

SECTION 3. Metro Code Chapter 5.01 as amended by Section 25 of Ordinance 98-762 is amended to read:

Renewal of Licenses and Franchises

(a) Solid Waste Facility Licenses shall be renewed unless the Executive Officer determines that the proposed renewal is not in the public interest, provided that the licensee files a completed application for renewal accompanied by payment of an application fee of three hundred dollars (\$300) not less than 60 days prior to the expiration of the license term, together with a statement of proposed material changes from its initial application for the license and any other information required by the Executive Officer. The Executive Officer may attach conditions or limitations to any renewed license.

(b) Solid Waste Facility Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria contained in Section 20 of Ordinance 98-782, provided that the Franchisee files a completed application for renewal accompanied by payment of an application fee of five hundred dollars (\$500) not less than 120 days prior to the expiration of the Franchise term, together with a statement of proposed material changes from its initial application for the Franchise and any other information required by the Executive Officer or by the Council. The Council may attach conditions or limitations to the renewed Franchise.

SECTION 4. Metro Code Chapter 5.01 as amended by Section 28 of Ordinance 98-762 is amended to read:

Change of Authorizations.

(a) A Person holding a Certificate, License or Franchise shall submit an application pursuant to 5.01.060 when said Person seeks authorization to:

(1) Accept Wastes other than those authorized by the applicant's Certificate, License or Franchise, or

(2) Perform Activities other than those authorized by the applicant's Certificate, License or Franchise, or

(3) Modify other limiting conditions of the applicant's Certificate, License or Franchise.

(b) Applications for a change in authorization or limits shall be filed on forms or in the format provided by the Executive Officer.

(c) An application for a change in authorizations or limits to the applicant's Certificate, License or Franchise shall not substitute for an application that would otherwise be required under Section 9 of this Ordinance.

(d) A Person holding a Certificate, License or Franchise shall notify Metro in writing when said Person proposes to cease accepting authorized Wastes or cease performing authorized Activities at the Solid Waste Facility or Disposal Site.

(e) The fee for applications for changes of authorizations or limits shall be one hundred dollars (\$100).

SECTION 5. Metro Code Section 5.01.140 as amended by Section 42 of Ordinance 98-762 is amended to read:

5.01.140 License and Franchise Fees

(a) ~~The Council shall establish an annual fee for Licenses and Franchises. The annual fee for a solid waste License shall not exceed three hundred dollars (\$300), and the annual fee for a solid waste Franchise shall not exceed five hundred dollars (\$500).~~ The Council may revise these fees upon 90 days written notice to each Licensee or Franchisee and an opportunity to be heard.

(b) The License or Franchise fee shall be in addition to any other fee, tax or charge imposed upon a Licensee or Franchisee.

(c) The Licensee or Franchisee shall pay the License or Franchise fee in the manner and at the time required by the Executive Officer.

SECTION 6. Metro Code Section 5.01.200 as amended by Section 49 of Ordinance 98-762 is amended to read:

5.01.200 Penalties

(a) Upon a finding that a Certificate holder, Licensee or Franchisee is in violation of this chapter, the Code, the Certificate, License or Franchise agreement, or the administrative procedures or performance standards adopted pursuant to Section 37 of Ordinance 98-782 during an inspection or audit conducted pursuant to Section 39 of Ordinance 98-782 the Executive Officer shall provide written notice to the Certificate holder, Licensee or Franchisee describing the violation at the time of the inspection, and requiring the licensee to correct the violation within the time specified on the notice.

(b) Upon a finding that the Certificate holder, Licensee or Franchisee has failed to abate the violation within the specified time period, the Executive Officer shall issue a citation, indicating

the continuing violation, the date of re-inspection and imposing a fine of \$500.00 on Licensees or Franchisees, and ~~no fine (\$0.00) on Certificate or License holders~~. Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(c) If after re-inspection, the Executive Officer finds the licensee or Franchisee has failed to abate the violation, such violation shall be punishable by a fine of \$1,000.00. Notice of a final deadline for abating the violation shall be given at the time of re-inspection.

(ed) Upon a finding that the Certificate holder, licensee or Franchisee has failed to abate the violation after the final deadline, the licensee or Franchisee shall be required to cease performing the Activity resulting in the violation.

