

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

| | |
|---------------------------------|-----------------------|
| FOR THE PURPOSE OF GRANTING A) | RESOLUTION NO. 86-665 |
| VARIANCE FROM THE REQUIREMENT) | |
| FOR A SOLID WASTE DISPOSAL) | Introduced by the |
| FRANCHISE SURETY BOND TO SUN-) | Executive Officer |
| FLOWER RECYCLING) | |

WHEREAS, Sunflower Recycling has been issued Solid Waste Disposal Franchise No. 003 to compost limited amounts of source separated food scraps, grass clippings, weeds, sawdust, and sod; and

WHEREAS, Sunflower Recycling has successfully operated its composting facility for seven years and is providing an innovative demonstration of effective waste reduction, thereby furthering the objectives of the District; and

WHEREAS, Sunflower Recycling has requested a variance to Section 5.01.060(b)(1) of the Metro Code which requires that a corporate surety bond be maintained by the franchisee; and

WHEREAS, Sunflower Recycling has met the purpose and intent of the variance criterion under Metro Code Section 5.01.110 for a variance from the corporate surety bond requirement as described in the attached Staff Report dated July 1, 1986; and

WHEREAS, Variances may be granted subject to annual review by the Executive Officer; now, therefore,

BE IT RESOLVED,

That the requested variance from the Metro Code requirement to maintain a corporate surety bond be granted to Sunflower Recycling, but that the variance be reviewed annually by the Executive Officer. If in the opinion of the Executive Officer,

the variance warrants review it shall be considered by Council.

ADOPTED by the Council of the Metropolitan Service District
this 10th day of July, 1986.



Jim Gardner,
Deputy Presiding Officer

RM/epv

7/1/86

STAFF REPORT

Agenda Item No. 8.1

Meeting Date July 10, 1986

CONSIDERATION OF RESOLUTION NO. 86-665, GRANTING A VARIANCE FROM THE REQUIREMENT FOR A SOLID WASTE DISPOSAL FRANCHISE SURETY BOND TO SUNFLOWER RECYCLING.

Date: July 1, 1986

Presented by: Rich McConaghy

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this staff report is to introduce Resolution No. 86-665 which grants a variance to Sunflower Recycling from Section 5.01.060 (b)(1) of the Metro Disposal Franchise Ordinance. Adoption of the resolution would eliminate the need for Sunflower Recycling to maintain a \$1,000 surety bond and would provide for an annual review of the variance by the Executive Officer.

Sunflower Recycling is located at 2230 S.E. Grand Avenue in Portland. The company operates a solid waste collection and recycling business. A small portion of the business involves the collection of source separated putrecibles (food scraps, grass clippings, weeds, sawdust and sod) from collection customers and the composting of these materials. The composted product is then returned or sold to the business' customers. This composting service is the only portion of the business which operates under a Metro Franchise.

Composting is accomplished in two six cubic yard cement mixers which occupy less than 10 percent of the site's area. The remainder of the site is used for non-franchised recycling activities, office operations as well as servicing and storage of collection equipment. Less than two tons per month of putrecible materials for composting are collected from Sunflower's customers and delivered to the site. Materials for composing are not accepted from any other waste collectors or from the general public. The compost product is made available to customers who have provided it or may be purchased by others.

Roughly 10 percent of Sunflower's collection customers pay for the composting service and this produces about \$125.00 a month in revenue. An additional \$30.00 per month in revenue is received from the sale of the product to other individuals. The monthly cost of collecting the material for composting is estimated at about \$70.00 per month. No estimates of the monthly cost for operating and maintaining the apparatus or for handling the compost product have been made, but the compost operation is

thought to be a break even proposition. The franchisee receives little or no profit from the composting operation and continues to provide it as a service to his customers and as an effective demonstration of a small scale waste reduction alternative.

