

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) ORDINANCE NO. 14-1323
CHAPTER 5.02 AND RELATED PROVISIONS OF)
METRO CODE CHAPTER 7.01 TO ALLOW SOLID) Introduced by Chief Operating
WASTE DISPOSAL FEES AND CHARGES AND SOLID) Officer Martha Bennett with the
WASTE EXCISE TAX RATES TO TAKE EFFECT AT) concurrence of Council President
THE BEGINNING OF EACH FISCAL YEAR, AND TO) Tom Hughes
UPDATE OTHER SECTIONS OF METRO CODE)

WHEREAS, Metro Code currently requires the annual process for setting solid waste fees to be strictly aligned with the annual budget process; and,

WHEREAS, As a result of this code requirement, it is not possible for solid waste fees and solid waste excise tax rates to take effect at the beginning of the fiscal year; and,

WHEREAS, The Code does not allow for the adoption of a standard rate schedule, but instead requires extensive amendments to the Code itself in order to adopt new solid waste fees and charges; and,

WHEREAS, The Metro Council finds that the efficiency and transparency of Metro’s financial operations are enhanced when rate changes coincide with the beginning of the fiscal year and when all rate changes are consolidated in a single rate schedule; now therefore,

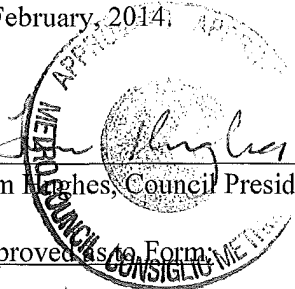
THE METRO COUNCIL ORDAINS AS FOLLOWS:

- Section 1. Metro Code Amendment. Metro Code Section 5.02.020 is amended in the form attached hereto as Exhibit “A.”
- Section 2. Metro Code Amendment. Metro Code Section 5.02.025 is amended in the form attached hereto as Exhibit “B.”
- Section 3. Metro Code Amendment. Metro Code Section 5.02.045 is amended in the form attached hereto as Exhibit “C.”
- Section 4. Metro Code Amendment. Metro Code Section 5.02.047 is repealed and replaced with the language attached hereto as Exhibit “D.”
- Section 5. Metro Code Amendment. Metro Code subsection 5.01.150(c) is repealed and the remaining subsections of Metro Code 5.01.150 shall be renumbered accordingly, and all other subsections of Metro Code Section 5.01.150 shall remain unchanged.
- Section 6. Metro Code Amendment. The term “Parks and Environmental Services (or its successor department)” shall replace the term “Regional Environmental Management Department” in Metro Code subsection 5.02.015(a), and all other subsections of Metro Code Section 5.02.015 shall remain unchanged.
- Section 7. Metro Code Amendment. Metro Code subsection 7.01.020(e)(1) is amended in the form attached hereto as Exhibit “E” and all other subsections of Metro Code Chapter 7.01 shall remain unchanged.

ADOPTED by the Metro Council this 13 day of February, 2014;

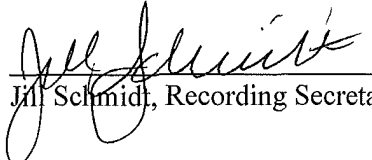


Tom Hughes, Council President



Approved as to Form

Approved as to Form

Attest:



Jill Schmidt, Recording Secretary



Alison R. Kean, Metro Attorney

Exhibit "A" to Ordinance No. 14-1323

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.02. DISPOSAL CHARGES AND USER FEES

5.02.020 Establishment of Disposal Fees and Charges; Procedures

(a) Purpose. The purpose of this section is to establish a consistent, predictable, open and transparent framework for the adoption of solid waste disposal fees and charges by Metro.

(b) Definitions. As used in this subsection, "rates" means any of Metro's solid waste fees or charges as set forth in Metro Code section 5.02.025 or 5.02.045. "Rate year" means a period of 365 consecutive days (366 leap year days) commencing from the date on which a rate becomes effective.

(c) Frequency. The Council shall consider rates annually and adopt changes as needed.

(d) Rate-Making Requirements; Independent Review. Each year the Chief Operating Officer shall prepare rates for consideration by the Council. Rates shall be regarded as provisional until transmitted to the Council pursuant to paragraph (e) of this section. In preparing provisional rates the Chief Operating Officer shall:

(1) Consider all sources and uses of funds that affect the Solid Waste Revenue Fund budget during the next rate year.