(ee) Further inspections shall be conducted to ensure suspension of the offending Activity. If the Certificate holder, licensee or Franchisee has failed to suspend the offending Activity, the Executive Officer shall conduct an investigation which may result in the:

- (1) Imposition of a remedy suitable to the District to be implemented by and at the expense of the Certificate holder, licensee or Franchisee;
- (2) Suspension of all solid waste Activities on site;
- (3) Imposition of a lien on the property for the amount of the fines; or
- (4) Suspension, modification or revocation of the Certificate, License or Franchise pursuant to Section 5.01.170.

(ef) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by the District upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed \$500 per day for each day of violation.

SECTION 7. Metro Code Section 7.01.020 is amended to read:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by the district, each user shall pay a tax of 7.5 percent of the payment charged by the operator or the district for such use unless a lower rate has been established as provided in subsection 7.01.020(b). Each user of all solid waste system facilities shall pay an additional tax of 1.0 percent of the payment charged by the operator or the district. The tax constitutes a debt owed by the user to the district which is extinguished only by payment of the tax directly to the district or by the operator to the district. The user shall pay the tax to the district 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) by so providing in an ordinance adopted by the district. If the council so establishes a lower rate of tax, the executive 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) In lieu of taxes imposed under (a) of this section and notwithstanding section 7.01.050(a)(6), operators of solid waste facilities licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to the District's contract operator for disposal of putrescible waste shall pay a tax in the amount of \$1.76 per ton of putrescible waste delivered directly to the District's contract operator for disposal of putrescible waste.

SECTION 8. Metro Code Section 7.01.050 is amended to read:

7.01.050 Exemptions

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

(1) Persons, users and operators whom the district 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 Civic Stadium or the Portland Center for the Performing Arts.

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

(4) Any persons making payment to the district 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 the district for any purpose other than solid waste disposal, use of a Metro ERC facility, or use of the Metro Washington Park Zoo.

(6) An operator of a solid waste facility certified, licensed, or franchised under Chapter 5.01 of this Code, other than any disposal sites or transfer stations owned, operated or

franchised by the District, provided that such operator performs resource recovery or performs operations limited to transfer of yard debris.~~franchised processing center that accomplishes material recovery and recycling as a primary operation.~~

(7) Persons making payments to the district on behalf of the Metro Washington Park Zoo for the following purposes:

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

(B) 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 conducted at the zoo;

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

(D) Payments that entitle a person to admission to a special fund-raising event held at the 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 zoo and the proceeds of the event are contributed to the zoo;

(E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the district for admission to the zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the 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~~operating~~ pursuant to a Metro Code Chapter 5.01 franchise, and which sorts, classifies or processes used tires into fuel and/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.

(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 district facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

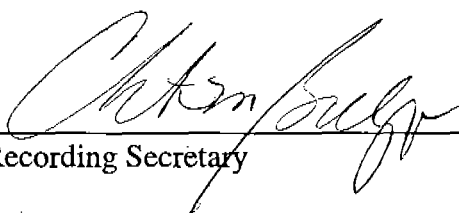
SECTION 9. The amendments to the Metro Code provided for in Sections 1 through 9 of this Ordinance shall take effect 90 days after the passage of this Ordinance.

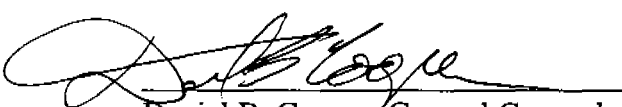
ADOPTED by the Metro Council this 6th day of August, 1998


Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:


Recording Secretary


Daniel B. Cooper, General Counsel

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EXECUTIVE SUMMARY
ORDINANCE 98-767
FEE, PENALTY & EXCISE TAX CHANGES RELATED TO 5.01 REVISION

PROPOSED ACTION

Passage of Ordinance 98-767 would create or alter application fees, annual fees, and penalties in conjunction with the other solid waste facility regulatory changes proposed in a companion ordinance, 98-762. This ordinance would also make changes to the excise tax code to be consistent with the revisions made to the regulatory code.

