system as possible. He also noted that, due to their design, very little recycling was currently done at either Forest Grove or Metro South.

Councilor McLain also asked for an explanation of the difference between the existing rate stabilization account and the proposed recovery rate stabilization reserve. Petersen and Councilor Park responded. They noted that the existing stabilization account was designed to insure that the disposal tip fee would not be subject to large increases resulting from factors that might cause a decrease on tonnage. The recovery rate reserve is designed to provide stability for collections under that per ton tax in future years should unforeseen factors cause less than the budgeted amount to be collected.

Councilor Atherton asked for an explanation of the proposed tax credits for those facilities that reach certain recycling goals, specifically why there are graduated tiers. Councilor Park explained that the higher the percentage of recycling at the facility, the greater the percentage of the tax credit they would receive. The intent would be to encourage such facilities to go after material that is more difficult to recycle.

Councilor Atherton then asked about the cost of administering the tax credit program. Petersen responded that the staff had prior experience in administering the regional system fee credit program. Because the tiers for the tax credit are identical to those used for the system fee credit, the only additional cost would be the development of reporting forms for the new per ton tax.

The committee then received testimony from several industry representatives in support of the ordinance. Merle Irvine, representing Willamette Resources, noted that he had initially thought that the new per ton tax would significantly increase the tax burden for his facility, but that the addition of the tax credit and other amendments would result in only a small increase. He expressed some concern about the inflationary adjustment of the amount to be collected and adjusting the tonnage amount by the aspirational recycling rates. But, he would be willing to see how these adjustments work for a short period of time. He praised the proposed amendment that would require Council review of the ordinance in March 2002.

Dean Kampfer, representing Waste Management, noted that, while his company might pay some additional tax, "the company recognizes the benefits of the proposed system and is committed to helping the region meet its waste recovery goals." He also indicated that some of the new elements of the ordinance would need to be tracked closely.

Dave White, representing local hauling interests, expressed general support for the ordinance. He noted that the per ton tax will have the effect of treating all tons equally for tax purposes. He expressed concern that the use of the aspirational recycling goals to calculate the tax added a level of complexity to the ordinance. He indicated that, while many haulers would have preferred to have any overcollected taxes returned as a future tax offset, the proposed reserve would help insure that these funds would be properly spent.

Ralph Gilbert, representing East County Recycling, testified in strong support of the ordinance. He noted that it would have the effect of leveling the playing field. He also expressed interest in increasing the minimum recycling rate to qualify for the tax credit, but recognized the need to balance facility-based recycling with the need to encourage source-separated recycling.

Aleta Woodruff testified in favor of returning a portion of Metro's contract savings to the ratepayers.

The committee made two minor amendments to the ordinance. First, the Financial Planning requested that the Recovery Rate Stabilization Account be renamed as a "reserve". This change would clarify the purpose of the reserve under state budget law. The second amendment was to clarify the funds in reserve could not be allocated without prior Council approval.

Executive Summary

Ordinance No. 00-857A is seeking to achieve five basic goals.

GOALS

- EQUITY
- PROVIDE TAX INCENTIVES TO ENCOURAGE ADDITIONAL RECYCLING
- INSURE THAT METRO'S TAX SYSTEM DOES NOT HAMPER ACHIEVING OUR RECYCLING GOALS, BUT ACTUALLY ASSISTS IN ACHIEVING THOSE GOALS
- PROVIDE A MORE PREDICTABLE LEVEL OF FUNDING FOR METRO'S CURRENT CHARTER-MANDATED PROGRAMS AND
- PROVIDE A SIMPLE METHOD OF CALCULATING THE ANNUAL TAX RATE

BASIC ELEMENTS OF THE PROPOSED ORDINANCE:

- 1) Convert the current percentage excise tax to a per ton tax.
- 2) Establish a methodology for calculating the tax rate annually based on the prior year's solid waste tonnage and an aggressive percentage-recycling goal.
- 3) Set the initial tax rate for FY 2000-01 at a level that would raise an amount equal to the amount raised by the current percentage tax.
- 4) Place the amount to be raised in the ordinance and allow the amount to increase based on the CPI. The initial amount would be \$5.7 million.
- 5) If actual revenues exceed the amount calculated under the ordinance, all excess funds would be placed in a special account or used to enhance the tax credits for facilities that recycle at higher levels. Spending from this account would require a specific action by the Council.
- 6) Establish tax credit for recycling facilities to encourage additional recycling.