With the granting of a franchise in May of 1982, Sunflower was given variances from the collection of Metro user fees, the payment of an annual franchise fee, the minimum liability insurance requirements and the minimum \$25,000 surety bond. A surety bond of \$1,000 was required based on an analysis of the probable costs which Metro would pay if it had to close and clean-up the site if the franchisee failed to meet his obligations and duties under the franchise. These variances were granted in recognition of the operation's small size and experimental nature and the heavy cost burden to both Sunflower and Metro of accounting for Metro fees on such a small amount of waste (less than \$10.00 per month in User Fees and Regional Transfer Charges would be collected if they were applied to the site). These variances were granted on the condition that no more than 10 cubic yards of waste per week be accepted for composting. The franchisee has kept waste flows under this limit. The attached Sunflower Recycling request for an additional variance from the current \$1,000 surety bond requirement (dated March 28) indicates that having to provide the surety bond would result in a substantial curtailment or closing of the composting service.

A variance may be granted under Metro Code Section 5.01.110 (variances) when it is requested in writing and facts are presented to show why it should be granted. The Council may grant a variance to a Section of the Metro code if it "...finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

- "(1) is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
- "(2) will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
- "(3) would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District."

In the past, Sunflower Recycling has been able to secure the required \$1,000 surety bond for an annual premium cost of \$30 or less. Sunflower's bond was cancelled by its insurance company in February of 1986. Since that time, Sunflower has made numerous attempts to obtain a bond from other sources and these have proved futile. Sunflower's only option would be to deposit \$1,000 to provide for a cash bond. The difficulty in obtaining reasonably priced insurance and in many cases any kind of insurance, has been evident in many business sectors over the last year. Sunflower also has an additional difficulty , since

its net worth was determined to be somewhat less than zero by its past insurer. Having to pay an additional \$1,000 for this bond from an annual revenue stream of less than \$2,000 produced by the composting operation would not allow the franchisee to continue offering the composting service which is now provided on essentially a break-even basis. The fact that the composting service would have to be closed or curtailed if the \$1,000 bond continues to be required indicates that it would be appropriate to authorize a variance.

The intent of requiring a surety bond is to assure that Metro won't have to pay significant operating and clean-up costs if a franchisee fails to operate in a manner consistent with the franchise agreement or if he walks away and leaves a mess on the site. A staff analysis has shown that clean-up costs for the composting facility would be no more than \$900 if the franchisee were to abandon the site. Metro would not need to pay for continued operation of the site since alternative disposal facilities could handle the two tons or less of waste per month which currently are received at the site. The thousand dollars or less which would be required to clean the site would not be a significant cost to Metro in comparison to the much greater costs which would be required if a sizable franchised landfill, processing center or transfer station were to close and leave Metro with the clean-up responsibility. In addition, Sunflower Recycling has shown over seven years that its composting operation is well managed and that there is a low risk of irresponsible behavior. An allowance for an annual review of the variance by the Executive Officer would assure that the composting operation continues to be well managed. The operation provides a good example of a small scale waste reduction alternative which has been developed and operated through private sector initiative.

If the Council denies the variance request, the franchisee must either provide a \$1,000 cash bond or give up the franchise. In its decision to authorize the variance, the Council must compare the benefit of continued operation of the composting service to the potential \$1,000 expense to the District if the composting operation were to fail, and Metro were to be responsible for clean-up.

EXECUTIVE OFFICERS'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No.86-665 granting a variance from the requirement for a Solid Waste Disposal Franchise surety bond to Sunflower Recycling.



RECEIVED APR 7 1986

28 March 1986

S.E. Grand at Division St. • PO. Box 14061 • Portland, OR 97214 • (503) 238-1640

*Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201*

Attn: Dan Durig

Sunflower Recycling would like to request a variance to Metro Code Section 5.01.060 (Surety Bond). This would eliminate the required posting of a \$1,000.00 Surety Bond for the operation of our composting facility at 2230 S.E. Grand Avenue.

This request is a result of the recent cancellation of the \$1,000.00 Performance Bond by Mid-Century Insurance Company. Their justification for this action was a claimed negative net-worth of \$841.00 for our operation. Our response to this is that the analysis did not fully account for our solid waste collection service. In addition, the action did not take into consideration the public-service nature of our facility and the impact it has on this region's waste reduction effort.

