

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.02)	ORDINANCE NO. 06-1103
TO REQUIRE ALL PERSONS TRANSPORTING)	
SOLID WASTE TO DISPOSAL SITES OR SOLID)	Introduced by Michael Jordan,
WASTE FACILITIES TO BE RESPONSIBLE)	Chief Operating Officer, with the
FOR PAYMENT OF REGIONAL SYSTEM FEES)	concurrence of David Bragdon,
AND TO CLARIFY HOW CERTAIN LOADS)	Council President
SHOULD BE REPORTED FOR PAYMENT OF)	
REGIONAL SYSTEM FEES)	

WHEREAS, Metro Code Section 5.02.045 provides that solid waste system facility operators shall collect and pay Regional System Fees for the disposal of solid waste generated, collected, or disposed of within Metro boundaries; and

WHEREAS, Metro has identified solid waste haulers delivering waste to out-of-region disposal sites and telling the operators of those facilities that the waste originated outside the region, and thereby fraudulently escaping payment of Metro Regional System Fees and Excise Taxes; and

WHEREAS, the effective enforcement of the payment of Metro fees requires that solid waste haulers or other persons transporting solid waste generated, originating, or collected from inside the Metro region to Designated Facilities be held responsible for payment of fees when such obligation has not been satisfied by payment of those fees to Designated Facility operators; and

WHEREAS, loads from the same vehicle or container that consist of waste generated outside the Metro boundary mixed with waste generated from inside the Metro boundary shall be reported as generated from inside the Metro boundary and assessed Metro System Fees on the entire load, unless the licensee can provide documentation regarding the amounts in the vehicle or container or unless Metro has agreed in writing to another method of reporting; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore
THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. The following definition of “Designated Facility” shall be added to Metro Code Section 5.02.015, the other definitions in that section shall be renumbered accordingly, and all other references to such definitions in this Code shall be revised accordingly:

“Designated Facility” shall have the meaning assigned thereto in Metro Code Section 5.05.010.

Section 2. Metro Code Section 5.02.045 shall be amended as follows:

5.02.045 Regional System Fees

(a) The Regional System Fee shall be \$14.54 per ton of solid waste, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated, or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that

the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(ac) ~~Regional System Fee:~~ Solid waste system facility ~~Designated Facility~~ operators shall collect and pay to Metro a ~~the~~ Regional System Fee of \$14.54 per ton for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(d) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

~~(be) Metro Facility Fee: Metro shall collect a Metro Facility Fee of \$1.10 per ton for all solid waste delivered to Metro Central Station or Metro South Station~~

(ee) System fees described in ~~paragraph this~~ Section 5.02.045(a) shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 3. Metro Code Section 5.02.055 shall be amended as follows:

5.02.055 Remittance to Metro of Fees and Other Charges by Franchisees and Other designated Facilities

(a) Fees and charges owed to Metro by any person pursuant to this Chapter shall constitute a debt owed to Metro and such debt shall be extinguished only by payment of such fees and charges to Metro as provided in this section. Franchisees and other operators of ~~Designated Facilities designated to receive waste under Metro Code Section 5.05.030~~ shall remit fees and charges other than excise taxes to Metro as specified in this section. In addition, waste haulers and other persons liable for the payment of user fees as provided in Metro Code Section 5.02.045(b) shall remit fees and charges other than excise taxes to Metro as specified in this section.

(b) Fees shall accrue on a monthly basis and shall be remitted to Metro by the 15th day of the month for waste disposed of in the preceding month. Fees and other charges will be delinquent if not received by Metro on or before the due date, either by personal delivery to the Metro Department of Administrative Services during business hours or, if delivered by mail, by receipt in Metro's mail room on or before the due date. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows.

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

Attest:

Christina Billington, Recording Secretary

BM:bjl

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David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1103 AMENDING METRO CODE CHAPTER 5.02 TO REQUIRE ALL PERSONS TRANSPORTING SOLID WASTE TO DISPOSAL SITES OR SOLID WASTE FACILITIES TO BE RESPONSIBLE FOR PAYMENT OF REGIONAL SYSTEM FEES, AND TO CLARIFY HOW CERTAIN LOADS SHOULD BE REPORTED FOR PAYMENT OF REGIONAL SYSTEM FEES

January 3, 2006

Prepared by: Bill Metzler

BACKGROUND

Description of the Ordinance

Presently, Metro Code Section 5.02.045 provides that solid waste system facility operators shall collect and pay Regional System Fees for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries. The purpose of this Ordinance is to ensure that all persons transporting solid waste to disposal sites or solid waste facilities be responsible for payment of applicable Metro System Fees.

This issue has arisen as the result of Metro identifying solid waste haulers delivering waste generated within the boundary of Metro to out-of-region disposal sites with which Metro has Designated Facility Agreements and telling the operators of those facilities that the waste originated outside of the region. Such haulers thereby fraudulently escape paying Metro Regional System Fees and Excise Taxes.

Unlike the current provisions for collecting System Fees in Chapter 5.02, the Code provision for the collection of Excise taxes in Chapter 7.01 makes it clear that users of solid waste system facilities are responsible for paying the Metro Excise tax. In order to collect the foregone fees and taxes in the solid waste fraud or flow control cases described above, Metro has pursued them as violations of Chapter 7.01 (failure to pay Excise taxes) and collected the foregone Regional System Fees by imposing a monetary penalty large enough to compensate Metro for its losses and deter further such abuses.

The proposed amendments to Chapter 5.02 of the Code will make it clear that a waste hauler or other person transporting solid waste that was generated, originated or collected from inside the Metro region can be held responsible for payment of Metro System Fees for the disposal of that waste- in the same way that Chapter 7.01 of the Metro Code does for Excise taxes. Metro could then pursue enforcement against haulers that fraudulently claimed that their waste did not originate within the region for both payment of Regional System Fees and Excise taxes. The proposed changes also stipulate that loads consisting of a mixture of waste generated from both in-region and out-of-region locations must be claimed as in-region in their entirety for purposes of paying the Regional System Fee. This would make such enforcement proceedings significantly more “straight-forward” and easy to explain to a hearings officer, could make it easier to work out negotiated settlements of such violations, and could also make it easier to pursue criminal theft charges against such actions that were sufficiently egregious and repetitive to warrant such an action.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapters 5.01 and 5.02.

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to ensure that users of solid waste system facilities are responsible for payment of a Regional System Fee.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact, but could well result in the more efficient and less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 05-1103.

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