SECTION BY SECTION REVIEW:

Section 1. (Definitions)

Provides term definitions necessary for the operation of the ordinance. The amendments provide references to existing definitions in other code sections and add definitions for the terms "cleanup material contaminated by hazardous substances", "facility recovery rate", and "regional recovery rate".

Section 2. (Amends Metro Code 7.01.020)

The section provides necessary amendments to the existing excise tax code. These changes are needed to:

- Replace the existing percentage tax with a per ton tax (7.01.020 (a) (b) and (c))
- Establish the tax payment method (7.01.020 (c))
- Establish who should pay the tax and what types of tonnage are subject to the tax (7.01.020 (c) and (e))
- Establish the initial amount to be raised by the tax (7.01.020(d))
- Establish how the tax is to be calculated (7.01.020 (f))
- Establish a tax credit for facilities that recycle at a rate that exceeds 25% (7.01.020 (g))
-

The proposed amendments would affect subsection (c) through (g). The intent of these amendments is to:

- Clarify that direct haulers and out of district waste would be subject to the per ton tax by repealing the old 7.01.020.
- Clarify that source separated materials and inert materials would not be subject to the tax (subsection (d)).
- Establish a separate, lower tax of \$1/ton for cleanup materials contaminated by hazardous substances (mostly PCS) (subsection (e)(2)).
- Ensure that the tonnage base for the calculation of the tax is the same as the tonnage base on which the tax will be collected (subsections (e) and (f))
- Modify the tax credit table for conform with the credit table for the regional system fee (subsection (g)).

Section 3 (Adds Section 4 to Metro Code Chapter 7.01)

Section 4 (Provides for an Annual CPI Adjustment of the Amount of Tax to Be Collected)

This section provides that the dollar amount of the tax to be collected shall be annually modified by the Consumer Price Index calculated for the Portland-Vancouver area. This section was not amended.

Section 5 (Adds Section 6 to Metro Code Chapter 7.01)

Section 6 (Budgeting of Excess Revenue)

This section establishes how any excess revenue from the tax would be apportioned:

- First, these funds would be placed in a recovery rate stabilization account with the general fund. The maximum balance for this account would be an amount equal to 10% of the total per ton excise tax collections from the solid waste system in the preceding two fiscal years.
- Second, if additional revenue exceeds the maximum balance for the recovery rate stabilization account, an additional tax credit would be given to facilities with a recovery rate of greater than 45%. The total credit could not exceed the amount owed by the facility.
- Third, if excess revenue exceeds the both of the needs noted above, these funds would revert to the recovery rate stabilization account.

Section 7 (Clarifies tax exemption for certain facility users)

The exemptions would include users of:

- facilities that treat cleanup material Contaminated by Hazardous Wastes (generally facilities that use a heating process to cleanse PCS)
- licensed yard debris processing facilities
- tire processing facilities, and
- facilities that are certified, licensed, franchised or exempt from regulation other than disposal sites or transfer stations that are not subject to Metro Code 5.01.125(a)

In addition, persons delivering useful materials to disposal sites that are used as daily cover or for other productive uses are also exempt.

Section 8 (Adds Section 9 to Metro Code Chapter 7.01)

Section 9 (Relationship of Proposed Ordinance to Proposed Initiative Requiring Voter Approval of New Taxes)

A proposed initiative would require voter approval of new taxes such as the one proposed in Ordinance 00-857A. This section would move the effective date of the ordinance to December 1, at which time the outcome of the vote on the proposed initiative would be known. If the initiative passes, the ordinance would not take effect and the current percentage-based excise tax system would continue. If it fails, this ordinance would take effect.