The granting of this variance request would further Metro's waste reduction goals by reducing the amount of compostable wastes disposed of in landfills and by allowing for the reuse and recycling of a valuable commodity. In addition, we believe that the purpose and intent of Section 5.01.060 of the Metro Code can be achieved without strict compliance. Finally, strict compliance with this requirement would be extremely burdensome to our operation and could result in a substantial curtailment or closing of the composting service.

If requested, Sunflower Recycling would agree to place in collateral pieces of equipment whose scrap metal value is in excess of \$1,000.00. The value received for this material would cover any costs incurred as a result of our company's unlikely failure to fulfill the franchise obligations.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Kahn", written in a cursive style.

Stan Kahn, President

7.2 Consideration of Ordinance No. 86-204, Amending Ordinance No. 85-189 (Temporary Procedures for Hearing Petitions for Major Amendment of the Urban Growth Boundary) (Second Reading)

The Clerk read the Ordinance a second time by title only.

Main Motion: A motion to adopt the Ordinance was made by Councilors DeJardin and Gardner at the meeting of June 26, 1986.

Ms. Hinckley explained at the June 26 meeting, Councilor Kelley had requested staff prepare language for an amendment to define circumstances under which the Council could extend deadlines. Staff proposed the following language be added at the end of the last full sentence on the first page of the Ordinance (after "time"): "if warranted by unusual circumstances..."

Motion to Amend: Councilor Kelley moved to amend the Ordinance by adding the above language proposed by staff. Councilor Kirkpatrick seconded the motion.

Vote on the Motion to Amend: The vote resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing, Gardner, Hansen, Kelley, Kirkpatrick, Oleson and Van Bergen

Absent: Councilors Kafoury and Waker

The motion carried and the Ordinance was amended.

Vote on the Main Motion: The vote resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing, Gardner, Hansen, Kelley, Kirkpatrick, Oleson and Van Bergen

Absent: Councilors Kafoury and Waker

The motion carried and the Ordinance was adopted as amended.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 86-665, for the Purpose of Granting a Variance from the Requirement for a Solid Waste Disposal Franchise Surety Bond to Sunflower Recycling

Rich McConaghy, Solid Waste Analyst, briefly reviewed the staff

Metro Council
July 10, 1986
Page 7

report. If the request were denied, the franchisee must either provide a \$1,000 cash bond or give up the franchise, he explained.

Councilor Van Bergen was concerned the Council had granted other waivers and he questioned why bonds were required if variances continued to be requested. He also thought the bonding policy could discourage small recycling businesses.

Councilor Kirkpatrick noted a letter from Stan Kahn, owner of Sunflower Recycling, had suggested Metro hold his equipment as collateral in lieu of a bond. She asked why that condition had not been included in the Resolution. Mr. McConaghy said the \$1,000 bond amount was considered too small to work out such an arrangement. The Councilor said she agreed with Councilor Van Bergen that bonding procedures needed review.

After continued discussion of Metro's bonding procedures, Mr. McConaghy and Deputy Executive Officer Don Carlson agreed to review the procedures and return to the Council with a recommendation.

Motion: Councilor Frewing moved to adopt Resolution No. 86-665 and Councilor Kirkpatrick seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Cooper, DeJardin, Frewing, Gardner, Hansen, Kelley, Kirkpatrick and Van Bergen

Absent: Councilors Kafoury, Oleson and Waker

The motion carried and the Resolution was adopted.

8.2 Consideration of Resolution No. 86-661, for the Purpoe of Amending the Pay Plan for a 3 Percent Cost of Living Adjustment and for Amending Resolution No. 86-659

Randy Boose, Personnel Officer, reported the recommended 3 percent cost of living adjustment was based on the FY 1986 Portland area Consumer Price Index.

Motion: Councilor Kirkpatrick moved to adopt the Resolution and Councilor DeJardin seconded the motion.

Councilor Frewing asked staff to explain how the recently granted 2 percent raise to non-Zoo employees related to this request. Mr. Boose reported the 2 percent salary increase granted by the