



METRO

Agenda

MEETING: METRO COUNCIL
DATE: August 2, 2007
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the July 19, 2007 Metro Council Regular Meeting.

4. ORDINANCES – FIRST READING

4.1 **Ordinance No. 07-1159**, For the Purpose of Authorizing the Chief Operating Officer to Execute a Franchise Amendment to Extend the Term of the Forest Grove Transfer Station Franchise to December 31, 2008.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 07-1147A**, Amending Metro Code Chapters 5.01, 5.02, 5.05, and 7.01 to Ensure that All of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, to Eliminate the Regional System Fee and Excise Tax Credit Program, and to Make Related Changes.

Harrington

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for August 2, 2007 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, Aug. 2 (live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmtv.org -- (503) 288-1515 8:30 p.m. Sunday, Aug. 5 2 p.m. Monday, Aug. 6
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, Aug. 6	Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, Aug. 4 11 p.m. Sunday, Aug. 5 6 a.m. Tuesday, Aug. 7 4 p.m. Wednesday, Aug. 8
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 3.1

Consideration of Minutes for the July 19, 2007 Metro Council Regular Meeting

Consent Agenda

Metro Council Meeting
Thursday, August 2, 2007
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, July 19, 2007
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Rex Burkholder, Brian Newman, Carl Hosticka

Councilors Absent: Robert Liberty (excused), Rod Park (excused)

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. RECOGNITION OF THE UNITED STATES FISH AND WILDLIFE AGENTS AND US ATTORNEYS WHO SUPPORTED THE ENDANGERED SPECIES JUSTICE FUND

Council President Bragdon introduced Tony Vecchio, Oregon Zoo Director. Mr. Vecchio introduced U.S. Fish and Wildlife (USFW) Service Law Enforcement Agents Phil Land, Jim Stinebaugh, and Dirk Hoy, Special Agent in Charge of Law Enforcement for the Pacific Region of the USFW Paul Chang, Assistant U.S. Attorneys Dwight Holton and Amy Potter and U.S. Attorney Karin Immergut. He said he was excited about being here today. He was saddened that there were crimes against wildlife. He was thrilled to acknowledge those who have been involved in dealing with wildlife crimes in Oregon. He talked about the connections to the Oregon Zoo. The US Attorney's Office recognized the need to keep the money in the region. They came to the Oregon Zoo and established the Endangered Species Justice Fund. A total of \$85,000 had come back to the Zoo to help with endangered species both locally and internationally. He wished to recognize those partners. He and Council President Bragdon provided each with awards for their work. Ms. Immergut added her remarks about enforcement of the crimes against wildlife. This fund was a way to return something to the region. She acknowledged the partnership with the Oregon Zoo. Mr. Holton talked about the results of those funds and the need for conservation. They were pleased to have Metro involved. Mr. Land said there were about 200 special agents investigating wildlife trafficking around the United States. He thanked the Council and Mr. Vecchio for their efforts. Mr. Stinebaugh reiterated Mr. Land's remarks about their partnership. Councilor Newman offered his deep gratitude for their work and the choice of the Oregon Zoo to be a center for wildlife conservation programs.

4. CONSENT AGENDA

4.1 Consideration of minutes of the July 12, 2007 Regular Council Meeting.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the July 12, 2007 Regular Metro Council.

Vote:

Councilors Burkholder, Harrington, Newman, and Council President Bragdon voted in support of the motion. The vote was 4 aye/ 1 abstained, the motion passed with Councilor Hosticka abstaining from the vote.

5. ORDINANCES – SECOND READING

5.1 Removed from the agenda.

5.2 **Ordinance No. 07-1157**, For the Purpose of Dissolving the Greenspaces Policy Advisory Committee (GPAC) and Repealing Metro Code Section 2.19.160.

Motion:	Councilor Newman moved to adopt Ordinance No. 07-1157.
Seconded:	Councilor Hosticka seconded the motion

Council President Bragdon introduced the legislation and noted that they would be utilizing focused limited duration task forces to deal with natural resources areas and parks.

Council President Bragdon opened a public hearing on Ordinance No. 07-1157.

Mike Houck, Urban Greenspaces Institute and a former GPAC member, PO Box 6903 Portland OR 97228 said he agreed with the concept of utilizing task forces instead of GPAC because of limited resources. He shared his concerns about the natural resource focus needing an ongoing voice. He didn't question Council's commitment to natural area resources and parks. He felt there needed to be a standing committee that provided input. He supported the direction that Council President was taking.

Council President Bragdon closed the public hearing. He thanked Mr. Houck for his service. He noted a task force that had been created for oversight on the natural areas bond measure and one that was still forming having to do with the Nature in Neighborhoods Capital Grant program. Councilor Burkholder supported this direction and explained how organizing this type of task force was effective and efficient. He talked about limited resources in the region.

Councilor Harrington would support the measure. She also saw this as an important step to demonstrated efficiency in government. They were leveraging the resources that the public had put forward.

Vote:

Councilors Hosticka, Burkholder, Harrington, Newman, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

6. RESOLUTIONS

6.1 **Resolution No. 07-3829**, For the Purpose of Amending the 2006-09 Metropolitan Transportation Improvement Program (MTIP) to Add the Cornell Road and Science Park Drive/143rd Intersection Project and the Hall Boulevard and Highway 99W Intersection Project.

Motion:	Councilor Burkholder moved to adopt Resolution No. 07-3829.
Seconded:	Councilor Hosticka seconded the motion

Councilor Burkholder introduced the resolution and explained that this was a procedure for projects that received new funding. Any project that was of this magnitude must be included in the Regional Transportation Plan (RTP). These projects also had to go through an air quality conformity process. Councilor Hosticka asked where the funding was coming from. Councilor Burkholder responded to his question. Councilor Hosticka commented that various units of government were unable to fund the projects, so cities were having to help fund these projects.

Vote:

Councilors Hosticka, Burkholder, Newman, Harrington, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

7. CONTRACT REVIEW BOARD

7.1 Deliberation on Appeal by RPS-BER Ltd. of Chief Operating Officer's Rejection of Appeal Regarding Contract RFP No. 07-1219-PKS for Property Acquisition Services.

Council President Bragdon highlighted the process for this appeal (a copy of which is included in the record).

Theodore Wenk, representing Mr. Ray Stiles said he rejected the decision of the Chief Operating Officer (COO). He felt not all of the information had been provided to his client. There was some question on the original scoring. It appeared Mr. Stiles' proposal had been rescored. He was asking the Metro Council to consider the policy. He spoke to Disadvantage Enterprises and that under state contracting law, Mr. Stiles was not eligible but under federal contracting law he was eligible for consideration. He also asked that he be rescored and re-evaluated for this contract.

Darin Matthews, Procurement Officer, said he oversaw the process for this contract proposal process. They received numerous proposals. There were 12 proposals, which were fairly evaluated. Mr. Stiles' proposal did not rise to the level of granting the contract. The result was appealed, he reviewed the appeal and felt the process was fair and followed the Metro Code as well as state contract law. Minority and Women-Owned Business Enterprise (M/WBE) guidelines were utilized. He felt this procurement was done appropriately and the denial should stand.

Mr. Wenk closed by saying that they fully supported Metro's work with disabilities. They felt there was a hole in the process. Mr. Stiles said they had already been working on a particular site. He said Joel Morton, Senior Attorney, came to him asking him to complete the Request For Proposal (RFP). He indicated that Metro was happy with the work they had done. He explained further the history of what had gone on.

Councilor Newman asked Mr. Wenk to explain the hole in our Code having to do with Disadvantaged Enterprises and the issue with scoring. Mr. Wenk explained the difference between federal qualifications for contracts versus state contracts. Councilor Newman said our program was one of outreach. He wanted to know where the hole in the Code existed. Mr. Wenk suggested Metro needed to add the disadvantage enterprise to their Code. Councilor Hosticka asked about the number of providers for each category. Mr. Matthews responded to his question. Councilor Hosticka clarified, was there a certain number that were selected? Mr. Matthews said there were a total of twelve firms who applied and nine were selected. Mr. Stiles said as a minority business enterprise he was not selected. They were not designated as a M/WBE. Councilor Newman asked for clarification about his proposal. Mr. Stiles explained the process for how he developed his contract. There were time limitations for submittal of the contract.

Councilor Newman said based on his own acknowledgement Mr. Stiles wasn't able to get a quality proposal on time. How did the Disadvantage Enterprise Small Business relate to the proposal? Mr. Stiles responded to his question. Councilor Burkholder said, as he understood the scoring, it did not include the M/WBE factor. Mr. Matthews said that was not a scorable item.

Motion:	Councilor Burkholder moved to uphold the Chief Operating Officer's decision.
Seconded:	Councilor Newman seconded the motion

Councilor Burkholder said he supported the COO's recommendation. They needed to judge the quality of the work on what was submitted. They had a process that was followed. They did not use M/WBE as part of the scoring. This might be a conversation for future contracts. He felt the appeal did not have standing in his opinion. Councilor Hosticka asked Mr. Fjordbeck to explain what happened if they upheld the appeal. Mr. Fjordbeck said if they upheld the appeal of the appellant he would be added to the list as a consultant. Councilor Hosticka said if they added him to the list, would they automatically get a project? Mr. Fjordbeck said even if they were on the list they could not be guaranteed work. Mr. Matthews said that was correct. Councilor Hosticka asked if there was a possibility for reopening the process for another application to be considered. Mr. Fjordbeck said the application process was closed and noted that the application deadline had been extended to allow the applicant to submit his proposal.

Vote:

Councilors Burkholder, Newman, Harrington, and Council President Bragdon voted in support of the motion. The vote was 4 aye/ 1 nay, the motion passed with Councilor Hosticka voting no.
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7.2 Resolution No. 07-3828, For the Purpose of Approving Change Order No. 9 to the Waste Disposal Services Contract.

Motion:	Councilor Harrington moved to adopt Resolution No. 07-3828.
Seconded:	Councilor Burkholder seconded the motion

Councilor Harrington said this resolution authorized the COO to execute change order 9 to the waste disposal services contract between Metro and Waste Management. She provided additional details of the change order (a summary of these remarks is included in the staff report).

Council President Bragdon said the contract between Waste Management and Metro was very important. The contract required a lot of care and attention. He reminded that we were here to represent the ratepayer. He felt this was accomplished through the mediation. He said the company acknowledged the agreement. He thanked the staff for their work on this change order. Councilor Hosticka said he wanted to be clear as to when various contracts were expiring and did this have any effect on the timeline? Mike Hoglund, Solid Waste and Recycling Director, responded that it would be up to the Council to determine when the RFP for the contract would be rebid. He explained options for the timeline. Councilor Harrington said the change order provided value to our region. She thanked all of those who had worked on this issue.

Vote:

Councilors Hosticka, Burkholder, Newman, Harrington, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

8. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, was not at the meeting.

9. COUNCILOR COMMUNICATION

Councilor Hosticka alerted the Council, as a member of the I-5/99W Connector Task Force he would be meeting in August to try to shorten the list of projects. He had scheduled a work session on August 7th to discuss this with the Council.

Councilor Harrington said she was curious about Metro's hiring practices for a preference program given the extent of returning veterans.

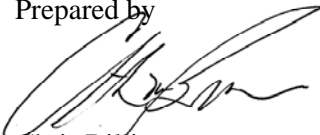
Councilor Burkholder announced the Jazz Festival at Cathedral Park this weekend. This event had been going on for 27 years in North Portland. The Bi-State Committee met this morning. He reviewed the items they discussed which included the Columbia River Crossing. They would be coming back to discuss options with the Council prior to their meeting in November. Second, Portland State University and Washington State University were asked to do some interviews in the community about the issue of the border between the two states and how it affected people's lives. They would be sharing the report with the Council. The north side of the river had been looking long range and what that might mean for transportation. Issues included do we build more bridges and what might that mean?

Council President Bragdon said there would not be a formal regular meeting next Thursday but would be holding a work session on budget issues.

10. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:13 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
JULY 19, 2007**

Item	Topic	Doc. Date	Document Description	Doc. Number
4.1	Minutes	7/12/07	Metro Council Meeting Minutes of 7/12/07	071907c-01
7.2	Amended Exhibit A	7/19/07	To: Metro Council From: Marv Fjordbeck Re: Amended Exhibit A to Resolution No. 07-3828	071907c-02
7.1	Memo and attachments	7/17/07	To: Metro Council From: Marv Fjordbeck, Senior Attorney Re: Appeal process and supporting documents	071907c-03

Ordinance No. 07-1159, For the Purpose of Authorizing the Chief Operating Officer to Execute a Franchise Amendment to Extend the Term of the Forest Grove Transfer Station Franchise to December 31, 2008.

First Reading

Metro Council Meeting
Thursday, August 2, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	ORDINANCE NO. 07- 1159
CHIEF OPERATING OFFICER TO EXECUTE A)	
FRANCHISE AMENDMENT TO EXTEND THE)	Introduced by The Chief Operating Officer
TERM OF THE FOREST GROVE TRANSFER)	with Concurrence of Council President David
STATION FRANCHISE TO DECEMBER 31,)	Bragdon
2008		

WHEREAS, the Metro Council authorized the issuance of Metro Solid Waste Franchise No. FR-004 (“the Franchise”) to the Forest Grove Transfer Station (“Forest Grove”) on December 31, 1997, and thereby authorized Forest Grove to operate and maintain a solid waste transfer station; and

WHEREAS, the initial term of the Franchise was 5 years and the Franchise provided for an automatic extension, beginning on December 31, 2002, if Forest Grove was not in default under the Franchise at the end of the initial term; and

WHEREAS, on December 31, 2002, the expiration date of the Franchise was automatically extended, and the current expiration date of the Franchise is December 31, 2007; and

WHEREAS, the Metro Council has authorized the issuance of three local solid waste transfer station franchises that have expiration dates of December 31, 2008, and Metro Code Section 5.01.087 requires these three franchisees to submit renewal applications for Metro Council consideration and action no later than September 1, 2008; and

WHEREAS, the Solid Waste and Recycling Department is conducting the System Improvement Planning project, which will assess the best approach for putrescible waste allocation and which is scheduled for completion in early to mid-2008; and

WHEREAS, amending the Franchise to extend it one year to December 31, 2008, will allow the Department to complete the System Improvement Planning project before the Metro Council considers Forest Grove’s application for renewal of the Franchise and also will provide the Metro Council the opportunity to consider all three local transfer station franchise renewal applications and the Forest Grove regional transfer station franchise renewal application concurrently in 2008; now therefore:

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Metro Council hereby amends Metro Solid Waste Franchise No. FR-004 as provided in Exhibit A.