Section 10 (Adds Section 11 to Metro Code Chapter 7.01)

Section 11 (Council Review of Ordinance Effect)

This section requires that the Council review the impacts and effects of the ordinance in March 2002.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO. 00-857A
METRO CODE CHAPTER 7.01 TO)	
CONVERT THE EXCISE TAX LEVIED)	Introduced by the Regional
ON SOLID WASTE TO A TAX LEVIED)	Environmental Management
UPON TONNAGE ACCEPTED AT)	Committee of the Metro
SOLID WASTE FACILITIES AND)	Council
MAKING OTHER RELATED)	
AMENDMENTS)	

WHEREAS, ~~the State of Oregon Metro~~ has set a ~~recycling~~ Regional Recovery Rate goal for solid waste of 56 percent by the year 2005; and

WHEREAS, ~~recycling~~ reduction of solid waste in the region is of the utmost importance and should be a priority in Metro's solid waste fee system; and

WHEREAS, Metro needs a stable funding source for its charter mandated responsibilities; and

WHEREAS, Metro needs to respond to recent ~~centralization~~ consolidation within the solid waste industry; and

WHEREAS, newer processing facilities include both wet and dry waste components; and

WHEREAS, the purpose of this ordinance is to further ~~recycling~~ waste reduction and provide stability and predictability in the setting of solid waste fees during the Metro budget cycle; and

WHEREAS, Metro imposes an excise tax for the use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, the tax is currently imposed as a percentage of the payment charged by Metro or by the operator of such solid waste facilities; and

WHEREAS, to enable Metro to fulfill its missions, it is desirable to change the method by which the tax on solid waste is imposed from the current method using a percentage of the payment charged for disposal to a method under which the tax is imposed upon each ton of solid waste disposed at solid waste facilities; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) Cleanup Material Contaminated By Hazardous Substances means solid waste resulting from the cleanup of release of hazardous substances into the environment, including petroleum contaminated soils and sandbags from containment of chemical spills provided that such substances are derived from nonrecurring environmental cleanup activity. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(ed) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the ~~Metro Washington Park Oregon Zoo~~, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

~~(d) "Facility Retrieval Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.~~

(e) "Inert" shall have the meaning assigned thereto in Metro Code 5.01.010(t).

(def) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

(efg) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(fgh) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal.

Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

(ghi) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(hij) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(jk) "Processing Residual" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(kl) "Facility Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(m) "Regional Recovery Rate" shall have the meaning assigned thereto in ORS 459A.010(4)(a).

(in) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010 including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010 that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

(mo) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(np) "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting shall have the meaning assigned thereto in Metro Code Section 5.01.010.

(joq) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

(r) "Useful material" shall have the meaning assigned thereto in Metro Code Section 5.01.010(w).

(kps) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). ~~Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district.~~ The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

~~(c) In lieu of taxes imposed under (a) of this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of \$1.76 per ton of putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste.~~

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities and each solid waste facility licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is

collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2000, and for each fiscal year thereafter subject to Section 34 of this ordinance, the tax rate imposed and calculated under this section shall be sufficient to generate at least \$5,700,000 in excise tax revenue net excise tax revenue of \$5,700,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter.

(e) The excise tax rate for each ton of solid waste exclusive of source separate recyclable materials accepted at the solid waste system facilities shall be the amount that results from dividing the amount set forth in sub-section (d) by an amount that is equivalent to the sum of the solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, during the twelve-month period ending on December 31 of each year, as further adjusted by the Executive Officer under sub-section (f). Subject to subsection 7.01.020(b), the rate so determined shall be the district's rate excise tax on solid waste during the subsequent Metro fiscal year,

(e)(1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, and (iii) Cleanup Materials Contaminated by Hazardous Substances, shall be the amount that results from dividing the net excise tax revenue amount set forth in sub-section (d) by the amount of solid waste tonnage which the Executive Officer reports to the Council under sub-section (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be the district's excise tax rate on solid waste during the subsequent Metro fiscal year.

