

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 06-3690
TO RENEW A NON-SYSTEM LICENSE TO)
NEWBERG GARBAGE SERVICE, INC. FOR) Introduced by Michael Jordan,
DELIVERY OF SOLID WASTE TO THE NEWBERG) Chief Operating Officer, with the
TRANSFER STATION) concurrence of David Bragdon,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro boundary to a non-system disposal facility; and

WHEREAS, Newberg Garbage Service, Inc., has applied for the renewal of its non-system license under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and

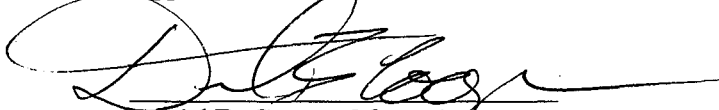
WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

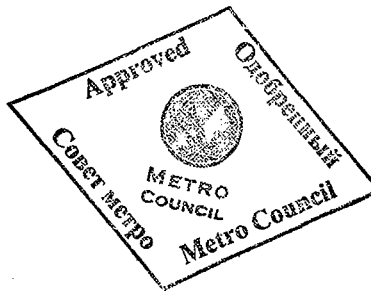
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to Newberg Garbage Service, Inc., in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this 18th day of May, 2006.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1650 | FAX 503 797 1795



METRO

METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

Number N-113-04

LICENSEE:
Newberg Garbage Service, Inc. 2904 Wynooski Rd. Newberg, OR 97132
CONTACT PERSON:
Merlin LaJoie Phone: (503) 538-1388 Fax: (503) 538-1383 e-mail: newberggarbage@hotmail.com
MAILING ADDRESS:
PO Box 1000 Newberg, OR 97132

METRO

**Licensee's Acceptance &
Acknowledgement of Receipt:**

Signature

Michael Jordan, Chief Operating Officer
Print name and title

Date

Signature of Licensee

Print name and title

Date

1	NATURE OF WASTE COVERED BY LICENSE
	This license authorizes delivery to the non-system facility listed in section 3, below, of residential and commercial solid waste generated within the Metro region, including putrescible waste collected by the Licensee.

2	FISCAL YEAR TONNAGE LIMITATION
	This license grants the licensee the authority to dispose of up to 160 tons per fiscal year of the waste described in section 1, above. A fiscal year shall run from July 1 through June 30 of the following year.

3	NON-SYSTEM FACILITY
	The licensee hereunder may deliver the waste described in section 1, above, to the following non-system facility for the purpose of transfer to the Riverbend Landfill only: <div style="text-align: center;"> <p>Newberg Transfer Station 2904 Wynooski Rd. Newberg, OR 97132</p> </div>

4	TERM OF LICENSE
	The term of this license will commence on September 1, 2004 and expire at midnight on June 30, 2006.

5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of solid waste on behalf of the licensee.

6	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer of solid waste to the Newberg Transfer Station authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) The Licensee's authority to deliver drop box loads of non-putrescible waste under this license shall be terminated if Metro adopts a requirement that such loads must undergo recovery at a Metro-authorized facility prior to delivery for disposal.(c) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:<ul style="list-style-type: none">(i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,(ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or(iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in section 3, above.(d) This license shall, in addition to subsections (c)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.(e) No later than the fifteenth (15th) day of each month, beginning with the

	<p>next month following the signature date below, Licensee shall:</p> <ul style="list-style-type: none"> (i) submit to Metro’s Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and (ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(f) Licensee shall make all records from which (e) above are derived available to Metro (or Metro’s designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in section 4, above.</p> <p>(g) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(h) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3.</p> <p>(i) This license authorizes delivery of solid waste to the Newberg Transfer Station only for the purpose of subsequent transfer to the Riverbend Landfill. Transfer of waste generated from within the Metro boundary to any disposal site other than the Riverbend Landfill is prohibited unless authorized in writing by Metro.</p>
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7	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the licensee’s solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth herein.</p>

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8	INDEMNIFICATION
	Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3690 AUTHORIZING THE CHIEF OPERATING OFFICER TO RENEW A NON-SYSTEM LICENSE TO NEWBERG GARBAGE SERVICE, INC. FOR DELIVERY OF SOLID WASTE TO THE NEWBERG TRANSFER STATION

