

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 01-917
METRO CODE CHAPTER 5.05)
CONCERNING SOLID WASTE) Introduced by Mike Burton,
FLOW CONTROL) Executive Officer

WHEREAS, Metro Code Chapter 5.05 concerning solid waste flow control was adopted in 1989 and last amended in 1993; and

WHEREAS, Subsequent to the last amendment of Chapter 5.05 Metro has modified its approach to managing the regional solid waste disposal system, in part through adoption of a new Regional Solid Waste Management Plan and through amendment of Metro Code Chapter 5.01 concerning regulation of solid waste facilities; and

WHEREAS, Subsequent to the last amendment of Chapter 5.05 there have also been changes in the structure of the private solid waste industry; and

WHEREAS, The Metro Council finds it desirable to update Metro Code from time to time to reflect changes in the solid waste system; and,

WHEREAS, This ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.05.010 is amended as follows.

5.05.010 Definitions

Notwithstanding anything expressed or implied in the Metro Code to the contrary, as used in this chapter 5.05, the following terms shall have the respective meanings set forth

below unless the context requires otherwise:

(a) "Act" shall mean Oregon Revised Statutes Chapter 268, as amended, and other applicable provisions of the laws of the State of Oregon.

(b) "Council" shall have the meaning assigned thereto in Metro Code section 1.01.040(a).

(c) "Designated facility" means one of the facilities constituting a part of the system designated from time to time pursuant to section 5.05.030 of this chapter 5.05, to which solid waste may be directed by a required use order.

(d) "Director" means the director of the Metro Regional Environmental Management department of solid waste or the director's designee.

(e) "Disposal site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

(f) "District" shall have the meaning assigned thereto in Metro Code section 1.01.040(b).

(g) "Executive Officer" shall mean the duly elected or appointed, qualified and acting executive officer of Metro, or any officer of Metro hereafter succeeding to the powers and duties of such executive officer with respect to the system.

(h) "Metro Code" means the Code of the ~~Metropolitan Service District~~.

(i) "Non-system facility" means any solid waste disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste which does not constitute part of the system.

(j) "Non-system license" means a license issued pursuant to and in accordance with Metro Code section 5.05.035.

(k) "Person" shall have the meaning assigned thereto in Metro Code section 1.01.040(f).

(l) "Processing facility" shall mean a facility described in Metro Code section 5.01.010~~(e)~~ which has been designated by Metro as constituting part of the system.

(m) "Regional Solid Waste Management Plan" means the Metro regional solid waste management plan adopted by Ordinance No. ~~95-624-88-266B~~ on November 30, 1995~~October 27, 1988~~, and as subsequently amended by the Metro Council.

(n) "Regional system fee" shall have the meaning assigned thereto in Metro Code section 5.02.015.

~~(on)~~ "Required use order" means a written order issued pursuant to Metro Code section 5.05.040 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

~~(po)~~ "Resource recovery facility" shall mean a facility described in Metro Code section 5.01.010~~(o)~~ which has been designated by Metro as constituting part of the system.

~~(p)~~ "Service area" shall mean the area within the jurisdictional boundaries of issuer within which the system operates to provide solid and liquid waste disposal services, all as contemplated by the Act.

(q) "Solid waste" shall have the meaning assigned thereto in Metro Code section 5.01.010~~(t)~~.

(r) "Source separated recyclable material" shall have the meaning assigned thereto in ORS 459.005~~(22)~~ and 459.005~~(29)~~.

(s) "State" shall have the meaning assigned thereto in Metro Code section 1.01.040~~(g)~~.

(t) "System" shall mean any and all facilities now or hereafter designated by Metro as part of its system for the management and disposal of solid and liquid waste, including, but not limited to recycling and other volume reduction facilities, sanitary landfills, or other disposal means, resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel), recycling and transfer stations, roads, water lines, wastewater lines and treatment facilities to the extent provided or operated to carry out the provisions of the Act, and all buildings, fixtures, equipment and all property, real and personal now or hereafter owned, leased, operated or used by Metro, all for the purpose of providing for solid and liquid waste disposal; ~~as of the date of enactment of this chapter 5.05, said system consists of the initial designated facilities described in section 5.05.030(a) of this chapter.~~

(u) "Transfer station" shall mean a facility described in Metro Code section 5.01.010~~(v)~~ which has been designated by Metro as constituting part of the system.