(2) Follow generally accepted practices for selection of methodologies, assumptions, requirements, and other technical factors that determine the rates.

(3) Incorporate rate criteria and policies adopted by resolution of the Council pursuant to paragraph (e) of this section.

(4) Submit the provisional rates to review by at least one independent expert. The reviewer shall test the provisional rates for accuracy, adequacy, the reasonableness of underlying assumptions, compliance with applicable law and requirements, consistency with adopted criteria of the Council, and any other criteria specified by the Chief Operating Officer or recommended by the reviewer under generally accepted professional or best practices for rate review. The Chief Operating Officer shall provide the reviewer with access to the rate model, data, assumptions, criteria, and any other information that the Chief Operating Officer used to calculate the provisional rates. At the conclusion of his work, the reviewer shall deliver a written report to the Chief Operating Officer documenting the reviewer's findings, exceptions and recommendations.

(5) Perform any other forms of due diligence that the Chief Operating Officer finds necessary to meet the purpose of this section.

(e) Transmittal of Proposed Rates to the Council. Each year the Chief Operating Officer shall transmit to the Metro Council in ordinance form a set of proposed rates for consideration. ~~Transmittal of the rates shall coincide with transmittal of the proposed budget by the Budget Officer.~~ At the same time that he transmits the rates, the Chief Operating Officer shall transmit to the Metro Council:

(1) A report that documents the methodologies, data, assumptions, adopted criteria and the other factors that the Chief Operating Officer used to calculate the proposed rates including his response to the recommendations of the independent review; and

(2) The report of the independent review prepared pursuant to paragraph (d) (3) of this section.

~~(f) Public Review and Comment. The Council shall open public hearings on the proposed rates on a time line designed to coincide with public hearings on the proposed annual budget.~~

(~~g~~f) Periodic Review of Rate Criteria and Policies. From time to time the Council shall undertake a review of its adopted rate criteria and policies. The purpose of these reviews shall be to assure that adopted criteria and policies reflect the purpose of this section, meet Metro's needs, support Metro's management of the regional solid waste system, and address any findings of the Council that result from the periodic review. ~~The Chief Operating Officer shall initiate the first such periodic review on a time line designed to facilitate consideration by the Council before December 31, 2010.~~ The Chief Operating Officer shall initiate ~~subsequent~~ periodic reviews no less frequently than every three years ~~thereafter~~. The Council may initiate, or the Chief Operating Officer may propose to initiate, a review of rate criteria or policies at any time.

Exhibit "B" to Ordinance No. 14-1323

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.02. DISPOSAL CHARGES AND USER FEES

5.02.025 Disposal Charges at Metro South & Metro Central Station

(a) The fee for disposal of solid waste at the Metro South Station and at the Metro Central Station shall consist of:

(1) The following charges for each ton of solid waste delivered for disposal:

(A) A tonnage charge in the dollar amount adopted by an ordinance of the Metro Council of \$61.74 per ton,

(B) The Regional System Fee as provided in Section 5.02.045,

(C) ~~An~~The Community Rehabilitation and Enhancement Fee set forth in Metro Code Chapter 5.06 of \$.50 per ton, and

(D) The applicable DEQ fees established in Oregon Revised Statutes chapters 459 and 459A, as implemented in Chapter 340 Division 90 of Oregon Administrative Rules totaling \$1.24 per ton;

(2) All applicable solid waste taxes as established in Metro Code Chapter 7.01, which excise taxes shall be stated separately; and

(3) ~~The following~~ A Transaction Charge in the dollar amount adopted by an ordinance of the Metro Council for each Solid Waste Disposal Transaction that is:

(A) ~~For each Solid Waste Disposal Transaction~~ Completed at staffed scales, or the Transaction Charge shall be \$12.00.

(B) ~~For each Solid Waste Disposal Transaction that is~~ Completed at the automated scales, the Transaction Charge shall be \$3.00.

(C) Notwithstanding the provisions of subsection (A), the Solid Waste Disposal Transaction Charge shall be the amount authorized in subsection (B) \$3.00 in

the event that a transaction that is otherwise capable of being completed at the automated scales must be completed at the staffed scales due to a physical site limitation, a limit or restriction of the computer operating system for the automated scales, or due to a malfunction of the automated scales.