(e)(2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By June 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Council stating the amount of solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, for the twelve-month period ending the previous December 31. Based upon the tonnage amount set forth in such written report, the Executive Officer at the same time shall calculate the amount of such solid waste tonnage that would have been generated during the previous calendar year if the solid waste recovery rates corresponding for each calendar year set forth on the following schedule had been achieved:

<u>Year</u>	<u>Recovery Rate</u>
<u>2000</u>	<u>46%</u>

<u>2001</u>	<u>48%</u>
<u>2002</u>	<u>50%</u>
<u>2003</u>	<u>52%</u>
<u>2004</u>	<u>54%</u>
<u>2005</u>	<u>56%</u>

The product of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e) of this section.

(f) By December 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Metro Council stating the following:

“(1) For the twelve-month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to section 7.01.050(a) of this chapter, and

“(2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

<u>Year</u>	<u>Regional Recovery Rate</u>
<u>1999</u>	<u>43%</u>
<u>2000</u>	<u>46%</u>
<u>2001</u>	<u>48%</u>
<u>2002</u>	<u>50%</u>
<u>2003</u>	<u>52%</u>
<u>2004</u>	<u>54%</u>
<u>2005</u>	<u>56%</u>

The result of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e)(1).

~~(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(c) or (f) for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:~~

<u>Excise Tax Credit Schedule</u>	
<u>Recovery Rate</u>	<u>Excise Tax Credit</u>

<u>From Above</u>	<u>Up To & Including</u>	
0%	20%	0%
20%	25%	4%
25%	30%	10%
30%	35%	20%
35%	40%	33%
40%	100%	45%

(g) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount resulting from reducing the Excise Tax due by the percentage reduction corresponding with the Facility Recovery Rates provided on the following table:

<u>Excise Tax Credit Schedule</u>		
<u>Facility Recovery Rate</u>		<u>Excise Tax Credit</u>
<u>From Above</u>	<u>Up To & Including</u>	
0%	25%	0%
25%	30%	4%
30%	35%	10%
35%	40%	20%
40%	45%	33%
45%	100%	45%

SECTION 3. Section 4 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 4. Consumer Price Index Adjustment

Commencing with the Metro fiscal year beginning July 1, 2001, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

SECTION 5. Budgeting of Excess Revenue

~~Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the amount set forth in Section 7.01.020 (c) as adjusted by Section 4 of this Ordinance, such additional revenue shall be placed in an account within the General Fund specifically created to receive such revenue. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.~~

SECTION 5. Section 6 of this Ordinance is added to and made a part of Metro Code chapter 7.01.

SECTION 6. Budgeting of Excess Revenue:

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the net excise tax revenue amount set forth in Section 7.01.020 (d) as adjusted by Section 4 of this Ordinance, such additional revenue shall be apportioned as follows:

(1) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Account established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Section 7.01.020(c) during the period of the two most recent Metro fiscal years.

(2) If at the end of any fiscal year, the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.012.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter

(3) Any remaining excess revenue over the amounts apportioned in (1) and (2) of this section shall be placed in the account established in (1).

SECTION 7. Metro Code Section 7.01.050 is amended to read:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

- (1) Persons, users and operators whom the district is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.