ADOPTED by the Metro Council this _____ day of _____ 2007.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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



METRO

AMENDMENT NO. 2
TO METRO SOLID WASTE FACILITY FRANCHISE
NUMBER FR-004

FRANCHISEE: Waste Management of Oregon 7227 NE 55 th Avenue Portland, OR 97218 Tel (503) 992-3015 Fax (503) 357-4822	FACILITY NAME AND LOCATION: Forest Grove Transfer Station 1525 B Street Forest Grove, OR 97218 Tel (503) 992-3015 Fax (503) 357-4822
OPERATOR: Waste Management of Oregon 7227 NE 55 th Avenue Portland, OR 97218 Tel (503) 992-3015 Fax (503) 357-4822	PROPERTY OWNER: Waste Management of Oregon 7227 NE 55 th Avenue Portland, OR 97218 Tel (503) 992-3015 Fax (503) 357-4822

Issued in accordance with the provisions of Metro Code Chapter 5.01. Solid Waste Facility Franchise No. FR-004 is amended as follows:

Section 2 is amended to read as follows:

2. TERM AND APPLICABILITY OF FRANCHISE

2.1 The initial term of this Franchise shall be five (5) years commencing upon the execution of this Franchise and terminating five (5) years thereafter; provided, however, that if, at the end of the initial term of this Franchise, Franchisee is not then in default under this Agreement, the term of this Agreement shall be automatically extended for an additional five (5) years commencing on the expiration of the initial term. Commencing on December 31, 2007, the term of this Franchise shall be extended one year and the Franchise shall terminate on December 31, 2008.

The above amendment shall be effective upon the date signed by the Chief Operating Officer, and shall remain in effect until the expiration of this license.

METRO

Franchisee's Acceptance & Acknowledgement of Receipt

Signature

Signature of Franchisee

Michael Jordan,
Chief Operating Officer

Print name and title

Date

Date

M:\rem\od\projects\Legislation\2007\071159 Forest Grove Exhibit A.doc

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO.07-1159 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE A FRANCHISE AMENDMENT TO EXTEND THE TERM OF THE FOREST GROVE TRANSFER STATION FRANCHISE UNTIL DECEMBER 31, 2008

Date: July 12, 2007

Prepared by: Bill Metzler

BACKGROUND

The Forest Grove Transfer Station (FGTS) is operating under a Solid Waste Franchise agreement issued by Metro on December 31, 1997. The term of the franchise is five years (ending December 31, 2002) with an automatic extension for an additional five years (ending on December 31, 2007), provided that FGTS was not in default under the Franchise at the end of the initial term. FGTS is owned and operated by Waste Management of Oregon.

In addition to the FGTS – which is a regional transfer station, there are three other Metro franchised local transfer stations operating in the Metro region¹: Pride Recycling located in Sherwood, Willamette Resources Inc. (WRI) located in Wilsonville, and the Troutdale Transfer Station located in Troutdale. All three of the local transfer station franchises will expire on December 31, 2008.

Extending the term of the FGTS franchise for one year to expire on December 31, 2008 will allow the Metro Council to consider and act on all four Metro transfer station franchise renewal applications concurrently, and prior to their expiration at the end of 2008. In addition, the Solid Waste and Recycling Department is conducting the System Improvement Planning project, scheduled for completion in early to mid-2008, that will assess the best approach for putrescible waste allocation. Extending the term of the FGTS franchise for one year, through December 31, 2008, will allow for the completion of the System Improvement Planning project.

The FGTS accepts putrescible solid waste generated from inside and outside the Metro region, and has been operating since 1985 under authority of a Metro franchise issued in 1984. The FGTS also holds a Metro Non-System License (NSL) authorizing it to transport up to 160,000 tons of solid waste per calendar year to the Riverbend Landfill in McMinnville Oregon for disposal. In April 2007 there was an incident where FGTS exceeded tonnage caps imposed by its NSL. However, FGTS is regarded as well-run and has a good compliance record with all public health, safety, and environmental rules and regulations.

Ordinance No. 07-1159 will authorize the Chief Operating Officer to execute a Franchise amendment to extend the term of the Franchise for one year ending on December 31, 2008. The proposed franchise amendment (Amendment #2 to Franchise No. FR-004) is attached as Exhibit A to Ordinance No. 07-1159.

¹ The Columbia Environmental transfer station is not yet operational, but was issued a Metro franchise in 2005 to operate as a local transfer station with a putrescible waste tonnage cap of 38,000 tons per year.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition, however Waste Management has expressed its preference to obtain a standard five-year franchise renewal for the Forest Grove Transfer Station instead of the proposed one-year extension.
2. **Legal Antecedents:** The Metro Code Chapter 5.01, Metro Franchise No. FR-004.
3. **Anticipated Effects:** The resolution will authorize the Chief Operating Officer to execute a Franchise amendment that extends the term of the Forest Grove Transfer Station Franchise one year, starting December 31, 2007 and ending on December 31, 2008.
4. **Budget Impacts:** There are no budget impacts.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 07-1159.

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Agenda Item Number 5.1

Ordinance No. 07-1147A, Amending Metro Code Chapters 5.01, 5.02, 5.05, and 7.01 to Ensure that all of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, to Eliminate the Regional System Fee and Excise Tax Credit Program, and to Make Related Changes.

Second Reading

Metro Council Meeting
Thursday, August 2, 2007
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTERS)	ORDINANCE NO. 07-1147A
5.01, 5.02, 5.05, AND 7.01 TO ENSURE)	
THAT ALL OF THE REGION’S NON-)	Introduced by Michael Jordan, Chief
PUTRESCIBLE WASTE UNDERGOES)	Operating Officer, with the concurrence of
MATERIAL RECOVERY PRIOR TO)	David Bragdon, Council President
DISPOSAL, TO ELIMINATE THE)	
REGIONAL SYSTEM FEE AND EXCISE)	
TAX CREDIT PROGRAM, AND TO MAKE)	
RELATED CHANGES)	

WHEREAS, Metro is accountable for meeting the state-mandated 2009 waste reduction goal for the tri-county region, and the recovery of additional “dry waste” material generated by the building industry is a key component of reaching the 64% goal; and

WHEREAS, dry waste consists primarily of wood, metal, corrugated cardboard, concrete, drywall and roofing; and

WHEREAS, over 90% of this material is reusable or recoverable with current technology and markets; and

WHEREAS, a minimum of 33,000 additional tons of dry waste per year could be recovered by a regional program to require the processing of all dry waste before disposal; and

WHEREAS, such a program was recommended by a stakeholder group in 2003 as the option most likely to help the region attain its recovery goal for the building industry sector; and

WHEREAS, this recommendation was subsequently incorporated in the region’s interim waste reduction plan approved by Council in 2006; and

WHEREAS, by July 1, 2009 it is the intent of the Metro Council that all dry waste originating from the Metro region be subject to processing for material recovery or subject to a landfill surcharge intended to discourage unprocessed dry waste from going directly to a landfill; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code section 5.01.010 is amended as follows:

5.01.010 Definitions

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

(a) "Activity" means a primary operation or function that is performed in a Solid Waste Facility or at a Disposal Site, including but not limited to Resource Recovery, Composting, Energy Recovery, and other types of Processing; Recycling; Transfer; incineration; and disposal of Solid Waste; but excluding operations or functions such as Segregation that serve to support the primary Activity.