April 11, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

In 2004, Newberg Garbage Service, Inc., (“NGS”) was granted a new solid waste hauling franchise by the Sherwood City Council. The Metro Council subsequently approved a new non-system license (“NSL”) to NGS to annually deliver a maximum of 160 tons of residential and commercial solid waste, including putrescible waste, collected from routes located inside the Metro region to the Newberg Transfer Station (“NTS”), an affiliated facility co-located with NGS. NGS delivered a total of 113 tons to NTS during the ten-month period from September, 2004 through June, 2005 and is projected by Metro to deliver approximately 140 tons during fiscal year 05-06. Waste is transferred from NTS to the Riverbend Landfill for disposal as a condition of the NSL. Since the Riverbend Landfill is a Waste Management facility, the NSL does not implicate Metro’s obligations under its disposal contract. On February 21, 2006, NGS submitted an application to renew the license, which is scheduled to expire on June 30, 2006. Since the proposed new license replicates the existing license, the moratorium does not apply.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to issuance of the proposed non-system license.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (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;*

The proposed disposal site is a transfer station rather than a landfill and thus does not pose the same potential environmental risk from wastes delivered from prior users. NTS began operations in 1985. The site was previously a filbert orchard. Staff is not aware of any wastes accepted at NTS that could pose a risk of environmental contamination.

Ultimate disposal will be at the Riverbend Landfill. The Riverbend Landfill first came into use during the mid-eighties. When Riverbend became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the required

environmental controls required by the Oregon Department of Environmental Quality (DEQ). The landfill has no known history of landfilling wastes that 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;*

The owner of NTS is regulated by both the DEQ and Yamhill County (for the transfer station) and by the City of Sherwood (for the hauling company) and has a good compliance record with all applicable requirements. The Riverbend Landfill is permitted by the DEQ. The DEQ considers the landfill to be a well run facility that is in compliance with federal, state and local requirements. The facility has a good compliance record with public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

NTS' operational practices and management controls are judged by Metro and DEQ staff to be adequate and consistent with the other similar facilities. The Riverbend Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The applicant has applied to deliver 160 tons annually of residential and commercial solid waste from its collection routes within the City of Sherwood. The license, as proposed, would authorize only putrescible waste with little or no recycling potential.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of "acceptable waste" that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, Waste Management of Oregon (WMO). The waste subject to the proposed license is proposed to be delivered from NTS to the Riverbend Landfill, which is a WMO facility. Thus, approval of the requested license will not conflict with Metro's disposal contract or any other of its 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*

The applicant operates both a garbage hauling company that has previously operated entirely outside the Metro boundary and an out-of-region transfer station. The applicant has a good record regarding compliance with Metro. It is also regulated by both the DEQ and Yamhill County (for the transfer station) and by the City of Sherwood (for the hauling company) and has a good compliance record with all applicable requirements.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, its trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with

out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, NGS and Metro have mutually agreed to an estimation method whereby the NGS multiplies the number of in-Metro cans and carts by the average weight of the same size containers as determined by quarterly weight studies used to allocate disposal costs between other jurisdictions where NGS operates. Staff finds this to be a reasonable and verifiable procedure.

3. Anticipated Effects

The effect of Resolution No. 06-3690 will be to issue an NSL to Newberg Garbage Service, Inc., for delivery of up to 160 tons per fiscal year of residential and commercial putrescible solid waste to the Newberg Transfer Station.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to NTS under authority of the proposed NSL. This is a renewal for the same amount of tonnage as presently authorized. Thus no budget impact is anticipated.

A new provision has been added to the proposed license renewal. This provision requires the licensee to send a monthly e-mail to both Metro and the landfill that states the amount of in-Metro tonnage delivered during the previous month so that the amount of such tonnage can be incorporated into the formula for proper calculation of Metro's disposal rate under its contract with Waste Management of Oregon (the Riverbend Landfill is a Waste Management disposal site). This is so that the landfill can distinguish in-Metro tonnage delivered by the licensee via the Newberg Transfer Station from out-of-Metro waste delivered from the same facility.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 06-3690, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.