(b) Notwithstanding subsection (a) of this section,

- (1) There shall be a minimum charges at ~~the~~ Metro South Station and at ~~the~~ Metro Central Station for the acceptance of solid wastes ~~for loads of solid waste weighing 340 pounds or less of \$28,~~ which shall consist of a transaction charge as set forth in Metro Code section 5.02.025(a)(3) plus a tipping charge based on the minimum load weight adopted by an ordinance of the Metro Council ~~Tonnage Charge of \$16.00 plus a Transaction Charge of \$12.00 per Transaction.~~
- (2) The Chief Operating Officer may waive collection of the Regional System Fee on solid waste that is generated outside the District, and collected by a hauler that is regulated by a local government unit, and accepted at Metro South Station or Metro Central Station.

(c) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(d) The Director of Parks and Environmental Services may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

Exhibit "C" to Ordinance No. 14-1323

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.02. DISPOSAL CHARGES AND USER FEES

5.02.045 Regional System Fees

(a) The Regional System Fee shall be ~~\$18.56~~the dollar amount per ton of solid waste adopted by an ordinance of the Metro Council, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(c) Designated Facility operators shall collect and pay to Metro the Regional System Fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(d) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary, and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

(e) System fees described in this Section 5.02.045 shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Exhibit "D" to Ordinance No. 14-1323

METRO CODE - TITLE V SOLID WASTE
CHAPTER 5.02. DISPOSAL CHARGES AND USER FEES

5.02.047 Regional System Fees on Cleanup Material Contaminated by
Hazardous Substances

(a) Notwithstanding Section 5.02.045(a), there is hereby established a reduced Regional System Fee on Cleanup Material Contaminated by Hazardous Substances that is delivered to any Solid Waste System Facility authorized to accept such material.

(b) The Regional System Fee on Cleanup Material Contaminated by Hazardous Substances shall be the dollar amount per ton adopted by an ordinance of the Metro Council.

(c) The Chief Operating Officer is authorized to issue administrative procedures that define the terms and conditions under which solid wastes may qualify for the reduced Regional System Fee. The Chief Operating Officer is further authorized to establish an application process for said reduced rate; and may approve, deny, or approve with conditions any application submitted under this process.

Exhibit "E" to Ordinance No. 14-1323

METRO CODE - TITLE VII FINANCE
CHAPTER 7.01. EXCISE TAXES

Metro Code Section 7.01.020 Tax Imposed

- (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) recoverable solid 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~~2014-15, and each fiscal year thereafter, the rate determined by this subsection shall be effective ~~as of September 1st~~on the first day of each fiscal year unless another effective date is adopted by the Metro Council.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 14-1323 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 AND RELATED PROVISIONS OF METRO CODE CHAPTER 7.01 TO ALLOW SOLID WASTE DISPOSAL FEES AND CHARGES AND SOLID WASTE EXCISE TAX RATES TO TAKE EFFECT AT THE BEGINNING OF EACH FISCAL YEAR, AND TO UPDATE OTHER SECTIONS OF METRO CODE

Date: February 6, 2014

Prepared by: Douglas Anderson, FRS (Ext. 1788)

Summary

This ordinance would implement three sets of changes. It would:

1. Amend Metro Code to allow solid waste charges and excise tax rates to take effect at the beginning of each fiscal year.
2. Amend Metro Code in a manner that improves the transparency of future rate ordinances.
3. Authorize the Chief Operating Officer to develop administrative procedures for waste generators who seek a reduced-fee system fee and excise tax on contaminated soils.

Background

1. Aligning rates with the fiscal year. In 2005, the Council President, acting in his role as the Budget Officer, directed staff to prepare new solid waste rates only after all budget decisions for the next fiscal year had been made. This direction was one element of the Council President's initiative to simplify, streamline, and improve the transparency of the budget and rate processes.

As a matter of practicality, it is difficult to complete the budget process early enough to implement solid waste rates at the start of the fiscal year. By law, revenue ordinances require a 90-day referral period, meaning that rates must be adopted by March of each year if they are to be implemented on July 1. Accordingly, rates now take effect in August or September. There are two main consequences of this fact: (a) the General Fund foregoes some revenue that would be forthcoming if the new tax rates could take effect a month or two earlier; (b) new contract and personnel costs take effect on July 1, but with only 10 or 11 months to recover these costs, solid waste rates are generally higher than if they could be collected over the full 12 months of the fiscal year.