(b) "Agronomic application rate" has the meaning provided in OAR 340-093-0030(4).

(c) "Chief Operating Officer" means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

(d) "Cleanup Material Contaminated By Hazardous Substances" means solid waste resulting from the cleanup of releases of hazardous substances into the environment, including petroleum contaminated soils and sandbags from chemical spills. Cleanup Material Contaminated By Hazardous Substances does not mean solid waste generated by manufacturing or industrial processes.

(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.

(f) "Code" means the Metro Code.

(g) "Compost" means the stabilized product of composting.

(h) "Composting" means the controlled biological decomposition of organic material.

(i) "Composting Facility" means a site or facility which utilizes organic material to produce a useful product through the process of composting.

(j) "Council" means the Metro Council.

(k) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(l) "Direct haul" means the delivery of Putrescible Waste from a Solid Waste Facility directly to Metro's contract operator for disposal of Putrescible Waste. Direct Haul is an Activity under this chapter.

(m) "Disposal site" means the land and facilities used for the disposal of Solid Wastes whether or not open to the public, but does not include transfer stations or processing facilities.

- (n) "District" has the same meaning as in Code Section 1.01.040.
- (o) "Energy recovery" means a type of Resource Recovery that is limited to methods in which all or a part of Solid Waste materials are processed to use the heat content, or other forms of energy, of or from the material.
- (p) "Franchise" means the grant of authority or privilege given by the Council to operate a Disposal Site, Transfer Station, or an Energy Recovery facility, or to conduct any activity specified in Section 5.01.045(b) of this chapter.
- (q) "Franchisee" means the person to whom a Franchise is granted by the Council under this chapter.
- (r) "Franchise fee" means the fee charged by Metro to the Franchisee for the administration of the Franchise.
- (s) "Hazardous waste" has the meaning provided in ORS 466.005.
- (t) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous waste" may include but is not limited to some cleaners, solvents, pesticides, and automotive and paint products.
- (u) "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.
- (v) "License" means the permission given by the Council or Chief Operating Officer to operate a Solid Waste Facility not exempted or requiring a Franchise under this chapter that Transfers, and Processes Solid Waste, and may perform other authorized Activities.
- (w) "Licensee" means the person to whom a License is granted by the Council or Chief Operating Officer under this chapter.
- (x) "Local Transfer Station" means a Transfer Station that serves the demand for disposal of Putrescible Waste that is generated within a single Service Area, and may provide fewer disposal services than are provided by a Regional Transfer Station.
- (y) "Material recovery" means a type of Resource Recovery that is limited to mechanical methods of obtaining from Solid Waste materials which still have useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material Recovery includes obtaining from Solid Waste materials used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

(z) "Metro Designated Facility" means a facility in the system of transfer stations, Metro Franchised facilities and landfills authorized under Chapter 5.05 of this Title to accept waste generated in the area within the jurisdiction of Metro.

(aa) "Non-putrescible waste" means any Waste that contains no more than trivial amounts of Putrescible materials or minor amounts of Putrescible materials contained in such a way that they can be easily separated from the remainder of the load without causing contamination of the load. This category includes construction ~~waste, and demolition waste debris, and land clearing debris~~; but excludes Cleanup Materials Contaminated by Hazardous Substances, ~~and S~~Source-Separated Recyclable Material, ~~whether or not sorted into individual material categories by the generator~~ special waste, land clearing debris and yard debris.

(bb) "Person" has the same meaning as in Code Section 1.01.040.

(cc) "Petroleum contaminated soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

(dd) "Process," "Processing" or "Processed" means a method or system of altering the form, condition or content of Wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping; but excluding incineration or mechanical volume reduction techniques such as baling and compaction.

(ee) "Processing facility" means a place or piece of equipment where or by which Solid Wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerators, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(ff) "Processing residual" means the Solid Waste destined for disposal which remains after Resource Recovery has taken place.

(gg) "Putrescible" means rapidly decomposable by microorganisms, which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

(hh) "Putrescible waste" means Waste containing Putrescible material.

(ii) "Rate" means the amount approved by Metro and charged by the Franchisee, excluding the Regional System Fee as established in Chapter 5.02 of this Title and franchise fee.

(jj) “Recyclable material” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

(kk) “Recycle” or “Recycling” means any process by which Waste materials are transformed into new products in such a manner that the original products may lose their identity.

(ll) "Recycling drop center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(mm) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

(nn) “Regional Transfer Station” means a Transfer Station that may serve the disposal needs of more than one Service Area and is required to accept solid waste from any person who delivers authorized solid waste to the Regional Transfer Station.

(oo) “Reload” or “Reload facility” means a facility that performs only Transfer ~~and delivers all solid waste received at the facility to by means of a fixed or mobile facilities including but not limited to drop boxes and gondola cars, but excluding solid waste collection vehicles, normally used as an adjunct of a solid waste collection and disposal system, between a collection route and~~ another Solid Waste facility ~~or a disposal site~~ after it receives such solid waste, generally within 24 hours of receipt.

(pp) "Resource recovery " means a process by which useful material or energy resources are obtained from Solid Waste.

(qq) “Reuse” means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(rr) “Segregation” means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the Transfer of Solid Waste. Segregation does not include Resource Recovery or other Processing of Solid Waste. The sole intent of segregation is not to separate Useful Material from the Solid Waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

(ss) “Service Area” means the geographic locale around a solid waste facility that is defined by the characteristic that every point within such area is closer in distance to the solid waste facility contained in such area than to any other solid waste facility or disposal site. As used in this definition, “distance” shall be measured over improved roads in public rights-of-way.

(tt) "Solid waste" means all Putrescible and Non-Putrescible Wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-Solid Wastes, dead animals; infectious waste as defined in ORS 459.386; ~~petroleum contaminated soils~~ and other ~~such~~ wastes, including without limitation, cleanup materials contaminated with hazardous substances, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

(uu) "Solid waste facility" means the land and buildings at which Solid Waste is received for Transfer, Resource Recovery, and/or Processing but excludes disposal.

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

(ww) "Source-separated recyclable material" or "Source-separated recyclables" means ~~material~~ solid waste that has been Source Separated by the waste generator for the purpose of Reuse, Recycling, or Composting. This term includes (1) all homogenous loads of Recyclable Materials that ~~are has been~~ Source Separated by material type for the purpose of recycling (i.e., source-sorted) and (2) ~~Residential and commercial commingled~~ Recyclable Materials, which includes only those recyclable material types that the local jurisdiction, where the materials were collected, permits to be mixed together in a single container as part of its residential curbside recyclable material collection program. This term does not include any other commingled recyclable materials. ~~that are mixed together in one container (i.e., commingled).~~

(xx) "Special waste" means any waste (even though it may be part of a delivered load of waste) which one or more of the following categories describes:

- 1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below.
- (2) Waste transported in a bulk tanker.

- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals, unless the containers (or drums) are empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) One end has been removed (for containers in excess of 25 gallons); and
 - (i) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (ii) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.
 - (C) Containers that once held acutely hazardous wastes must be triple-rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple-rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, and be dry and free of contamination to be accepted as refuse.
- (5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, Laundromats or car washes.
- (6) Waste from an industrial process.
- (7) Waste from a pollution control process.
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.

- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.
- (10) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment).
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.
- (12) Any waste that requires extraordinary management or special handling.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

- (13) Radioactive waste.
- (14) Medical waste.

(~~xx~~yy) "Transfer" means the Activity of receiving Solid Waste for purposes of transferring the Solid Waste from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of Solid Waste from more than one vehicle, and compaction, but does not include Resource Recovery or other Processing of Solid Waste.

(~~yy~~zz) "Transfer station" means a Solid Waste Facility whose primary Activities include, but are not limited to, the Transfer of Solid Waste.

(~~zz~~aaa) "Useful material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from Solid Waste, is suitable for use in the same or other purpose(s). Types of Useful Materials are: material that can be Reused; Recyclable Material; organic material(s) suitable for controlled biological decomposition such as for making Compost; material used in the preparation of fuel; material intended to be used, and which is in fact used, for construction or land reclamation such as Inert material for fill; and material intended to be used, and which is in fact used, productively in the operation of landfills such as roadbeds or alternative daily cover. For purposes of this Code, Cleanup Material Contaminated By Hazardous Substances are not Useful Materials.

(~~aaa~~bbb) "Vermiprocessing" means a controlled method or system of biological Processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

(~~bbb~~ccc) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(~~eee~~ddd) "Waste hauler" means any person who is franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul Solid Waste.

(~~ddd~~eee) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other vegetative waste having similar properties, but does not include demolition debris, painted or treated wood.

(~~eee~~fff) "Yard debris facility" means a yard debris processing facility or a yard debris reload facility.

(~~fff~~ggg) "Yard debris reload facility" means an operation or facility that receives yard debris for temporary storage, awaiting transport to a processing facility.

SECTION 2. Metro Code section 5.01.040 is amended as follows:

5.01.040 Exemptions

(a) In furtherance of the purposes set forth in this chapter, except as provided in Sections 5.01.040(b) through (d) below, the Metro Council declares the provisions of this chapter shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by Metro.
- (3) Facilities that (A) exclusively receive non-Putrescible Source-Separated Recyclable Materials, and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes.
- (5) The following operations, which do not constitute Yard Debris Facilities:

- (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (B) Residences, parks, community gardens and homeowner associations.
- (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
- (D) Operations or facilities that chip or grind wood wastes, unless:
 - (i) such chipped or ground wood wastes are processed for composting; or
 - (ii) such operations or facilities are otherwise regulated under Metro Code Section 5.01.045.
- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if Metro finds an emergency situation exists.
- (7) Any Reload facility that:
 - (A) Accepts Solid Waste collected under the authority of a single **solid waste collection** franchise granted by a local government unit, or from multiple **solid waste collection** franchises so long as the area encompassed by the franchises is
 - (B) Is owned or controlled by the same person granted franchise authority ascribed in subsection (A); and
 - (C) Delivers any Putrescible Waste accepted at the **operation or** facility to a Transfer Station owned, operated, Licensed or Franchised by Metro; and
 - (D) Delivers all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another **solid waste** facility ~~or Disposal Site~~ under authority of a Metro Non-System License issued pursuant to Chapter 5.05.
- (8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding Section 5.01.040(a), all persons shall comply with Sections 5.01.030(a), (b), (d) and (f).

(c) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shall comply with Section 5.01.150 of this chapter.

(d) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the provisions of Section 5.01.135 of this chapter shall apply to operations and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter.

SECTION 3. Metro Code section 5.01.125 is amended as follows:

5.01.125 Obligations and Limits for Selected Types of Activities

(a) A holder of a License or Franchise for a Material Recovery facility, ~~Reload or Local Transfer Station, or a holder of a Franchise~~ issued after July 1, 2000, ~~for a Regional Transfer Station~~ shall perform Material Recovery from Non-Putrescible Waste accepted at the facility ~~as specified in this section or as otherwise specified in its license or franchise~~, or shall deliver such Non-Putrescible Waste to a Solid Waste facility ~~whose primary purpose is authorized by Metro~~ to recover useful materials from Solid Waste.

(b) ~~A holder of a License or Franchise for a Material Recovery facility or Local Transfer Station, or a holder of a Franchise issued after July 1, 2000 for a Regional Transfer Station,~~ A licensee or franchisee subject to subsection (a) of this section shall recover at least 25% by weight of Non-Putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste shall exclude both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section shall constitute a violation enforceable under Metro Code Sections 5.01.180 and 5.01.200. ~~After January 1, 2009, the requirements of this subsection will not be applicable to licensees or franchisees unless Metro Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.125(c).~~

(c) ~~(e)~~—Effective January 1, 2009, a licensee or franchisee subject to subsection (a) of this section shall:

(1) ~~At a minimum,~~ Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, (including aluminum). Processing residual from such a facility shall not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension

- (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of such sampling to Metro in the monthly report due the month following the end of that quarter.
- (3) Based on observation, audits, inspections and reports, Metro inspectors shall conduct or require additional analysis of waste residual at the facility in accordance with section 5.01.135(c). Failure to maintain the recovery level specified in subsection (c)(1) of this section shall constitute a violation enforceable under Metro Code. The first two violations of this subsection by a single licensee or franchisee shall not result in the imposition of a civil penalty.
- (4) Failure to meet the reporting requirements in subsection (c)(2) of this section shall constitute a violation enforceable under Metro Code after July 1, 2009.

~~(d) In addition to the requirements of (a) and (b) in this section,~~ A holders of a Franchise for a Local Transfer Station:

- (1) Shall accept Putrescible Waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul Putrescible Waste.
- (2) Shall not accept hazardous waste.
- (3) Shall be limited in accepting Putrescible Waste during any fiscal year to an amount of Putrescible Waste equal to the demand for disposal of Putrescible Waste generated within a Service Area as specified in accordance with this chapter.
- (4) Shall accept Solid Waste from any Waste Hauler who operates to serve a substantial portion of the demand for disposal of Solid Waste within the Service Area of the Local Transfer Station.

~~(d)(e) In addition to the requirements of (a) and (b) in this section,~~ A holders of a Franchise for a Regional Transfer Station, ~~in accordance with its franchise issued after July 1, 2000:~~

- (1) Shall accept authorized Solid Waste originating within the Metro boundary from any person who delivers authorized waste to the facility,

on the days and at the times established by Metro in approving the Franchise application.

- (2) Shall provide an area for collecting Household Hazardous Waste from residential generators at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.
 - (3) Shall provide an area for collecting source separated recyclable materials without charge at the Franchised Solid Waste Facility, or at another location more convenient to the population being served by the franchised Solid Waste Facility, on the days and at the times established by Metro in approving the Franchise application.
- (f) A holder of a license for a reload facility shall deliver all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (g) A holder of a license or franchise for a solid waste facility shall not crush, grind or otherwise reduce the size of non-putrescible waste except when such size reduction constitutes a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations, and such size reduction is described and approved by Metro in an operating plan.