~~(v)~~ "User fee" shall have the meaning assigned thereto in Metro Code section 5.01.010~~(w)~~.

~~(vw)~~ "Waste hauler" means any person engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within the ~~service area~~District, including any person engaged in such activities with respect to solid waste

generated by such person as well as any person engaged in such activities with respect to solid waste generated by others.

Section 2. Metro Code Section 5.05.015 is amended as follows:

5.05.015 Special Findings for Solid Waste Flow Control

In connection with the enactment of the provisions of this chapter 5.05 of the Metro Code (as defined below), the council of Metro hereby finds and determines the following:

(a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste, it is the responsibility of the council to protect and judiciously utilize such limited land and resources.

(b) Metro ~~has developed~~ is developing the system as a regional waste disposal and recovery system within the framework of a regional solid waste management plan in cooperation with federal, state and local agencies for the benefit of all citizens of the service area District.

~~———— (c) ——— Pursuant to the regional solid waste management plan, Metro has made significant contractual commitments of financial resources, including authorization of revenue bonds, to provide for the construction, operation and maintenance of major facilities as part of the system to provide and assure the safe and efficient disposal, transfer and resource recovery of solid waste generated within the service area to meet the needs of residents of the service area.~~

~~———— (d) ——— The feasibility of construction, operation and maintenance of major facilities as part of the system to meet the present and future needs of the residents of the service area and the ability of Metro to generate revenues sufficient to liquidate the bonded indebtedness to be incurred by Metro to finance the construction of major facilities as part of the system depend upon the ability to obtain the type and quantity of operational volumes of solid and liquid waste needed to make such facilities economically viable.~~

(c) The purposes of this chapter are to protect and preserve the health, safety and welfare of the District's residents; to implement cooperatively with federal, state and local agencies the Regional Solid Waste Management Plan; to provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of the District; to reduce the volume of Solid Waste disposal through source reduction, recycling, reuse and resource recovery; and to protect the citizens of the region from liability arising from the use of a disposal site subject to federal law.

(de) Pursuant to the authority granted to Metro under ORS 268.317 and 268.360, as amended, Metro may require any person or class of persons who generate solid or liquid waste to make use of disposal, transfer or resource recovery sites or

facilities of the system or disposal, transfer or resource recovery sites designated by Metro.

(e) ORS 268.317 and 268.360, as amended, also provides Metro the authority to require any person or class of persons who pickup, collect, or transport solid or liquid wastes to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

~~(g) Further authority to require use of various solid waste facilities as may be designated by Metro to assure financial feasibility of such facilities is provided in the regional solid waste management plan, chapter 10, referred to above.~~

(h) The provisions of this chapter 5.05 are intended to be, and they shall constitute, the exercise by Metro of the powers and authority granted to it under ORS 268.317 and 268.360, as amended, and the regional solid waste management plan to require the persons and classes of persons specified herein who generate, pickup, collect or transport solid or liquid wastes to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

Section 3. Metro Code Section 5.05.020 is amended as follows:

5.05.020 Authority, Jurisdiction, and Application

(a) Metro's Solid Waste flow control authority is established under ORS Chapter 268 for Solid Waste and the 1992 Metro Charter and includes authority to regulate Solid Waste generated within the District.

(b) This chapter 5.05 shall govern the transportation, transfer, disposal and other processing of all solid waste generated within the service area District as authorized by state law, and shall govern all waste haulers and other persons who generate solid waste within the service area District or who transport, transfer, dispose or otherwise deal with or process solid waste generated within the service area District; provided that notwithstanding the foregoing, this chapter does not apply to or govern the transportation, transfer or processing of, or other dealing with, source separated recyclable material.

(c) All Solid Waste regulation shall be subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter shall be liberally construed to accomplish these purposes.

Section 4. Section 5 is added to and made a part of Metro Code Chapter 5.05.

Section 5.

Prohibited Activities

Except as otherwise provided in this chapter it shall be unlawful for any waste hauler or other person to transport solid waste generated within the District to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the District, any solid waste facility or disposal site without an appropriate license from the District.