- (2) Persons who are users and operators of the Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the district or to an operator constitute a donation, gift or bequest for the receipt of which neither the district nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the district for a business license pursuant to ORS 701.015.
- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the district for any purpose other than solid waste disposal, use of a Metro ERC facility, or use of the Metro Washington Park Zoo.
- ~~(6) An operator of a solid waste facility certified, licensed, or franchised under chapter 5.01 of this Code, other than any disposal sites or transfer stations owned, operated or franchised by the district, provided that such operator performs resource recovery or performs operations limited to transfer of yard debris.~~
- (6) Users of the following facilities:
 - (i) Facilities that are certified, licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a) as amended by Metro Ord. 00-866;
 - (ii) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;
 - (iii) Licensed yard debris processing facilities or yard debris reload facilities;
 - (iv) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.
- (7) Persons making payments to the district on behalf of the Metro Washington Park Zoo for the following purposes:

- (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the district agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the zoo;
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the zoo that is not held on the grounds of the zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the zoo where the event is sponsored and conducted by a nonprofit organization approved by the council and the primary purpose of which is to support the zoo and the proceeds of the event are contributed to the zoo;
 - (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the district for admission to the zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.
- (8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.
- (9) A tire processor which is regulated pursuant to Metro Code chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

(10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a district facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

SECTION 8. Section 9 of this Ordinance is added to and made a part of Metro Code chapter 7.01

SECTION 9. Effective Date and Effect of Initiative Passage.

This Ordinance shall be effective on December 1, 2000, provided that during the State of Oregon General Election conducted on November 7, 2000, no amendment to the Oregon Constitution is adopted by the people which prohibits the imposition, adoption or levy of any new tax, fee or charge without first obtaining voter approval. If during such election, such an amendment is adopted by the people of the State of Oregon, the provisions of this Ordinance shall not become effective and the provisions of Metro Code Chapter 7.01 in effect as of June 1, 2000 shall remain in full force and effect.

SECTION 10. Section 11 of this Ordinance is added to and made a part of Metro Code chapter 7.01

SECTION 11. Council Review of Ordinance Effect

Between March 1, 2002 and March 31, 2002, the Metro Council shall conduct a review of the impacts and effects of this ordinance on the Metro Solid Waste System and shall conduct at least one public hearing regarding any such impacts and effects.

ADOPTED by the Metro Council this _____ day of _____,
2000.

David Bragdon, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

OGC/MDF/kaj 06/05/2000
a:\ord857.orig.doc

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 00-857
CODE CHAPTER 7.01 TO CONVERT THE) Introduced by Council
EXCISE TAX LEVIED ON SOLID WASTE) Regional Environmental
TO A TAX LEVIED UPON TONNAGE) Management Committee
ACCEPTED AT SOLID WASTE FACILITIES AND)
MAKING OTHER RELATED AMENDMENTS)

WHEREAS, the State of Oregon has set a recycling goal for solid waste of 56 percent by the year 2005; and

WHEREAS, recycling of solid waste in the region is of the utmost importance and should be a priority in solid waste fee system; and

WHEREAS, Metro needs a stable funding source for its charter mandated responsibilities; and

WHEREAS, Metro needs to respond to recent centralization within the solid waste industry; and

WHEREAS, newer processing facilities include both wet and dry waste components; and

WHEREAS, the purpose of this ordinance is to further recycling and provide stability and predictability in the setting of solid waste fees during the Metro budget cycle; and

WHEREAS, Metro imposes an excise tax for the use of the facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by Metro; and

WHEREAS, the tax is currently imposed as a percentage of the payment charged by Metro or by the operator of such solid waste facilities; and

WHEREAS, to enable Metro to fulfill its missions, it is desirable to change the method by which the tax on solid waste is imposed from the current method using a percentage of the payment charged for disposal to a method under which the tax is imposed upon each ton of solid waste disposed at solid waste facilities; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.010 is amended to read:

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Accrual basis accounting" means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

(b) "Cash basis accounting" means revenues are recorded when cash is received.

(c) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Metro Washington Park Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the district.

(d) "Facility Retrieval Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(e) "Installment payments" means the payment of any amount that is less than the full payment owed either by any user to the district or to an operator or by an operator to the district.

(f) "Metro ERC facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(g) "Operator" means a person other than the district who receives compensation from any source arising out of the use of a district facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

(h) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(i) "Payment" means the consideration charged, whether or not received by the district or an operator, for the use of a district facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(j) "Processing Residual shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(k) "Recovery Rate" shall have the meaning assigned thereto in Metro Code Section 5.02.015.