(Ordinance No. 98-762C, Secs. 30-31. Amended by Ordinance No. 00-866, Sec. 5; Ordinance No. 01-916C, Sec. 4; Ordinance No. 02-952A, Sec. 1; Ordinance No. 03-1018A, Sec 16.)

SECTION 4. Metro Code section is amended as follows:

5.01.135 Inspections and Audits of Solid Waste Facilities

(a) The Chief Operating Officer shall be authorized to make such inspection or audit as the Chief Operating Officer deems appropriate, and shall be permitted access to the premises of a licensed or franchised facility, and all other Solid Waste Facilities, at all reasonable times during business hours with or without notice or at such other times with 24 hours notice after the Franchise or License is granted to assure compliance with this chapter, the Code, the Franchise or License, and administrative procedures and performance standards adopted pursuant to Section 5.01.132 of this chapter.

(b) Inspections or audits authorized under subsection (a) of this section shall occur regularly and as determined necessary by the Chief Operating Officer. Results of each inspection shall be reported on a standard form specified by the Chief Operating Officer.

(c) The Chief Operating Officer shall have access to and may examine during such inspections or audits any records pertinent in the opinion of the Chief Operating Officer to the License or Franchise, or to the provisions of this chapter, including but not limited to the books, papers, records, equipment, blueprints, operation and maintenance records and logs and operating rules and procedures of the Licensee, Franchisee or Solid Waste Facility operator. Such inspections or audits may include taking samples and conducting analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer shall coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to prevent the imposition of redundant requirements on operations.

(d) Any violations discovered by the inspection or audit shall be subject to the penalties provided in Section 5.01.200.

SECTION 5. The definition of “special waste” in Metro Code section 5.02.015(hh) shall be amended as follows:

(hh) "Special waste" ~~means any waste (even though it may be part of a delivered load of waste) which one or more of the following categories describes:~~ shall have the meaning assigned thereto in Metro Code section 5.01.010.

~~(1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below.~~

~~(2) Waste transported in a bulk tanker.~~

~~(3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.~~

~~(4) Containers (or drums) which once held commercial products or chemicals, unless the containers (or drums) are empty. A container is empty when:~~

~~(A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.~~

~~(B) One end has been removed (for containers in excess of 25 gallons); and~~

~~(i) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or~~

- ~~(ii) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or~~
 - ~~(iii) No more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.~~
 - ~~(C) Containers that once held acutely hazardous wastes must be triple-rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple-rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, and be dry and free of contamination to be accepted as refuse.~~
 - ~~(5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, Laundromats or car washes.~~
 - ~~(6) Waste from an industrial process.~~
 - ~~(7) Waste from a pollution control process.~~
 - ~~(8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.~~
 - ~~(9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition.~~
 - ~~(10) Chemical-containing equipment removed from service (for example: filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical-containing equipment).~~
 - ~~(11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.~~
 - ~~(12) Any waste that requires extraordinary management or special handling.~~
- ~~Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment~~

~~plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by products.~~

~~(13) Radioactive waste.~~

~~(14) Medical waste.~~

SECTION 6. Metro Code Section 5.02.046 is repealed.

SECTION 7. Metro Code Section 5.02.047 as amended by Ordinance No. 07-1146 is amended to read:

5.02.047 Regional System Fee Credits

~~(a) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 or a Designated Facility regulated by Metro under the terms of an intergovernmental agreement shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Recovery Rate shall be calculated for each twelve 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:~~

~~System Fee Credit Schedule~~

Facility Recovery Rate		
From Above	Up To & Including	System Fee Credit of no more than
0%	30%	0.00
30%	35%	9.92
35%	40%	11.46
40%	45%	13.28
45%	100%	14.00

~~(b) The Chief Operating Officer:~~

~~(1) Shall establish administrative procedures to implement subsections (b) and (c) of Metro Code Section 5.02.046; and~~

~~(2) May establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.~~

~~(e) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any~~

Solid Waste System Facility authorized to accept such substances shall be allowed a credit in the amount of \$11.58 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter.

~~(d) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council.~~

~~(e) The Director of the Solid Waste and Recycling Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and maintain existing contingency funding.~~

SECTION 8. The definition of “Special waste” in Metro Code section 5.05.010 shall be amended as follows:

(v) “Special waste” shall have the meaning assigned thereto in Metro Code Section ~~5.02.0155.01.010~~.

SECTION 9. The following definitions of “Material Recovery,” “Processing Residual,” and “Recyclable Material,” shall be added to Metro Code section 5.05.010, other Code subsections in that section shall be renumbered accordingly, and other Code references to such subsection shall be amended accordingly:

“Material recovery “ shall have the meaning assigned thereto in Metro Code section 5.01.010.

“Processing residual” shall have the meaning assigned thereto in Metro Code section 5.01.010.

“Recyclable material” shall have the meaning assigned thereto in Metro Code section 5.01.010.

SECTION 10. Metro Code section 5.05.030 shall be amended as follows:

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.

- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.
- (4) ~~(4)~~ Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of an agreement between Metro and the owner of Lakeside Reclamation authorizing receipt of solid waste generated within Metro **only as follows**:
- (A) As specified in an agreement entered into between Metro and the owner of the Lakeside Reclamation Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (5) (5) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of an agreement between Metro and the owner of Hillsboro Landfill authorizing receipt of solid waste generated within Metro **only as follows**:
- (C) As specified in an agreement entered into between Metro and the owner of the Hillsboro Landfill authorizing receipt of such waste; or
 - (D) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.-
- (6) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by **Waste Management Disposal Services of Oregon, Inc. (dba Oregon Waste Systems, Inc.)** subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems, **Inc.** and between Metro and Jack Gray Transport, Inc., **including any subsequent amendments thereto**. In addition, Columbia Ridge Landfill may accept **solid special**-waste generated within Metro:

- (A) As specified in an agreement entered into between Metro and ~~Waste Management Disposal Services of Oregon, Inc. Waste Systems~~ authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility ~~solid~~~~special~~ waste not specified in the agreement.
- (7) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, located in Klickitat County, Washington. Roosevelt Regional Landfill may accept ~~special~~~~solid~~ waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility ~~special~~~~solid~~ waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept ~~special~~~~solid~~ waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility ~~special~~~~solid~~ waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within ~~the District~~~~Metro~~ only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility ~~solid~~~~special~~ wastes not specified in the agreement.
- (10) Wasco County Landfill. The Wasco County Landfill, located in The Dalles, Oregon, which may accept solid waste generated within ~~the District~~~~Metro~~ only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Wasco County Landfill authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility solid wastes not specified in the agreement.

(11) Cedar Grove Composting, Inc. The Cedar Grove Composting, Inc., facilities located in Maple Valley, Washington, and Everett, Washington. Cedar Grove Composting, Inc., may accept solid waste generated within ~~the District~~Metro only as follows:

(A) As specified in an agreement entered into between Metro and Cedar Grove composting, Inc., authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to Cedar Grove Composting, Inc., solid wastes not specified in the agreement.