If adopted, this ordinance would remove the sections of Metro Code that require the budget and solid waste rate processes to be developed sequentially. In the future, the Council would set the appropriate effective date within the annual rate ordinance.

It is important to note that these changes will not constrain the council's deliberations over the budget in the future. Any changes to the proposed solid waste budget after the rates have been adopted would simply be managed through the Rate Stabilization Account of the Solid Waste Fund. This account would serve as a source (repository) of funds for any increase (decrease) in the proposed budget that is not covered in the adopted rates.

These amendments are implemented in Sections 1 and 7 of Ordinance No. 14-1323.

2. Improving transparency. The second set of amendments is intended to make future rate changes more transparent for decision-makers and stakeholders.

Most municipal codes authorize utility rates, but the numerical rates are usually adopted separately. At present, Metro Code both authorizes solid waste rates *and* specifies the numbers themselves. As a result, it takes an ordinance of 6 to 8 pages containing at least 10 amendments scattered across at least 7 different sections of the Code to implement solid waste rate changes. In this format, it is difficult for decision-makers and ratepayers to see the “big picture.”

This ordinance would change that. Under this ordinance, rate *authority* would remain in Metro Code, but the numbers would be set forth in a separate rate schedule that the council would adopt as needed. The simplification in format, and the resulting improvement in transparency, is considerable. Rate ordinances of the future could consist of findings and ordaining clauses, and a single rate schedule on which all rates are shown together in one place. An example is shown in Figure 1.

These amendments are implemented in Sections 2 through 5 of Ordinance No. 14-1323.

Figure 1. Example of a future rate ordinance – simpler and easier to understand

<p style="text-align: center;">BEFORE THE METRO COUNCIL</p> <p>FOR THE PURPOSE OF ADOPTING SOLID WASTE CHARGES AND USER FEES FOR FY 2014-15.))))</p> <p style="margin-left: 200px;">ORDINANCE NO. 14-XXXX Introduced by Chief Operating Officer Martha Bennett with the concurrence of Council President Tom Hughes</p> <p>WHEREAS, Metro Code Chapter 5.02 establishes charges for the acceptance of solid waste at Metro Central and Metro South transfer stations; and,</p> <p>WHEREAS, Metro Code chapters 5.01 and 5.02 establish user fees on solid waste accepted at all disposal sites in the system; and,</p> <p>WHEREAS, Metro’s costs for solid waste services and programs have changed; now therefore,</p> <p>THE METRO COUNCIL ORDAINS AS FOLLOWS:</p> <p>Section 1. <u>Solid Waste Fees and Charges.</u> The schedule of solid waste fees and charges attached hereto as Exhibit “A” shall be implemented on the effective date of this ordinance.</p> <p>Section 2. <u>Effective Date.</u> This ordinance shall become effective on July 1, 2014, or the first day of the first full month following 90 days after adoption by the Metro Council, whichever is later.</p> <p>ADOPTED by the Metro Council this 13th day of March, 2014.</p> <p style="text-align: right; margin-right: 100px;">_____ Tom Hughes, Council President</p> <p>Attest: _____ Approved as to Form:</p> <p>_____ Kelsey Newell, Recording Secretary</p> <p>_____ Alison R. Kean, Metro Attorney</p>	<p style="text-align: center;">Exhibit “A” to Ordinance No. 14-xxxx</p> <p style="text-align: center;">SCHEDULE OF SOLID WASTE FEES AND CHARGES Effective July 1, 2014</p> <p style="text-align: center;">Charges at Metro Central Station and Metro South Station</p> <p><u>Tonnage Charges by waste class</u> The rates per ton pursuant to Metro Code sections 5.02.025(a)(1) and 5.02.029 shall be:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">(1) Mixed solid waste</td> <td style="text-align: right;">\$ xx.xx</td> </tr> <tr> <td>(2) Wood waste or yard debris (separated or comingled).....</td> <td style="text-align: right;">xx.xx</td> </tr> <tr> <td>(3) Residentially generated organic waste.....</td> <td style="text-align: right;">xx.xx</td> </tr> <tr> <td>(4) Commercially generated organic waste (Metro Central only).....</td> <td style="text-align: right;">xx.xx</td> </tr> </table> <p><u>Transaction Charges by transaction class</u> The rates per transaction pursuant to Metro Code 5.02.025(a)(3) shall be:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">(1) For users of staffed scales</td> <td style="text-align: right;">\$ xx.xx</td> </tr> <tr> <td>(2) For users of automated scales</td> <td style="text-align: right;">xx.xx</td> </tr> </table> <p><u>Minimum Charges</u> Minimum tonnage charges pursuant to Metro Code section 5.02.025(b) shall be based on xxx pounds for all classes of solid waste.</p> <p style="text-align: center;">Fees on Disposal of Solid Waste</p> <p><u>Regional System Fees by waste class</u> The rates per ton pursuant to Metro Code sections 5.01.150, 5.02.045 and 5.02.047 shall be:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">(1) Environmental cleanup material contaminated by hazardous substances.....</td> <td style="text-align: right;">\$ x.xx</td> </tr> <tr> <td>(2) All other solid wastes.....</td> <td style="text-align: right;">xx.xx</td> </tr> </table>	(1) Mixed solid waste	\$ xx.xx	(2) Wood waste or yard debris (separated or comingled).....	xx.xx	(3) Residentially generated organic waste.....	xx.xx	(4) Commercially generated organic waste (Metro Central only).....	xx.xx	(1) For users of staffed scales	\$ xx.xx	(2) For users of automated scales	xx.xx	(1) Environmental cleanup material contaminated by hazardous substances.....	\$ x.xx	(2) All other solid wastes.....	xx.xx
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3. Rules for contaminated soils. The third set of amendments is intended to address Metro’s administration and fees on contaminated soils. “Contaminated soil” is dirt and other media that cannot be used for clean fill, and is best managed by disposal in a modern landfill.