Section 6. Section 7 is added to and made a part of Metro Code Chapter 5.05.

Section 7.

Exemptions

(a) A license is not required of any waste hauler or other person to transport solid waste generated within the District to, or to utilize or cause to be utilized for the disposal or other processing of solid waste generated within the District, a designated facility of the system that is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility.

(b) A license is not required to transport solid wastes to a solid waste facility or disposal site for the primary purpose of destroying such wastes, including but not limited to contraband, postage stamps, expired pharmaceuticals, and certain records.

Section 8. Metro Code Section 5.05.030 is amended as follows:

5.05.030 Use of Designated Facilities of the System

(a) Designated Facilities. The following described facilities shall 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) to which Metro may direct solid waste pursuant to a required use order:

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

~~(2) MSW (Municipal Solid Waste) Compost Facility. The MSW Compost Facility located at 5611 N.E. Columbia Boulevard, Portland, Oregon 97217.~~

~~(3) Metro Central Station. The Metro Central Station located at 6161~~

N.W. 61st Avenue, Portland, Oregon 97210.

- ~~(4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.~~
- (53) Franchise Facilities Subject to Metro Regulatory Authority. All disposal sites, transfer stations, processing facilities and resource recovery and solid waste facilities within the district which operate pursuant are subject to a Metro regulatory authority franchise under chapter 5.01 of the Metro Code.
- (64) ~~Grabhorn 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 ~~Grabhorn, Inc.~~ authorizing receipt of solid waste generated within the service area District.
- (75) 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, ~~Inc.~~ authorizing receipt of solid waste generated within the service area District.
- (86) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc. In addition, Columbia Ridge Landfill may accept special waste generated within the service area District:
- (A) As specified in an agreement entered into between Metro and Oregon Waste Systems authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.
- (97) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, ~~owned and operated by Regional Disposal Company of Seattle and~~ located in Klickitat County, Washington. Roosevelt Regional Landfill may accept special waste generated within the service area District 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 waste not specified in the agreement.

(408) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill ~~owned and operated by Finley Buttes Landfill Company of Vancouver, Washington, and located in Morrow County, Oregon.~~ Finley Buttes Regional Landfill may accept special waste generated within the ~~service area~~District 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 waste 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 ~~initial~~ 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 record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; [NOTE: this subsection has been moved in total to the new (6) below]~~
- (34) The adequacy of operational practices and management controls at the facility;

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

~~(6) The expected impact on Metro's revenue;~~

(57) 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~~

~~(8) The need for additional disposal capacity and the effect on existing designated facilities; and~~

(79) 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) An agreement, or amendment to an agreement between Metro and a designated facility, shall be subject to approval by the Metro council prior to execution by the executive officer.

(d) 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.

~~(e) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.~~

Section 9. Metro Code Section 5.05.035 is amended as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within the service area ~~District~~ to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area ~~District~~, any non-system facility only by obtaining a non-system license in the manner provided for in this section 5.05.035.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the executive officer, which

application shall be filed on forms or in the format provided by the executive officer. in writing and accompanied by a non-refundable application fee in the amount of \$500. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. Such written 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 annual 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; and
- (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.
- (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 executive officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the executive officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Every application shall be accompanied by payment of a non-refundable application fee, and an issuance fee which shall be refunded to the applicant in the event that the application is denied. Until such time as council acts on the executive officer's recommendation pursuant to section 5.50.035(g) of this Chapter, the following fees shall apply:

~~(1) For a limited duration non-system license, the application fee shall be fifty dollars (\$50) and the issuance fee shall be fifty dollars (\$50) for each 30 days (or part thereof) that the license is valid;~~

~~(2) For all other non-system licenses, the application fee shall be five hundred dollars (\$500) and the issuance fee shall be five hundred dollars (\$500).~~

(c) **Determination Whether to Issue Non-System License.** Within 60 days after receipt of a completed application for a non-system license and any additional information required by the executive officer in connection therewith, the executive officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. In making such determination, the executive officer shall consider the following factors to the extent relevant to such determination:

~~(1) Whether the solid waste proposed to be covered by the non-system license is of such a nature as to be valuable to the efficient operation of the system or is likely to cause problems for or disruptions in the efficient operation of the system;~~