WHY NECESSARY

- A major rewrite of the Metro Code (chapter 5.01) necessitates changes in various fees and penalties that can be imposed on solid waste facilities regulated by Metro.
- Changes to the excise tax code are needed to preserve an existing tax exemption for resource recovery efforts and create an alternative way of imposing an excise tax on a new non-resource recovery activity that is authorized under the revised 5.01 chapter and that otherwise would escape taxation (i.e., direct-haul of putrescible waste to Metro's disposal contractor)
- Fee, penalty and tax changes are proposed in a separate ordinance to be consistent with the Metro Code
- These changes would take effect 90 days following the adoption of this ordinance.

ISSUES/CONCERNS

- The annual franchise fees of \$500 are notably lower than some franchise fees assessed by other governments on regulated activities
- The flat dollar per ton excise tax imposed on direct-haul activities will not vary with the tax base as does the current percentage based excise tax
- As with the current tax exemption, the excise tax exemption for facilities that perform resource recovery activities is not graduated based on the level of resource recovery effort performed by the facility

BUDGET/FINANCIAL IMPACT

- Annual fees, application fees and penalties are expected to generate very little in additional solid waste revenues
- The excise tax revenues generated as result of these changes should remain about the same as would have been collected under the current regulatory and excise tax codes
- If the change in the method of excise tax assessment on direct-haul activities is not made and direct haul is subjected to the excise tax, annual excise tax revenues could increase in the range of \$100,000 to \$300,000 depending upon on the number of facilities licensed to direct-haul waste to Columbia Ridge

STAFF REPORT

IN CONSIDERATION OF ORDINANCE 98-767, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO SET CERTAIN FEES AND PENALTIES, AND MAKING RELATED ADJUSTMENTS TO CHAPTER 7.01.

Date: June 25, 1998

Presented by: Bruce Warner,
Dennis Strachota

I. BACKGROUND

A major revision of Metro's solid waste code, chapter 5.01, is proposed in Ordinance 98-762. As part of that revision, changes to application fees, annual fees and penalties for certified, licensed and franchised solid waste facilities have been proposed. In addition, revisions in chapter 7.01 are proposed to deal with changes made in the 5.01 revision. In accordance with the Metro charter, changes for both fees and related taxes are proposed in this separate ordinance.

The regulatory changes in Ordinance 98-762 represent the first major rewrite of Chapter 5.01 since 1981. As explained in the staff report to Ordinance 98-762, these changes were needed because the regulatory code was outdated and did not position the region well for the future.

Fees and Penalties

This ordinance establishes application fees to cover, in part, the cost of processing applications. These fees are \$100, \$300 and \$500 for certificates, licenses and franchises, respectively. The application fee for changes of authorizations or limits of a certificate, license or franchise, which requires less staff effort than initial applications is set at \$100. The ordinance establishes fees for the renewal of licenses and franchises at \$300 and \$500, respectively. Because certificate holders can hold certificates in perpetuity, the ordinance sets no renewal fees for certificates.

Chapter 5.01 adds two instruments to Metro's solid waste regulatory portfolio – certificates and licenses. Like the franchises that precede them, licenses have annual fees associated with them. This ordinance sets annual fees of \$300 for holders of licenses. Because certificate holders have little or no impact on the region's solid waste system, no annual fees are imposed for those instruments.

Penalties proposed in this ordinance differ from the current chapter 5.01 in one major respect. In place of a \$500 penalty for each violation, this ordinance would impose progressive fines for repeat violations. A repeat violation would trigger a fine of \$1,000 which would double each time a licensee or franchisee was cited for the same infraction within a 12-month period. The assessment of progressive fines is designed to provide an incentive for facilities to take corrective action. Because certificate holders have little or no impact on the region's solid waste system and Metro retains the right to suspend operations or rescind a certificate for threats to public health and safety, the proposed ordinance does not impose penalties for certificate violations.

Excise Taxes

As described in the staff report for Ordinance 98-762, chapter 5.01 revision would make a myriad of changes to Metro's regulation of solid waste facilities. One unintended consequence of these changes is to nullify a current excise tax policy favoring material recovery.

The Metro excise tax is imposed for the "use of the facilities, equipment, functions, services, or improvements owned, operated, franchised, or provided by the District." An exemption, however, is granted under chapter 7.01 of the Metro Code to "a processing center that accomplishes material recovery and recycling as a primary operation" (i.e., material recovery facilities). The new regulatory code authorizes solid waste facilities to perform multiple activities under one roof to gain efficiencies, consistent with the agency's Regional Solid Waste Management Plan.