Metro Code has long authorized a reduced Regional System Fee and excise tax rate (\$2.50 and \$1.00 per ton, respectively) on contaminated soils. The policy was originally adopted in the late 1990s to establish an equitable rate for the disposal of soils and other media containing petroleum-based

compounds (“petroleum contaminated soil,” or PCS) that was being generated in large quantities at the time by the remediation of leaking underground oil and gasoline tanks. The policy issues were both environmental and economic: Metro’s full fees and taxes, if assessed on PCS, would constitute the largest single cost of most remediation projects. Stakeholders argued that level of economic burden threatened the sound environmental handling of contaminated soils. In response, the Metro Council adopted reduced fees and-taxes on such material.

With the increase in urban redevelopment and brownfield remediation since the late 1990s, the amount of and types of soils and contamination have become more complex. Administrative procedures are now called for. This ordinance, if adopted, authorizes the Chief Operating Officer to develop administrative procedures on contaminated soils, and to develop recommendations on a fee structure, with the intent of implementing such procedures and fees by FY 2015-16.

These amendments **do not** affect any other class of solid waste. In particular, these amendments **do not affect** the exemption status for industrial wastes that are used for operational purposes in landfills, such as mixed glass cullet used for drainage or auto shredder residue used for daily cover.

This amendment is implemented in Section 4 of Ordinance No. 14-1323.

Information/Analysis

- 1. Known Opposition.** There is no opposition.
- 2. Legal Antecedents.** Any change to Metro code requires an ordinance of the Metro Council.
- 3. Anticipated Effects:** If adopted, this ordinance would (1) allow updated rates to be collected over the full fiscal year, rather than 10 or 11 months when rate implementation is delayed; (2) allow future rate ordinances to be simpler and more transparent; (3) authorize the Chief Operating Officer to develop procedures and recommend a fee structure that will update Metro’s administration of contaminated soils.
- 4. Budget Impacts.**
 - There would be no impact on the Solid Waste Revenue Fund. The rates would be set to recover same total revenue, but could be a bit lower, all else equal, because they would be collected over a 12-month period rather than over 10 or 11 months as is current practice.
 - There would be a small positive fiscal impact on the General Fund because the new rates would be collected over the full fiscal year rather than over 10 or 11 months.

RECOMMENDATION

The Chief Operating Officer recommends adoption of Ordinance No. 14-1323.