~~(2) Whether the facilities of the system are capable of processing or otherwise dealing with solid waste of the nature or quantity proposed to be covered by the non-system license;~~

~~(3) Whether any changes to the operation of the system or the system facilities would be necessary or appropriate in order to efficiently process or otherwise deal with the solid waste proposed to be covered by the non-system license.~~

~~(4) The extent to which the solid waste proposed to be subject to the non-system license has previously been processed or otherwise dealt with through the system and the impact thereof on the efficient operation of the system;~~

~~(5) The impact of the proposed non-system license, either singly or in conjunction with all other non-system licenses theretofore issued in effect, on:~~

~~(A) The continued safe and efficient operation of the system;~~

~~(B) Metro's plan for the development of the system; and~~

~~(C) The revenues generated by the system; and~~

~~(1) The degree to which prior users of the non-system facility and~~

waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;

(2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;

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

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

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

(6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;

(7) Such other factors as the executive officer deems appropriate for purposes of making such determination.

At the discretion of the executive officer, the executive officer may impose such conditions on the issuance of a non-system license as the executive officer determines are necessary or appropriate under the circumstances.

(de) Issuance of Non-System License; Contents. In the event the executive officer determines to issue a non-system license, then upon payment by the applicant of a \$500 issuance fee such non-system license shall be issued by the executive officer. Each non-system license shall be in writing and shall set forth the following:

(1) The name and address of the waste hauler or other person to whom such non-system license is issued;

(2) The nature of the solid waste to be covered by the non-system license;

(3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;

(4) The non-system facility or facilities at which or to which the solid

waste covered by the non-system license is to be transported or otherwise processed;

- (5) The expiration date of the non-system license, which date shall be not more than 120 days from the date of issuance for limited-duration non-system licenses, and two years from the date of issuance for all other of such non-system licenses; and
- (6) Any conditions imposed by the executive officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in section 5.05.035(c).

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

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month;
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the ~~user fee~~ Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(fe) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in section 5.05.035(d) above or any conditions of such non-system license imposed pursuant to section 5.05.035(b), then, upon discovery of such non-compliance, the executive officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the executive officer may

determine to grant as provided below, the licensee fails to:

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

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

~~(f) Effect on Existing Arrangements for Use of Non System Facilities. Notwithstanding the foregoing provisions of this section 5.05.035, any agreements or authorizations which permit any waste hauler or other person to transport solid waste generated within the service area to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility and which were entered into or given prior to the effective date of Metro Ordinance No. 89-319 shall remain in full force and effect for a period of 180 days following said effective date, subject in all respects to the terms and conditions of such agreements or authorizations, at the end of which 180-day period all such agreements shall automatically terminate and all uses of non-system facilities shall only be allowed pursuant to a non-system license obtained as provided above; provided that the foregoing shall in no way prevent Metro from exercising during such 180-day period any right it may have to terminate any such agreement or authorization.~~

(g) Executive Officer to Recommend License Application and Issuance Fee Schedules. ~~Within six months from the date of enactment of this chapter~~ Prior to March 15, 2002, the executive officer shall recommend to council non-system license application and issuance fee schedules which vary for each applicant and licensee based on the type and quantity of solid waste subject to the non-system license and other appropriate factors.

Section 10. Metro Code Section 5.05.038 is repealed.

Section 11. Metro Code Section 5.05.040 is amended as follows:

5.05.040 Issuance of Required Use Orders

(a) The director may issue a required use order to any waste hauler or other person within the ~~service area~~ District, requiring the recipient to deliver waste to a specific designated facility. In issuing a required use order, the director shall comply with the provisions of this section and section 5.05.050.

(b) The following priorities shall govern the director in determining whether to issue required use orders:

- (1) To the extent consistent with state, Metro and local regulations, and facility contractual obligations and facility limitations, waste haulers and other persons should be allowed to utilize the designated facility of their choice; and
- (2) It may be necessary for the director to override the facility choice of a waste hauler or other person if the director finds that allowing specific haulers to exercise their choice appears likely to result in:
 - ~~(A) Metro's failure to meet contractual obligations for waste deliveries;~~
 - (AB) The overloading or under-utilization of a specific designated facility or facilities; or
 - (BC) Other system inefficiencies or negative impacts on the public health, safety or welfare specified by the director.