The current excise tax code was crafted when solid waste facilities were still single-purpose operations. The multi-purpose facilities that are created as a result of new regulatory code would no longer be eligible for the excise tax exemption for material recovery because they no longer perform material recovery as "a primary operation." As a consequence, a major incentive for recovering materials from waste would be lowered. Exempting a multi-purpose facility that performs material recovery, however, indirectly could provide an exemption for the transfer and transport of putrescible waste, activities that inherently do not contribute to recycling and recovery goals.

This ordinance amends the excise tax code in such a way that it preserves the tax exemption for material recovery while it retains the excise tax on the transfer and transport of putrescible waste.

The excise tax is established as a tax on the "use" of facilities, services and other things of value. Generally a facility will collect the tax as part of the fee charged to its customers. In case of solid waste facilities, the major activities performed by a facility that might comprise a service include, transfer, processing (e.g., material recovery), and transport to a disposal site. Currently, if the facility is a material recovery facility (MRF), it is exempt from collecting excise tax on the services provided at the MRF. The MRF recovers material from non-putrescible waste and delivers the residual waste from the material recovery process to a disposal site. The disposal site collects excise tax and the Regional System Fee on the residual as part of their disposal fee.

To ensure that material recovery from solid waste continues to be exempt from the excise tax, this ordinance exempts all solid waste facilities, except disposal sites and regional transfer stations, from collecting excise tax from their customers if they perform resource recovery or perform only reloading of yard debris. As defined in the revised regulatory code, resource recovery encompasses everything but yard debris reloading that is currently exempt under the excise code, i.e., material recovery, recycling, petroleum-contaminated soil processing, and yard-debris composting. If facilities accept putrescible wastes from which generally few materials can be recovered, the excise tax would continue to be collected in one of two ways. Putrescible wastes delivered to a regional transfer station

would continue to be subject to excise tax as part of the tip fee charged to facilities and other transfer station customers. If the solid waste facility is licensed under the revised regulatory code to deliver putrescible waste directly to Metro's disposal contractor at Columbia Ridge Landfill, this ordinance would require these licensees to pay a flat excise tax of \$1.76 for each ton of putrescible wastes they deliver directly to Columbia Ridge.

The \$1.76 per ton represents the excise tax that would be collected if these facilities charged the equivalent of Metro's tip fee on putrescible waste. This flat per ton tax is in lieu of the excise tax that these facilities would otherwise be required to collect from customers delivering putrescible waste to them. A per unit basis for calculating excise tax is used in place of a percentage basis for calculating excise tax because of the recordkeeping and auditing difficulties associated with the percentage basis.

This ordinance does not alter the assessment of excise taxes and Regional System Fees collected by regional transfer stations and disposal sites because those facilities perform little, if any, material recovery, and hence do not contribute in a major way to the region's resource recovery.

II. BUDGET IMPACT

If this ordinance is adopted, Metro is expected to collect about the same amount of excise taxes as it would have under the old regulatory code and the current excise code. The major change under the revised chapter 5.01 that could have altered the level of excise tax revenues received by the agency is the authorization of direct-haul facilities. Under this ordinance, direct-haul facilities would pay the equivalent of the \$1.76 per ton in excise tax that would have been collected on similar activities performed at one of the regional transfer stations. As a result, total excise tax revenues collected on solid waste should remain about the same as was collected under old regulatory code and the current excise code.

Under the new regulatory code, direct-haul facilities would lose their exemption from excise taxes because they would no longer be considered a facility that "accomplishes material recovery and recycling as a primary operation." Without the changes in this ordinance, Metro could collect additional excise tax revenues in the range of \$100,000 to \$300,000 annually from direct-haul facilities (see Staff Report for Ordinance 98-762). Imposition of excise taxes on material recovery activities at facilities that accept putrescible waste, however, could seriously damage regional recovery efforts.

The fiscal estimates above are based on a full fiscal year. If this ordinance is adopted, the changes in the excise tax code will not take effect for 90 days or more than three months into FY 1998-99.

III. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance 98-767.