

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.01 AND 5.05 TO EXTEND) ORDINANCE NO. 07-1161
MORATORIA ON APPLICATIONS FOR NEW)
SOLID WASTE TRANSFER STATIONS AND) Introduced by Chief Operating
PUTRESCIBLE WASTE NON-SYSTEM) Officer Michael J. Jordan, with the
LICENSES UNTIL DECEMBER 31, 2008;) concurrence of Council President
AND DECLARING AN EMERGENCY) David Bragdon

WHEREAS, today approximately twice as much solid waste transfer capacity exists as is needed for the disposal of the region's municipal solid waste; and

WHEREAS, the Metro Council is concerned with maintaining sufficient levels of tonnage to ensure efficient operations at all transfer stations, including publicly owned facilities; and

WHEREAS, on August 19, 2004, the Metro Council adopted Ordinance No. 04-1056 for the purpose of amending Metro Code Chapter 5.01 to impose a moratorium until December 31, 2005, on applications for and authorizations of new solid waste transfer stations within the Metro region; and declaring an emergency; and

WHEREAS, on September 22, 2005, the Metro Council adopted Ordinance No. 05-1093 for the purpose of amending Metro Code Chapter 5.01 to extend a moratorium until December 31, 2007, on applications for and authorizations of new solid waste transfer stations within the Metro region; and

WHEREAS, on February 2, 2006, the Metro Council adopted Ordinance No. 06-1098B amending Metro Code Chapters 5.01 and 5.05 and the Regional Solid Waste Management Plan to impose a temporary moratorium until December 31, 2007 on certain new non-putrescible, mixed solid waste material recovery or reload facilities, and certain non-system licenses; and declaring an emergency; and

WHEREAS, on February 22, 2007, the Metro Council adopted Ordinance No. 07-1139 for the purpose of amending Metro Code Chapters 5.01 and 5.05 and the Regional Solid Waste Management Plan to lift a temporary moratorium on certain new non-putrescible mixed waste material recovery or reload facilities and certain non-system licenses; and

WHEREAS, Ordinance No. 07-1139 maintained the temporary moratorium provisions adopted in Ordinance No. 06-1098B on applications for and issuance of non-system licenses for mixed putrescible solid waste until December 31, 2007; and

WHEREAS, the Solid Waste and Recycling Department is conducting the System Improvement Planning project, which will assess the future of putrescible waste allocation and which is scheduled for completion in early 2008; and

WHEREAS, extending the moratoria on applications for new transfer stations and new putrescible waste non-system licenses will allow the Department to complete the System Improvement Planning project and also will provide the Metro Council the opportunity to consider these applications concurrently in 2008 after the project is completed; now therefore:

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.01.060 is amended to read as follows:

5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (3) A duplicate copy of any Closure plan required to be submitted to DEQ, or if DEQ does not require a Closure plan, a Closure document describing Closure protocol for the Solid Waste Facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of Closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit a proposal for providing financial assurance prior to the commencement of Metro-regulated activities for the costs of Closure of the facility. The proposal shall include an estimate of the cost to implement the Closure plan required in Section 5.01.060(c)(3). If an application is approved, the license or franchise shall require that financial assurance is in place prior to beginning any activities authorized by the license or franchise. However, regarding applications for licenses, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the Closure plan required in Section 5.01.060(e)(3) will be less than \$10,000.
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;

- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and
- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

(e) Notwithstanding any other provision in this section, the Chief Operating Officer shall not accept for filing any application for authority to operate a new Transfer Station ~~during the period commencing August 19, 2004, and continuing~~ until December 31, 20078.

SECTION 2. Metro Code Section 5.05.035 is amended to read 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.

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

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).

- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determine Whether to Issue Non-System License. The Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to determine whether or not to issue a non-system license:

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

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

- (1) Non-system licenses for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste.
 - (A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in

writing of such determination within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.
- (2) Non-system licenses for Putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for Putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license.
 - (A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.
 - (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.
- (3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license as deemed necessary or appropriate under the circumstances.

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

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than:
 - (A) 120 days from the date of issuance for a limited-duration non-system license;
 - (B) Three years from the date of issuance for a new full-term license; and
 - (C) Two years from the date of issuance of a renewed full-term non-system license.
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.035(c).

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

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

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

(g) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

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

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

(h) Notwithstanding any other provision in this section, and unless contrary to any other applicable law, the Chief Operating Officer shall not accept any application for a ~~new non-system license for mixed putrescible solid waste until September 2, 2008. N, and~~ neither the Chief Operating Officer nor the Metro Council shall issue a ~~new non-system license for mixed putrescible solid waste during the period commencing February 2, 2006, and continuing until December 31, 2007; provided, however, that a licensee may request, and the Chief Operating Officer or Metro Council may issue, a replacement license with an effective date beginning the day after an existing license expires if the replacement license is to authorize the licensee to deliver the same type and quantity of solid waste to the same non-system facility as the existing license whose term commences before January 1, 2009.~~

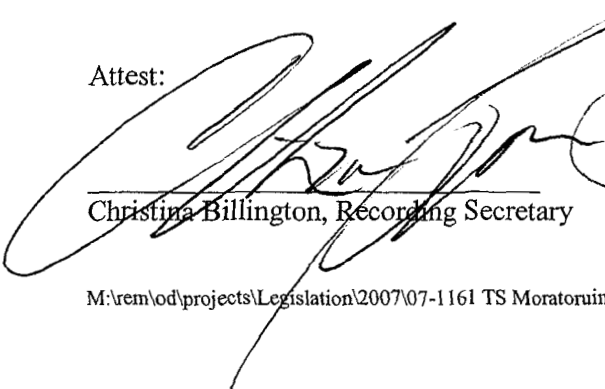
SECTION 3. This Ordinance is necessary for the health, safety, and welfare of the Metro area to ensure that the regional solid waste disposal system is operated efficiently. An emergency therefore is declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 38(1).