(l) "Solid waste system facility" means all facilities defined as such pursuant to section 5.05.010 including but not limited to all designated facilities set forth in section 5.05.030 and any non-system facility as defined in section 5.05.010 that receives solid waste from within the Metro boundary whether pursuant to an authorized non-system license or otherwise.

(m) "Source Separate" or "Source Separated" or "Source Separation" means that the person who last uses recyclable material separates the recyclable material from Solid Waste.

(n) "Source-separated recyclable material" or "Source-separated recyclables" means material that has been Source Separated for the purpose of Reuse, Recycling, or Composting.

(o) "Tax" means the tax imposed in the amount established in subsection 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

(p) "User" means any person who pays compensation for the use of a district facility or receives a product or service from a district facility subject to the payment of compensation

SECTION 2. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). ~~Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district.~~ The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, certified, licensed, franchised, or provided by the district, each user of all solid waste system facilities shall pay a tax in the amount calculated under section (e) for each ton of solid waste exclusive of source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2000, and for each year thereafter subject to Section 3 of this ordinance, the tax rate imposed and calculated under this section shall be sufficient to generate at least \$5,700,000 in excise tax revenue.

(e) The excise tax rate for each ton of solid waste exclusive of source separate recyclable materials accepted at the solid waste system facilities shall be the amount that results from dividing the amount set forth in sub-section (d) by an amount that is equivalent to the sum of the solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, during the twelve-month period ending on December 31 of each year, as further adjusted by the Executive Officer under sub-section (f). Subject to subsection 7.01.020(b), the rate so determined shall be the district's rate excise tax on solid waste during the subsequent Metro fiscal year,

(f) By June 1, 2000 and by March 1st of each year thereafter, the Executive Officer shall provide a written report to the Council stating the amount of solid waste tonnage generated within the district and delivered to any disposal site for disposal, exclusive of inert materials and materials accepted for and actually used for a beneficial purpose at a disposal site, for the twelve-month period ending the previous December 31. Based upon the tonnage amount set forth in such written report, the Executive Officer at the same time shall calculate the amount of such solid waste tonnage that would have been generated during the previous calendar year if the solid waste recovery rates

corresponding for each calendar year set forth on the following schedule had been achieved:

Year	Recovery Rate
2000	46%
2001	48%
2002	50%
2003	52%
2004	54%
2005	56%

The product of such calculation by the Executive Officer shall be used to determine the excise tax rate under sub-section (e) of this section.

(ef) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 and which attains a Facility Retrieval Rate of 10 percent or greater shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(c) or (df) for disposal of Processing Residuals from the facility. The Facility Retrieval Rate and the Recovery Rate shall be calculated for each six-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

Recovery Rate	Excise Tax Credit	
From Above	Up To & Including	
0%	20%	0%
20%	25%	4%
25%	30%	10%
30%	35%	20%
35%	40%	33%
40%	100%	45%

(fg) In lieu of taxes imposed under this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under chapter 5.01 of this Code to deliver putrescible waste directly to the district's contract operator for disposal of putrescible waste shall pay a tax in the amount of annually calculated under Section 7.01.020(e) \$5.02 per ton of for putrescible waste delivered directly to the district's contract operator for disposal of putrescible waste.

SECTION 3. Section 4 of this Ordinance is added to and made a part of Metro Code Chapter 7.01.

SECTION 4. Consumer Price Index Adjustment

Commencing with the Metro fiscal year beginning July 1, 2000~~1~~, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) reported for the first six months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Executive Officer deems appropriate.

SECTION 5. Budgeting of Excess Revenue

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the amount set forth in Section 7.01.020 (c) as adjusted Section 4 of this ordinance, such additional revenue shall be placed in an account within the General Fund specifically created to receive such revenue. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.

ADOPTED by the Metro Council this _____ day of _____,
2000.

ATTEST:

Recording Secretary

David Bragdon, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel