

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.05 TO)
INCREASE THE MAXIMUM DURATION OF) ORDINANCE NO. 06-1105
NEWLY ISSUED FULL-TERM NON-SYSTEM)
LICENSES UP TO THREE YEARS TO CLARIFY)
THE TIMEFRAME FOR ACTING ON) Introduced by Michael Jordan,
APPLICATIONS FOR LICENSE RENEWALS AND) Chief Operating Officer, with the
TO CLARIFY HOW CERTAIN LOADS SHOULD BE) concurrence of David Bragdon,
REPORTED FOR PAYMENT OF METRO FEES) Council President
AND TAXES)

WHEREAS, the Metro Code presently stipulates that the maximum term for non-system licenses (NSL) shall be two years; and

WHEREAS, a term of two years from the approval date usually puts the commencement and expiration dates of NSLs out of sync with calendar years and fiscal years; and

WHEREAS, effective administration requires the terms of non-system licenses to correspond with facility caps and Metro contractual obligations, which are either on a calendar year or a fiscal year basis; and

WHEREAS, the decision timeframe for replacement applications for existing non-system licenses is not specified in Metro Code Section 5.05.035(c); and

WHEREAS, an application to replace an existing non-system license could be filed well in advance of its actual expiration date by a licensee; and

WHEREAS, the COO or Council should not be compelled to make a decision on an application for a replacement non-system license when it is submitted significantly in advance of the expiration date of the existing non-system license; and

WHEREAS, the 60-day timeframe for the COO to make a decision on a replacement non-system license for non-putrescible solid waste should be no earlier than 60 days prior to the expiration date of the existing license; and

WHEREAS, the 120-day timeframe for Council to make a decision on a replacement non-system license for putrescible solid waste should be no earlier than 120-days prior to the expiration date of the existing license; 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 fees and taxes 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:

Metro Code Section 5.05.035 is amended as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).
- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determination Whether to Issue Non-System License. ~~Within 60 days after receipt of a completed application for a non-system license for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. After receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue the non-system license. If the Chief Operating Officer recommends that the non-system license be granted, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license. Within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required in connection therewith, the Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination. In making such determination, t~~The Chief

Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to ~~such determination~~ determine whether or not to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

(d) Timetables To Determine Whether to Issue a Non-System License.

(1) Non-system licenses for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste.

(A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

(B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the

expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.

(2) Non-system licenses for Putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for Putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license.

(A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

(B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.

(3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license as deemed necessary or appropriate under the circumstances.

(~~e~~) Issuance of Non-System License; Contents. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;

(5) The expiration date of the non-system license, which date shall be not more than: ~~120 days from the date of issuance for limited duration non-system licenses, and two years from the date of issuance for all other non-system licenses; and~~

(A) 120 days from the date of issuance for a limited-duration non-system license;

(B) Three years from the date of issuance for a new full-term license; and

(C) Two years from the date of issuance of a renewed full-term non-system license.

(6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.035(c).

(ef) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

(1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;

(2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and

(3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the load in its entirety shall be reported to Metro by the non-system licensee as having been generated within the Metro boundary and the Regional System Fee and Excise Tax shall be paid on the entire load unless the licensee provides Metro with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

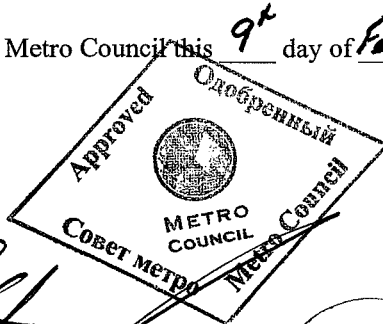
(fg) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements

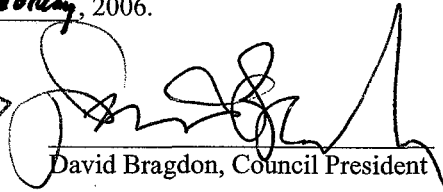
set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

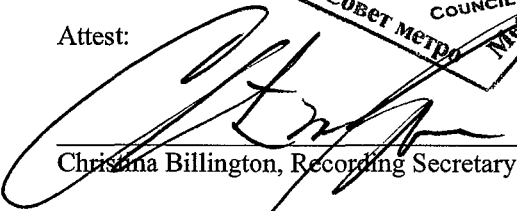
Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

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

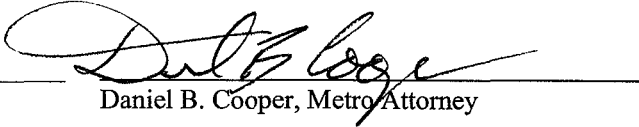



David Bragdon, Council President

Attest:


Christina Billington, Recording Secretary

Approved as to Form:


Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1105 AMENDING METRO CODE CHAPTER 5.05 TO INCREASE THE MAXIMUM DURATION OF NEWLY ISSUED FULL-TERM NON-SYSTEM LICENSES UP TO THREE YEARS, TO CLARIFY THE TIMEFRAME FOR ACTING ON APPLICATIONS FOR LICENSE RENEWALS, AND TO CLARIFY HOW CERTAIN LOADS SHOULD BE REPORTED FOR PAYMENT OF METRO FEES AND TAXES

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

Presently, Chapter 5.05 of the Metro Code stipulates a maximum term for non-system licenses (NSL) of two years from the approval date. Since there is no reason for the submission or approval of NSL applications to occur at any particular time of year, when an NSL is issued for a full two-year term, its commencement and expiration dates are nearly always out of sync with calendar years and fiscal years. This has made effective administration of NSLs difficult as such licenses generally include conditions relating to facility caps and Metro contractual obligations that are either on a calendar year or a fiscal year basis. For example, NSLs authorizing delivery of putrescible waste to non-Waste Management landfills impact Metro's obligations under its disposal contract and should all be on a calendar-year basis in order to better monitor and control the flow of such waste. The purpose of this ordinance is to enable staff to extend the term of an NSL when it is first issued as far beyond two years as necessary to set its expiration date to correspond to the end of the next fiscal year or calendar year, as appropriate to the license conditions. The maximum term for a new NSL would be three years. Thereafter, the maximum term for a renewal would be two years.

In addition, the COO and Metro Council decision timeframe provisions of Section 5.05.035 (c) are amended to make two clarifying changes. First, the new language makes it clear that a new non-system license application will be processed within either 60-days (for a COO decision on non-putrescible wastes) or 120 days (for a Council decision on putrescible wastes). Second, the new language provides that renewal of non-system license applications for non-putrescible waste must be submitted at least 60 days before the existing license expires, renewal of putrescible waste license applications must be submitted at least 120 days before the existing license expires, and that the COO (for non-putrescible waste licenses) or Council (for putrescible waste licenses) is not obligated to make a determination earlier than the expiration date of the existing license

The proposed changes also stipulate when solid waste generated from inside the Metro region is mixed in the same container with waste generated outside the Metro region, the entire load must be reported to Metro by the license holder as having been generated inside the Metro boundary. The Regional System Fee and Excise Tax must be paid on the entire load unless the licensee can provide documentation about the amount of solid waste in the container that was generated inside the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.05

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to allow all NSLs to have terms that correspond to either a fiscal year or a calendar year.

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. 06-1105.

M:\rem\od\projects\Legislation\2006\061105 Ord code 5.05 stfrpt.doc