

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 08- 1187A
CODE CHAPTER 7.01 RELATING TO EXCISE)
TAX, REGARDING EXEMPTIONS AND) Introduced by Chief Operating Officer
CALCULATIONS.) Michael Jordan with the concurrence of
) Council President David Bragdon

WHEREAS, the Metro solid waste excise tax is a component of the Metro solid waste tip fee and an ambiguity regulating its calculations should be clarified; and

WHEREAS, the Metro Council finds is appropriate to eliminate the excise tax on the Oregon Zoo since the zoo is now a component of the Metro General Fund; and

WHEREAS, the Metro Council finds that policies for establishing appropriate reserves should be adopted as budget policies; and

WHEREAS, The Solid Waste Department’s Excise Tax effective date for modifications is September 1. To avoid additional modification dates for excise tax, the exemption of the Zoo from Excise Tax should be effective the same date; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 7.01.020 Tax Imposed and the amendments there to adopted by Ordinance 07-1147B are amended as follows:

(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 [subsections \(c\) through \(g\)](#) of 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 Above	Up To & Including	Credit of no more than
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).

2 Metro Code Section 7.01.023 Additional Excise Tax is amended as follows:

7.01.023 ~~Amount of~~ Additional Excise Tax; ~~Budgeting of Additional Revenue for Regional Parks and Greenspaces Programs and Tourism Opportunity and Competitiveness Account~~

Commencing September 1, 2006, the additional excise tax authorized in Section 7.01.020(c) shall be \$3.14 per ton. For each fiscal year following fiscal year 2006-07, the additional excise tax shall be not less than the amount of the additional excise tax in the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Salem (All Urban Consumers) reported for the first six (6) months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Chief Operating Officer deems appropriate, and shall be effective as of September 1st each year unless another effective date is adopted by the Metro Council.

Section 3: Metro Code 7.01.028 Budgeting of Excess Revenues is repealed and the amendments there to that would have gone into effect on July 1, 2009 are also repealed.

Section 4: Metro Code Section 7.01.050 Exemptions is amended as follows:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

(1) Persons, users and operators whom Metro is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the state of Oregon.

(2) Persons who are users and operators of the Portland Center for the Performing Arts.

(3) Persons whose payments to Metro or to an operator constitute a donation, gift or bequest for the receipt of which neither Metro nor any operator is under any contractual obligation related thereto.

(4) Any persons making payment to Metro for a business license pursuant to ORS 701.015.

(5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to Metro for any purpose other than solid waste disposal, use of a Metropolitan Exposition and Recreation Commission (Metro ERC) facility, or use of the Oregon Zoo.

(6) Users of the following facilities:

(A) Facilities that are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a);

(B) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;

(C) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.

(7) Persons making payments to Metro for the following purposes:

(A) Individual or corporate sponsorship or naming rights contracts. A naming rights contract is any contract under which a Metro or Metro ERC facility or part of a facility (as authorized by Metro Code Chapter 2.16) will be named for the sponsor in exchange for payment from the sponsor. A sponsorship contract is a contract under which the sponsor's name or logo will be used in connection with a district facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for payment from the sponsor. This exemption applies to any payments pursuant to sponsorship or naming rights contracts, including payments of money, goods, services, labor, credits, property, or other consideration.

(B) Payments for advertising at Metro facilities and Metro ERC facilities.

(C) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether Metro agrees to utilize the payment for a specific purpose including all payments to the Oregon Zoo Parents program;

(D) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects;

(E) Payments that entitle a person to admission to a fund-raising event benefiting the Oregon Zoo that is not held on the grounds of the Oregon Zoo;

(F) Payments that entitle a person to admission to a special fund-raising event held at the Oregon Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Oregon Zoo and the proceeds of the event are contributed to the Oregon Zoo;

~~(G) Payments collected with admission to the Oregon Zoo in the form of a Conservation Admission Surcharge;~~

~~(H) Notwithstanding the provisions of subsections (C) through (G) above, all payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.~~

(8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.

(9) A tire processor which is regulated pursuant to Metro Code Chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

(10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for

purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(11) Persons making the following payments:

- (A) Payments that entitle a person to admission to an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (B) Payments to an operator that entitle a person to purchase booth space or exhibit space, or utilities or services associated with such booth or exhibit space, at an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (C) Payments to a user or operator that entitle a person to purchase goods, services, food, or beverages from a user or operator selling such goods, services, food, or beverages at a Metro ERC facility.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to any operator authorized by a management agreement or services agreement with Metro ERC to provide catering services, to provide food and beverage concessions services (other than vending machines), or to operate parking lots at Metro ERC facilities shall be subject to tax.

(12) Persons making the following payments:

- (A) Payments to a person or entity other than Metro that entitle a person to admission to an event that is held at a Metro regional park; and
- (B) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food or beverages at an event being held at a Metro regional park pursuant to the terms of a special use permit issued by Metro; and
- (C) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food, or beverages at an event that is being sponsored and conducted by Metro at a Metro regional park.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to an operator authorized by Metro to sell goods, food or beverages or to provide services at a Metro regional park shall be subject to tax.

