

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.01 TO) ORDINANCE NO. 06-1101
MODIFY FINANCIAL ASSURANCE)
REQUIREMENTS FOR SOLID WASTE FACILITY) Introduced by Michael Jordan,
LICENSE APPLICATIONS) Chief Operating Officer, with the
) concurrence of David Bragdon,
) Council President

WHEREAS, Metro Code Section 5.01.060(c)(4) requires applicants for solid waste facility licenses and franchises to provide proof of financial assurance for the cost of closure of their proposed facilities; and

WHEREAS, the Metro Code was amended in October, 2003, to provide the Chief Operating Officer with authority to approve and issue solid waste facility licenses, whereas such licenses had previously been approved by the Council; and

WHEREAS, some clarification of financial assurance requirements for solid waste facility license applicants is necessary to guide the Chief Operating Officer and prospective solid waste facility operators; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Section 5.01.010 is amended to add the following definition as a new subsection (e), and to renumber the remaining subsections as appropriate:

(e) “Closure” means the restoration of a Solid Waste Facility or a Disposal Site to its condition prior to the commencement of licensed or franchised Solid Waste activities at the site. Closure includes, but is not limited to, the removal of all accumulations of Solid Waste and Recyclable Materials from the site.

Metro Code Section 5.01.060 is amended as follows:

5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

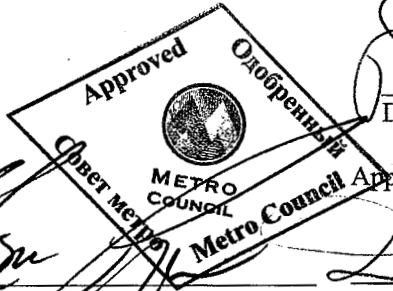
(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

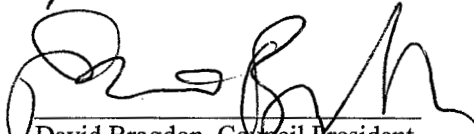
- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (3) A duplicate copy of any ~~e~~losure-Closure plan required to be submitted to DEQ, or if DEQ does not require a ~~e~~losure-Closure plan, a ~~e~~losure-Closure document describing ~~e~~losure-Closure protocol for the Solid Waste Facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of ~~e~~Closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit, ~~proof of a~~ proposal for providing financial assurance, prior to the commencement of Metro-regulated activities, for the costs of ~~e~~Closure of the facility. The proposal shall include an estimate of the cost to implement the Closure plan required in Section 5.01.060(c)(3). If an application is approved, the license or franchise shall require that financial assurance is in place prior to beginning any activities authorized by the license or franchise. However, regarding applications for licenses, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the Closure plan required in Section 5.01.060(c)(3) will be less than \$10,000.
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;
- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and
- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application, and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

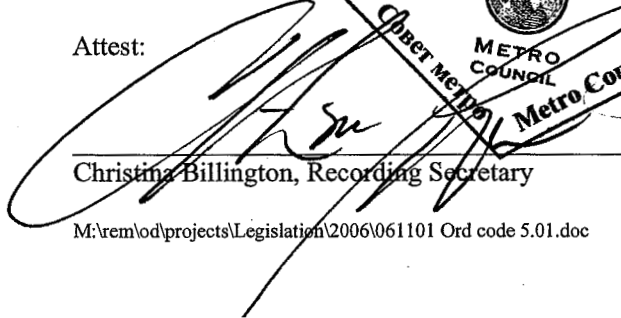
(e) Notwithstanding any other provision in this Section, the Chief Operating Officer shall not accept for filing any application for authority to operate a Transfer Station during the period commencing August 19, 2004 and continuing until December 31, 2005.

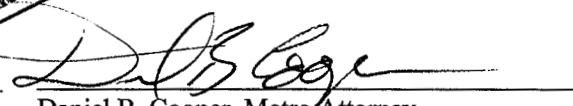
ADOPTED by the Metro Council this 9th day of February, 2006.




David Bragdon, Council President

Attest:


Christina Billington, Recording Secretary

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1101 AMENDING METRO CODE CHAPTER 5.01 TO MODIFY FINANCIAL ASSURANCE REQUIREMENTS FOR SOLID WASTE FACILITY LICENSE APPLICATIONS

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

Presently, Metro Code Section 5.01.060(c)(4) requires an applicant for a solid waste facility license to provide proof of financial assurance for facility closure as part of the license application. However, typical forms of financial assurance may be impossible to secure for a facility that has not yet been granted operating authority and are not even necessary in many other cases. The proposed ordinance would amend the Code to require only a proposal for financial assurance at the time of application. Actual financial assurance would not be required until after a license is approved but prior to the commencement of regulated activities.

Additionally, the proposed ordinance authorizes the Chief Operating Officer (COO) to waive financial assurance for facilities that are unlikely to have closure costs in excess of \$10,000. Financial assurance is important for facilities of a type that can quickly accumulate large amounts of problematic wastes such as roofing waste that could potentially be abandoned, and for certain new start-up facilities. But not all facilities pose such a risk. Prior to October 2003, when all facility licenses were approved by the Council, the Council typically exercised its discretion to waive the financial assurance requirement for facilities judged to have a relatively low risk of substantial closure costs. Such facilities have included solid waste reloads, yard debris reloading and composting facilities, and material recovery facilities that process only non-putrescible waste and have a well established history of successful operation. Frequent facility inspections conducted by Metro staff assure that enforcement actions can be taken before excessive stockpiles are accumulated by such facilities.

In October 2003, the Code was amended to give the COO authority to approve or deny applications for solid waste facility licenses for the processing of non-putrescible waste. However, the amendment did not provide the COO any discretion to waive the financial assurance requirement for facilities that are unlikely to accumulate large quantities of problematic wastes. As a result, the COO must require financial assurance even for operations for which the Council would typically have waived the requirement. The proposed Code amendment clarifies the circumstances under which the COO may require, or waive, financial assurance.

The proposed ordinance also adds to the Code a definition of "closure" in order to lend greater clarity to the financial assurance requirements. The definition defines closure in relation to solid waste activities authorized by Metro and requires that the site be returned to its condition prior to the commencement of such activities. Under the new definition, closure would require the removal of all accumulations of solid waste and recyclable materials from the site, but would not automatically require correction or remediation of non-solid waste-related conditions on the site, such as environmental contamination caused by other activities on the site.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01

3. Anticipated Effects

The anticipated effect of the proposed ordinance is that financial assurance will not have to be secured by an applicant prior to the approval of the proposed license, financial assurance requirements will be more clear to applicants, and the COO will have the authority to waive financial assurance when the expected costs of closure are less than \$10,000.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1101.

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