ADOPTED by the Metro Council this 15th day of November, 2007.



David Bragdon, Council President

Attest:



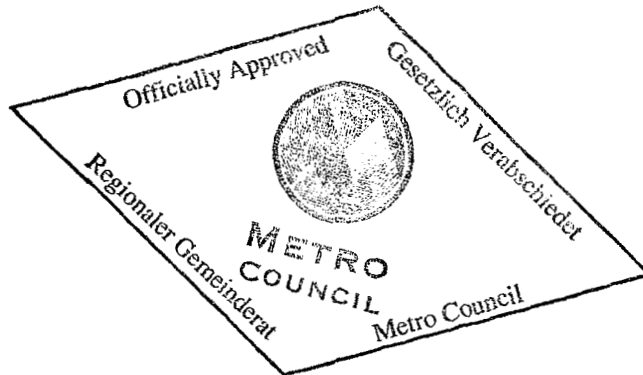
Christina Billington, Recording Secretary

Approved as to Form:



Daniel B. Cooper, Metro Attorney

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1161 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 AND 5.05 TO EXTEND MORATORIA ON APPLICATIONS FOR NEW SOLID WASTE TRANSFER STATIONS AND PUTRESCIBLE WASTE NON-SYSTEM LICENSES UNTIL DECEMBER 31, 2008; AND DECLARING AN EMERGENCY

Date: October 3, 2007

Prepared by: Bill Metzler

SUMMARY

This report recommends that Chapter 5.01 and Chapter 5.05 of the Metro Code be amended to extend the current moratoria on new solid waste transfer stations in the Metro region and new putrescible waste Non-System Licenses (NSLs) until December 31, 2008. This one-year extension is intended to maintain the status quo while assuring completion of major projects regarding the future of Metro's solid waste system. The proposed moratorium extension will not impact renewals of existing transfer station franchises or solid waste NSLs.

Metro is currently undertaking a new phase of the solid waste system improvement planning project that will re-examine the current methodology for allocating putrescible waste among solid waste facilities (public and private) that serve the region ("wet waste allocation project"). The Metro Council has requested a review of system issues, including: (a) allocating wet waste to facilities and haulers; (b) tonnage caps at all private transfer stations; and (c) authorizing new transfer facilities. The magnitude of this planning effort necessitates deferring consideration of new transfer station capacity and new putrescible waste NSLs until discussions with Metro Council on the wet waste allocation project have concluded.

Consequently, the Metro Council has expressed its desire to line up the transfer station franchises and putrescible waste non-system licenses to expire on December 31, 2008 allowing the Department to complete the system improvement planning project and providing the Metro Council with the opportunity to consider all transfer station application renewals and certain putrescible waste non-system license applications concurrently in 2008.

An extension of the moratorium on new transfer capacity will not negatively impact the region's solid waste system. The region's transfer and disposal needs are well served by six Metro authorized transfer stations, and transfer capacity for wet waste exceeds current need by approximately 1.1 million tons.

ANALYSIS/INFORMATION

With a total of six solid waste transfer stations located in the Metro region, and a seventh transfer station under construction,¹ an extension of the current moratorium on new transfer stations will not have adverse system impacts. The region's transfer stations provide sufficient access and more than enough capacity. In April 2004, Metro issued its *Regional Transfer Capacity Analysis* report that addressed the question of how much capacity the region's solid waste facilities have to accept and load waste for transport to disposal sites service the region. The analysis concluded that (a) the region's transfer capacity for wet waste currently exceeds the needed capacity by approximately 1.1 million tons per year; and (b) by 2015, the transfer stations that service the region will still have 841,000 tons of unused capacity.

¹ The Columbia Environmental transfer station was approved by the Metro Council in 2005.

An extension of the moratorium on new transfer capacity and new putrescible waste NSLs will not negatively impact the region's solid waste system. Moreover, the proposed moratorium extension will not impact renewals of existing transfer station franchises or solid waste NSLs.

1. **Known Opposition.** There is no known opposition.
2. **Legal Antecedents.** The Metro Code Chapter 5.01, Solid Waste Facility Regulation and Chapter 5.05, Solid Waste Flow Control.
3. **Anticipated Effects.** Ordinance No. 07-1161 will amend Chapter 5.01 and Chapter 5.05 of the Metro Code to extend a moratorium on new transfer stations in the Metro region and new putrescible waste NSLs until December 31, 2008, when the associated wet-waste system issues are resolved during the wet waste allocation project. Ordinance No. 07-1161 is necessary for the immediate preservation of public health, safety and welfare by providing for the effective and comprehensive management of the regional solid waste system. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).
4. **Budget Impacts.** There are no budget impacts.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 07-1161.

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