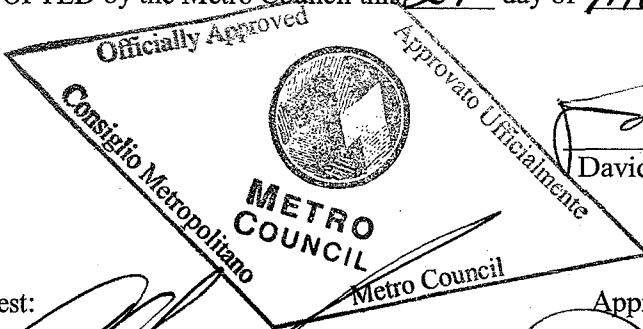
(13) Persons, users or operators making payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall not be subject to tax

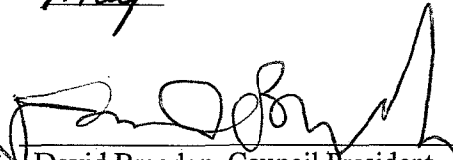
regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

—(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a Metro facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

Section 5: This ordinance takes effect September 1, 2008.

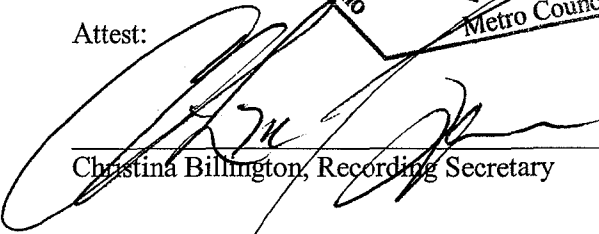
ADOPTED by the Metro Council this 29th day of May 20052008.





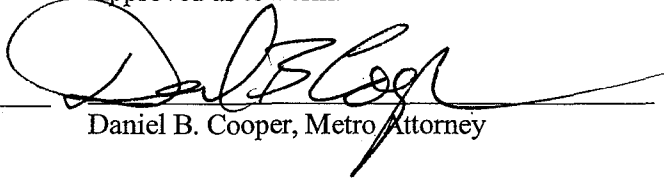
David Bragdon, Council President

Attest:



Christina Billington, Recording Secretary

Approved as to Form:



Daniel B. Cooper, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 08- 1187
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CALCULATIONS.) Michael Jordan with the concurrence of
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WHEREAS, the Metro solid waste excise tax is a component of the Metro solid waste tip fee and an ambiguity regulating its calculations should be clarified; and

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THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 7.01.020 Tax Imposed and the amendments there to adopted by Ordinance 07-1147B are amended as follows:

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(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 subsections (c) through (g) of 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:

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(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%
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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

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From Above	Up To & Including	Credit of no more than
0%	30%	0.00
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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 2: Metro Code Section 7.01.023 Additional Excise Tax is amended as follows:

7.01.023 ~~Amount of~~ Additional Excise Tax; ~~Budgeting of Additional Revenue for Regional Parks and Greenspaces Programs and Tourism Opportunity and Competitiveness Account~~

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Section 3: ~~Metro Code 7.01.028 Budgeting of Excess Revenues is repealed and the amendments there to that would have gone into effect on July 1, 2009 are also repealed.~~

Section 4: Metro Code Section 7.01.050 Exemptions is amended as follows:

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 - (3) Persons whose payments to Metro or to an operator constitute a donation, gift or bequest for the receipt of which neither Metro nor any operator is under any contractual obligation related thereto.
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 - (A) Facilities that are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a);
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 - (B) Payments for advertising at Metro facilities and Metro ERC facilities.

(C) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether Metro agrees to utilize the payment for a specific purpose including all payments to the Oregon Zoo Parents program;

(D) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects;

(E) Payments that entitle a person to admission to a fund-raising event benefiting the Oregon Zoo that is not held on the grounds of the Oregon Zoo;

(F) Payments that entitle a person to admission to a special fund-raising event held at the Oregon Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Oregon Zoo and the proceeds of the event are contributed to the Oregon Zoo;

~~(G) Payments collected with admission to the Oregon Zoo in the form of a Conservation Admission Surcharge;~~

~~(H) Notwithstanding the provisions of subsections (C) through (G) above, all payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.~~

(8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.

(9) A tire processor which is regulated pursuant to Metro Code Chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

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(11) Persons making the following payments:

- (A) Payments that entitle a person to admission to an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (B) Payments to an operator that entitle a person to purchase booth space or exhibit space, or utilities or services associated with such booth or exhibit space, at an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (C) Payments to a user or operator that entitle a person to purchase goods, services, food, or beverages from a user or operator selling such goods, services, food, or beverages at a Metro ERC facility.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to any operator authorized by a management agreement or services agreement with Metro ERC to provide catering services, to provide food and beverage concessions services (other than vending machines), or to operate parking lots at Metro ERC facilities shall be subject to tax.