(c) If, after considering the priorities in subsection (b) of this section, the director determines that it is necessary to issue or amend required use order(s), the director may do so giving due regard to the following factors:

- (1) The location of the waste hauler or other person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;
- (2) The equipment being utilized by the hauler at the time of issuance of the order in relation to the equipment handling capabilities of designated facilities;
- (3) The types of waste being disposed of by the waste hauler or other person, in relation to the capabilities of designated facilities to

most appropriately process those wastes; and

~~(4) Geographic and jurisdictional boundaries; and~~

(45) Other considerations deemed relevant by the director, including but not limited to other health, safety and welfare considerations; and other equitable considerations.

Section 12. Metro Code Section 5.05.070 is amended as follows:

5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

(a) Any waste hauler or person who violates or fails to comply with any provision of this chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or required use order shall be subject to the fines and penalties set forth in this section, which fines and penalties shall be assessed by the executive officer.

(1) A fine in the amount of not to exceed \$500 for each violation; and

(2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this chapter as a result of such violation or failure to comply have been paid in full.

(b) In addition to the foregoing fines and penalties:

(1) Any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the ~~user fee~~ Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the ~~service area~~ District transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; and

(2) Any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within the ~~service area~~ District to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within the ~~service area~~ District, any non-system facility shall be required to pay to Metro a fine in an amount equal to the \$500 non-system license application fee, plus the \$500 non-system license issuance fee, plus an amount equal to the ~~user fee~~ Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the ~~service area~~ District transported,

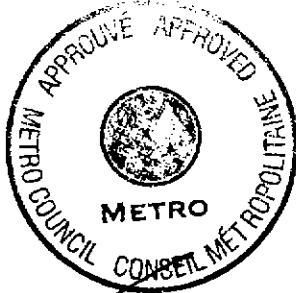
recycled, disposed of or otherwise processed to or at any non-system facility.

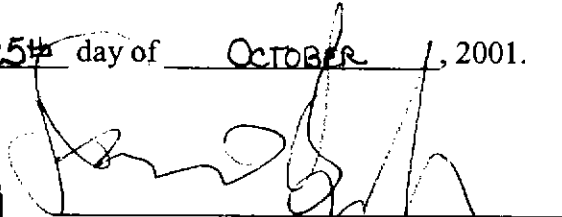
(c) If in the judgment of the executive officer such action is warranted, Metro shall commence an appropriate action in a state court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or required use order.

(d) ~~By March 15, 2002~~ ~~Within six months from the date of enactment of this chapter,~~ the executive officer shall recommend to council a schedule of fines which impose sanctions based on the nature and extent of the violation or failure to comply.

(e) A required use order may be enforced by authorized gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a required use order and is attempting to deliver waste to a facility not specified in the order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this section.

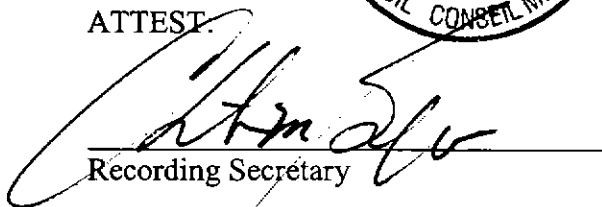
ADOPTED by the Metro Council this 25~~th~~ day of October, 2001.





David Bragdon, Presiding Officer

ATTEST.



Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 01-917, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 CONCERNING SOLID WASTE FLOW CONTROL

Date: October 18, 2000

Presented by: Councilor Atherton

Committee Recommendation: At its October 3 meeting, the committee considered Ordinance No. 01-917 and voted unanimously to send the ordinance to the Council with a do pass recommendation. Voting in favor: Councilors McLain, Monroe and Chair Atherton.