(12) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within ~~the District~~Metro only as follows:

(A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc., authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid wastes not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the 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 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 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 facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for non-putrescible waste. Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of ~~their~~ its intent to seek an agreement to recover non-putrescible waste from the Metro region in accordance with subsection (g) or to only take processed non-putrescible waste from authorized facilities included in subsection (f) or to take unprocessed dry waste from the Metro region subject to the fee or surcharge as determined by Metro Council in accordance with Section 11 of the Ordinance. No later than December 31, 2008, the Chief Operating Officer shall modify existing agreements to ensure substantial compliance with either subsection (f) or (g) of this section or Section 11 of this Ordinance as appropriate. If the Chief Operating Officer and a designated facility are not able to establish an agreement by November 1, 2008, then the Chief Operating Officer shall terminate the existing agreement following termination procedures described in the existing agreement, but no later than December 31, 2008.

(d) An agreement, or amendment to an agreement between Metro and a designated facility for Putrescible waste shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

~~(d)~~(e) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(f) ~~————(e)——~~An agreement between Metro and a designated facility ~~that authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall demonstrate substantial compliance with facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities.~~ shall not authorize the facility to accept non-putrescible waste originating or generated within Metro boundaries after December 31, 2008, unless:

- (1) Such non-putrescible waste is received from a facility that has been issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
- (2) Such non-putrescible waste is received from a designated facility that has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing such designated facility to perform material recovery on non-putrescible waste; or
- (3) The facility has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing the facility to perform material recovery on non-putrescible waste that has not yet undergone material recovery.

(g) An agreement between Metro and a designated facility that, after December 31, 2008, authorizes the facility to accept non-putrescible waste that has not yet undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:

- (1) Require such designated facility to perform material recovery on such waste; and
- (2) Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:
 - (A) Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
 - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
- (3) Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No.

07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code section 5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).

SECTION 11. Not later than March 1, 2008, the Chief Operating Officer shall provide the Metro Council with a recommendation for a form of additional solid waste fee or surcharge to be imposed on designated facilities seeking to dispose of unprocessed, non-putrescible waste from within the Metro region. The recommended fee or surcharge shall be applied as to provide substantially equivalent disposal rates among material recovery facilities and designated facilities for disposal of unprocessed non-putrescible wastes. The recommendation of the Chief Operating Officer shall also include an amount for the proposed additional solid waste fee or surcharge, a proposal for the administrative procedures required to implement the imposition and collection of such fee or surcharge, the effective dates, and a recommendation on the uses to which the revenues generated by such fee or surcharge may be put.

SECTION 12. Metro Code section 5.05.035(a) as amended by Ordinance No. 07-1138 shall be further 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.

An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities. **Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility after January 1, 2009, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code section 5.01.125.**

SECTION 13. Metro Code section 7.01.020 shall be amended as follows:

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 Metro,

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 Metro 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 Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro 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 Metro. If the Council so establishes a lower rate of tax, the Chief Operating 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, licensed, franchised, or provided by Metro, 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 Metro'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 compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. In addition, 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 Metro's contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 7.01.023 for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro 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, 2002, the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue of \$6,050,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be

sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.

- (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, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) compostable organic waste delivered to Metro Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in subsection (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under subsection (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro's excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2006-07, and each fiscal year thereafter, the rate determined by this subsection shall be effective as of September 1st unless another effective date is adopted by the Metro Council.
- (2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By March 1st of each year, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:

- (1) For the twelve (12) 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	Regional Recovery Rate
2005	56%
2006	56.5%
2007	57%
2008	57.5%
2009	58%

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

~~(g) (1) A solid waste facility which is 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 twelve (12) 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 no greater than as provided on the following table:~~

Excise Tax Credit Schedule		
Facility Recovery Rate		Excise Tax
From	Up To &	Credit of no more than
Above	Including	
0%	30%	0.00
30%	35%	1.92
35%	40%	2.75
40%	100%	3.51

- ~~(2) — During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.~~
- ~~(3) — The Chief Operating Officer may establish procedures for administering the Excise Tax Credits set forth in subsection (g)(1), including, but not limited to, establishing eligibility requirements for such credits and establishing incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (g)(1).~~

SECTION 14. Metro Code section 7.01.028 shall be amended as follows:

7.01.028 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 7.01.022, 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 Chapter 7.01 during the period of the two (2) 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 7.01.020(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 subsections (a) and (b) of this section shall be placed in the account established in subsection(a).~~

SECTION 15. Metro Code sections 7.01.160 and 7.01.170, and Section 4 of Metro Ordinance No. 07-1138 (Metro Code section 5.05.030(e)) are repealed.

SECTION 16. Metro Code sections 7.01.180 and 7.01.190 are repealed.

SECTION 17. Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12 and 15 of this ordinance shall be effective 90 days after the adoption of this ordinance. Sections 6, 7, 13, 14, and 16 of this ordinance shall be effective on January 1, 2009.

ADOPTED by the Metro Council this _____ day of _____, 2007.

David Bragdon, Council President

Attest:

Approved as to Form:

Council Clerk Recording Secretary

Daniel B. Cooper, Metro Attorney

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1147, FOR THE PURPOSE OF ADOPTING LEGISLATION TO ENSURE THAT ALL OF THE REGION'S NON-PUTRESCIBLE WASTE UNDERGOES MATERIAL RECOVERY PRIOR TO DISPOSAL, TO ELIMINATE THE REGIONAL SYSTEM FEE AND EXCISE TAX CREDIT PROGRAM, AND TO MAKE RELATED CHANGES

Date: April 26, 2007

Prepared by: Bryce Jacobson

BACKGROUND

Higher levels of material recovery from commercial sources are essential to achieving the region's 64% state-mandated waste reduction goal. Greater recovery of building industry waste is a key component of the region's efforts.

In 2003, a stakeholder study group examining options for increasing recovery from this sector recommended that Metro should require processing of all construction and demolition debris loads before landfilling. Metro Council then directed staff to develop a program that would require all dry waste to be processed prior to landfill disposal.

C&D (also referred to as dry waste) consists primarily of six types of material: wood, metal, corrugated cardboard, concrete, drywall and roofing. On a typical construction or demolition project, over 90% of the waste materials are reusable or recoverable with current technology and markets.

The region's building industry has a well-developed system of over 90 source-separated recyclers and salvagers, seven facilities that recover recyclable material from mixed dry waste, and two dry waste landfills.

- **Building material reuse facilities** accept and resell used building materials (salvage) taken out of buildings during demolition or remodeling. *Salvaged materials have a positive value, with most salvage retailers paying for materials or providing a tax-deductible receipt.*
- **Source-separated recyclers** accept loads of already sorted materials, which are essentially 100% recyclable. *These facilities pay for materials like cardboard and metal or charge between \$5/ton - \$25/ton for materials that have well-developed local markets (wood, land clearing debris and rubble).*
- **Dry waste facilities** accept mixed loads of debris that are free of food waste and that meet their particular standards for minimum recovery content. *Tip fees at dry waste recovery facilities vary, but are usually \$65-70/ton. These facilities typically achieve a 25-50% material recovery rate.*
- **Transfer stations** process mixed dry loads for recovery and achieve an 18-35% recovery rate. *The Metro tip fee for all waste is \$70/ton; private transfer stations generally charge a slightly lower rate to attract dry waste flow.*

- **Dry waste landfills** accept loads of mixed dry waste and dispose of the debris without doing any type of post collection recovery/sorting. *Landfilling of dry waste costs \$50 to \$61/ton.*

For many generators of mixed dry waste, particularly on the west side, two dry waste landfills, Hillsboro and Lakeside, are the facilities of choice because they are the lowest cost options. Landfilling waste material is simply less costly than processing it for recovery.