(12) Persons making the following payments:

- (A) Payments to a person or entity other than Metro that entitle a person to admission to an event that is held at a Metro regional park; and
- (B) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food or beverages at an event being held at a Metro regional park pursuant to the terms of a special use permit issued by Metro; and
- (C) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food, or beverages at an event that is being sponsored and conducted by Metro at a Metro regional park.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to an operator authorized by Metro to sell goods, food or beverages or to provide services at a Metro regional park shall be subject to tax.

(13) Persons, users or operators making payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall not be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

____(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a Metro facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

ADOPTED by the Metro Council this _____ day of _____ 2005.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1187, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 RELATING TO EXCISE TAX, REGARDING EXEMPTIONS AND CALCULATIONS

Date: April 24, 2008

Prepared by: Dan Cooper/Karen Feher

BACKGROUND

One of the main purposes of this legislation is to continue aligning the Metro Excise Tax Code with Metro Financial Policies and the intent of the consolidation of the General Fund. By way of background on these issues, the FY 2005-06 budget introduced changes in both process and presentation in order to provide greater transparency, provide stronger adherence to Financial Policies and dovetail with the Council's strategic planning process. This action is a continuation of those changes as well as accomplishing necessary housekeeping changes to Metro Code Chapter 7.01.

Over the years, Metro's growth has involved taking on unique activities that are deemed regional in nature. During that process Metro tacked on each of those activities budgetarily by creating separate budget funds for each activity. This was partially done to meet funding restrictions for those new activities or allow for time to decide or formalize permanent acceptance of the activities. Effective July 1, 2005 Metro combined all discretionary budgetary funds into one fund in order to more effectively accomplish the following:

- Provide fiscal and budgetary transparency.
- Emphasize agency programs rather than department budgetary funds.
- Relate programs to Council objectives.
- Enable flexibility in setting of priorities for the overall agency as well as funding those priorities.

This was the first step in changing Metro's operational culture of separate department activities by setting Council priorities and constructing programs that meet those priorities.

An ongoing review of the excise tax code demonstrated inconsistencies with Metro's financial policies and constraints on the Metro Council's flexibility to meet the changing needs of Metro's programs. When the Oregon Zoo became a Metro responsibility, as was the practice, a separate fund was established to record all financial transactions of the zoo. As enterprise revenues generated by the zoo contained the excise tax for the use of the zoo facilities, this excise tax was recorded separately as General Fund revenue. Now that the zoo revenues are recorded directly into the General Fund, a separate recording of excise tax is unnecessary. In addition the zoo's "Future Vision" master plan report, presented to Council last year, recommended eliminating excise tax on zoo activities. Therefore this ordinance presents, for your consideration, amending section 7.01.050 to exempt the users of the Oregon Zoo from excise tax effective September 1, 2008. In the coming year Metro will evaluate exempting other general fund functions from excise tax.

Staff Report for Ordinance 08-1187

In addition to the above, several needed housekeeping changes to code are as follows:

- Clarifies section 7.01.02(d). This section is ambiguous leading the reader to possibly interpret it as applying not only to the per ton tax calculation but also to the “7.5%” tax calculation in section 7.01.02(a). To resolve this, the code is amended specifying the sections these criteria apply to.
- Repeals Metro Code Section 7.01.028, that sets a “Recovery Rate Stabilization Reserve” as establishing reserves are more properly a Council budget responsibility rather than a code provision. The following is the deleted section:

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).

(Ordinance No. 00-857B, Secs. 5-6. Amended by Ordinance No. 06-1116, Sec. 3; Ordinance 07-1147B, Sec. 13.)

Note: The amendments to Metro Code Section 7.01.028 pursuant to Section 13 of Ordinance No. 07-1147B become operative July 1, 2009, and are set forth as follows:

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 excess net excise tax revenue shall be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.”

- A previous ordinance (Ordinance 06-1116: For the Purpose of Amending Metro Code Chapter 7.01 Relating to the Metro Solid Waste Excise Tax. Adoption: March 30, 2006) removed code dedications of the “other” excise tax to specific departments amended 7.01.23 of the code. That amendment did not change the title of the section consistent with the changes to the code and it still calls out specific department dedications for the “other tax”. The new title will be “7.01.012 Calculation of Amount of Additional Excise Tax”

ANALYSIS/INFORMATION

1. Known Opposition: None known
2. Legal Antecedents: This amends the Metro Code Chapter 7.01.
3. Anticipated Effects.
 - a. Provides consistency with Financial Policies
 - b. Maintains Council flexibility in budgeting and strategic planning
 - c. Accomplishes housekeeping changes for consistency with other portions of the Metro Code
4. Budget Impacts. Allows ease in calculation of anticipated and actual expenditure of Excise Tax in any given year. The Proposed Budget is consistent with the proposed changes to code.