Existing Law: This ordinance is one of four ordinances that the Council will be considering as a package. The ordinances amend Metro Code provisions relating to facility regulation, flow control, Metro tip fees and the regional system fee credit program. The ordinances seek to address four major objectives: 1) achieving Metro's waste reduction and recycling goals, 2) provide local disposal facility access and reduce vehicle miles traveled (VMT), 3) maintain the efficient operations of Metro transfer station facilities, and 4) provide financial benefit to the ratepayer. The committee and the Solid Waste Advisory Committee (SWAC) reviewed the elements of the proposed ordinances in both a conceptual and draft form over a series of several meeting prior to taking final action on the ordinance package.

Metro Code Chapter 5.05 establishes Metro policies related to flow control. Flow control is a legal concept that helps define the extent to which Metro can regulate activities within the region's solid waste system. These code provisions were originally adopted in 1989 and were last amended in 1993. Metro solid waste regulatory policies as reflected in Metro Code Chapter 5.01 and the nature of the region's solid waste system have significantly changed in recent years. In addition, there have been several federal court decisions that have changed the legal interpretation of local government flow control authority.

The Office of General Counsel had recommended that Chapter 5.05 be amended to reflect recent system changes and legal decisions. This ordinance reflects their recommended changes.

Committee Issues/Discussion: Marvin Fjordbeck, Office of General Counsel, outlined the amendments proposed ordinance. He noted that the ordinance clearly establishes that the intent of Metro's exercise of its flow control authority is based on the need to protect the public health, safety and welfare. Exercise of this authority also is based on the need for environmental protection and support of material.

The ordinance reflects this intent through the establishment of special flow control findings (Section 2) and a declaration of authority, jurisdiction, and application (Section 3). In addition, there are a variety of definitional and minor procedural changes that reflect that tie directly tie Metro's flow control authority to the regulation of the solid waste system in the public interest. These relate to prohibited activities, exemptions, designated facilities, non-system licenses and required use orders.

The committee had no questions regarding the ordinance and received no testimony.

**EXECUTIVE SUMMARY
ORDINANCE 01-917**

AMENDING METRO CODE CONCERNING SOLID WASTE FLOW CONTROL

PROPOSED ACTION

- Adopt Ordinance 01-917 amending Metro Code Chapter 5.05, “Solid Waste Flow Control.”
- These amendments position Metro’s solid waste system to be consistent with current legal principles, and reflect Metro’s current practices.

WHY NECESSARY

- Metro’s flow control authority remains an important tool for management of the solid waste system.
- The stipulations for the Metro Central bonds are based in part on implementation of flow control authority.
- Since Metro’s original flow control ordinance was adopted, the courts have affected the scope and application of flow control across the county.
- The solid waste industry has changed significantly since Metro’s original flow control ordinance was adopted.

ISSUES/CONCERNS

- There has been an increasing number of court challenges to flow control in recent years. This ordinance puts Metro in a better position to meet such a challenge.
- This ordinance will not necessitate any change in practice for the vast majority of stakeholders and participants in the solid waste system.

BUDGET/FINANCIAL IMPACT OF PASSAGE

- None.

STAFF REPORT

Ordinance No. 01-917, For the purpose of amending Metro Code Chapter 5.05 concerning solid waste flow control.

September 18, 2001

Presenter: Terry Petersen

BRIEF DESCRIPTION OF THE ORDINANCE

This Ordinance amends Metro Code Chapter 5.05, Solid Waste Flow Control, by updating it to strengthen the statement of public interests the chapter is intended to serve, to reflect recent changes in the solid waste system and Metro's management of the system, and to remove outdated portions of the Code. This ordinance will not necessitate any change in practice for the vast majority of stakeholders and participants in the solid waste system.

EXISTING LAW

Any amendment of Metro Code requires an ordinance approved by Metro Council, pursuant to Metro Charter section 39(1).

BACKGROUND

Metro Code Chapter 5.05, Solid Waste Flow Control, was adopted in 1989 and was last amended in 1993. Since then, Metro has modified its approaches to managing the regional solid waste disposal system—in part through adaptation to changes in the structure of the solid waste industry, and in part through adoption of a new Regional Solid Waste Management Plan and changes in the approach to regulation of solid waste facilities. Furthermore, parts of Metro Code Chapter 5.05 have become outdated over time.

EXPLANATION OF THE ORDINANCE

This Ordinance does not substantially change Metro Code Chapter 5.05, but rather aligns it more closely with Metro's implementation of its flow control authority, and current and expected practice in implementation.