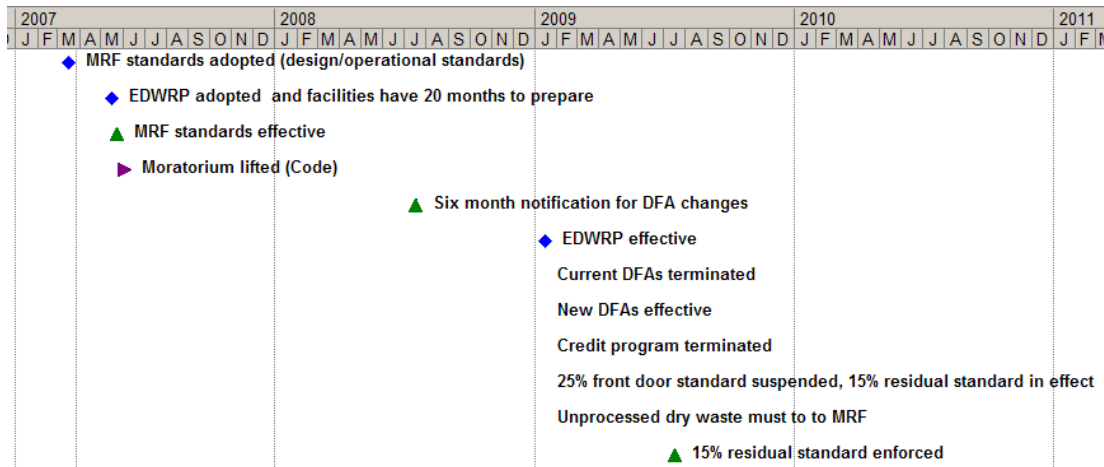
Hillsboro and Lakeside landfills collectively dispose of 125,000 tons of dry waste each year. The intent of this ordinance before Council is to spur at least 33,000 tons per year of new recovery by requiring the processing of dry waste for material recovery before landfilling.

The ordinance would affect all private facilities accepting Metro region mixed dry waste. Major provisions are as follows:

- All mixed dry waste generated in the Metro region would be required to be processed for material recovery prior to landfill disposal by January 1, 2009.
- Materials specified for recovery are those with steady markets: wood, metal and corrugated cardboard.
- The current “front door” 25% recovery requirement for dry waste facilities would be replaced by a new “back door residual” standard that would measure how effective a facility is at recovering wood, corrugated cardboard and metal. This standard would require that no more than 15% (by weight) of wood, cardboard and metal pieces (size specified) be present in the processing residual.
- The controversial Regional System Fee Credit program would end when this program takes full effect in January 2009.
- Facilities will have approximately 18 months before the required processing provision takes effect, but will have 25 months to meet the new performance requirement of this ordinance (15% “back door” residual standard) before it is enforced, beginning July 1, 2009.
- By March 1st, 2008, the Chief Operating Officer of Metro will recommend to Metro Council an additional per ton solid waste fee or surcharge that could be imposed on any designated facility (i.e., area landfill) still seeking to dispose of mixed dry waste after the program becomes effective. The recommended fee or surcharge would provide substantially equivalent disposal rates among material recovery facilities and designated facilities, eliminating current economic uncertainties for recovery and disposal facilities in Washington County.

The following timeline displays key dates in the program’s implementation and enforcement.

Figure 1
Key Dates for Dry Waste Recovery and MRF Standards



ANALYSIS/INFORMATION

1. **Known Opposition:** Lakeside landfill owner Howard Grabhorn, Washington county officials, and SWAC (most of the 9-6 majority opposing cited implementation uncertainties relative to Lakeside as the basis for their opposition).
2. **Legal Antecedents:** ORS 268.317, Metro Code Chapters 5.01, 5.05, and the Metro Charter
3. **Anticipated Effects:**

Economic Effects

EDWRP is likely to increase posted tip fees for mixed dry waste at private facilities throughout the region. The policy is to allow more operating costs to be covered by gate revenue (especially the cost of processing more material with potentially lower recovery content), and to replace revenue lost to the planned elimination of the Metro fee and tax credit programs.

The increase in recovery facility gate rate will incent additional source separated recycling as generators seek to avoid the now higher gate rate for dry waste. This increase in source separated recycling is estimated to be in the range of 5,000-10,000 additional tons per year.

Metro staff studied six types of “typical” construction projects to estimate the likely disposal cost increases for generators as a result of EDWRP:

- Residential kitchen remodel with small addition
- New single-family house
- Complete demolition of a single-family house
- Residential re-roofing job
- Commercial remodeling project

- New “big-box” commercial retail space

Cost increases in the residential sector construction projects should be well under \$100 per project; as a function of total project cost they were well under ½ of one percent increase. Residential single-family demolition costs increased more than any other project type. Total disposal costs there should increase from \$100 to over \$700 or less than 1% to almost 5% of the total job cost.

Commercial construction project costs for an office remodel should increase from \$20 to over \$200. A large “big-box” retail store should increase between \$200 and \$1,800. Because of the higher overall costs for these commercial projects, the cost increases as a percent of total project cost were small, mostly under .05%.

Environmental Effects

Enhanced Dry Waste Recovery will increase recovery in the region by a minimum of 33,000 tons of new dry waste recovery each year. This newly recovered material will serve as manufacturing feedstock in some instances, alternative fuel sources in others. In each case, the material recovered reduces the need to extract raw materials, eliminating attendant energy use and pollution associated with virgin material extraction.

As shown in Figure 2, the dry waste diverted from landfill disposal and recovered in some fashion will result in a reduction in greenhouse gases, energy consumption and airborne wastes.

Figure 2

Environmental Effects of EDWRP*

Action	Quantity	Equivalent to...
Reduce greenhouse gases by	25,931 MTCE (Metric tons of carbon equivalent)	keeping 19,567 cars off the road for a year
Reduce energy consumption by	733,971 Million BTU (British thermal units)	the energy used by 6,977 average households during a year
Reduce airborne wastes by	35,000 tons	21.8 million miles of heavy truck travel

*These benefits are projected by the National Recycling Coalition Environmental Benefits Calculator.

4. Budget impacts: Effect on the General Fund is in two parts: the base excise tax and the additional tax. The contribution to the Recovery Rate Stabilization Reserve would be reduced by about \$20,000 per year. Revenue from the additional tax (for Parks, MERC and the Zoo) would be reduced by about \$115,000 per year. Effect on the Solid Waste Fund is essentially fiscally neutral.

RECOMMENDED ACTION

The Chief Operating Officer recommends Metro Council approve Ordinance 07-1147.