Overview of the Revised Code

The implementation of Metro's flow control authority under the revised code is founded on the principle that solid waste be regulated in the public interest: health, safety and welfare; environmental protection; and in support of resource recovery. In the new structure of Chapter 5.05 Metro implements its flow control authority as follows:

- To protect the public interest, Metro requires a license to dispose of any solid generated within the region. Licenses are issued to an applicant that Metro finds will operate in a healthy, safe, and environmentally sound manner.

- However, to keep the system manageable, Metro “designates” facilities that Metro has pre-determined will operate in a healthy, safe, and environmentally sound manner. The system of designated facilities constitutes the safe harbor for persons who dispose of solid waste generated in the District. Accordingly, a license will not be required of persons who make use of “designated” facilities.
- Regional generators and waste haulers are free to choose among designated and non-designated facilities.
- Regional generators and waste haulers must apply for a license from Metro to use a non-designated facility. Metro may grant such a “non-system” license upon finding that both the hauler and the non-system facility will operate in a healthy, safe, and environmentally sound manner.

In summary, the Designated Facilities are the set of “safe harbor” disposal options available to the generator. Metro does not direct flow; the generator is free to choose among the options. If a person wishes to use a non-designated (that is a “non-system”) facility, they must obtain a “non-system license” to do so.

The relationship between Metro and Designated Facilities is based on a “Designated Facility Agreement,” a contract-like instrument approved by Metro Council. Among the provisions of this agreement, designated facilities collect and remit Metro fees and taxes.

Structure of the Revised Code

The key sections of the revised code are annotated and explained below.

5.05.015 Special Findings for Flow Control

The main purpose of Chapter 5.05—to protect the public health and safety, the environment, and to support resource recovery—is added as an explicit Special Finding for the chapter. References to Metro’s contractual obligations and the revenue-generating capability of the system are deleted, as these are no longer the main purposes of the flow control system.

5.05.020 Declaration of Authority, Jurisdiction, and Application

In this revised section, Metro’s flow control authority is first established;* then, jurisdiction is declared over solid waste generated within the District. This section establishes Metro’s broad authority to regulate solid waste in the public interest. The format of this section is revised to parallel that of Metro’s solid waste regulatory code (Chapter 5.01, as revised in 1998).

* Specifically, this authority is state law (ORS 268) and the Metro Charter.

new Identification of Prohibited Activities

This new section establishes the law that follows from the previous two sections. Specifically, this section makes it unlawful to transport waste generated within the region without an appropriate license.

new Exemptions

The main purpose of this section is to implement a set of “safe harbor” disposal choices for regional generators and waste haulers. Specifically, a generator or hauler who uses a “designated facility of the system” is exempted from the need to obtain a license. In the next section of the chapter, facilities are “designated” if the Council finds that they operate in a healthy, safe, and environmentally sound manner.

Thus, exempting the need for a license to use a designated facility protects the public interests, but renders the system more manageable by obviating the need for every generator and hauler to obtain a license.

5.05.030 Designated Facilities of the System

This section identifies the set of designated facilities and lays out the criteria by which Metro Council will approve additional designated facilities. These criteria are consistent with the purposes and applications of the chapter; that is, the public health, safety, welfare, environmental protection, protecting regional citizens from federal liabilities arising from the use of a disposal site, and fostering resource recovery.

5.05.035 License to Use Non-System Facility

This section lays out the criteria under which persons may be granted or denied a license to use a non-system facility. The primary change to this section is the revision of these criteria. As a matter of policy, the same standards that are employed to designate a safe-harbor facility should be employed to judge whether it is in the public interest to allow a non-system facility to receive regionally-generated waste. Accordingly, the revised criteria for a non-system license are parallel to those for designating facilities.

5.05.040 Required Use Orders

Required Use Orders (RUOs) were central to the original construction of Metro’s original flow control ordinances. Here, the RUO authority is retained, but the Code is amended so that RUOs are used only when it is in the public interest to balance flows among Metro-regulated facilities, such as in an emergency or to mitigate negative impacts to health and safety occasioned by the use of a facility.

BUDGET IMPACT OF PASSAGE

None.

EXECUTIVE OFFICER’S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 01-917.