

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO. 04-1043  
METRO CODE CHAPTER 5.03 TO )  
AMEND LICENSE AND FRANCHISE ) Introduced by: Michael Jordan, Chief Operating  
FEES, AND MAKING RELATED ) Officer, with the concurrence of David Bragdon,  
CHANGES TO METRO CODE ) Council President  
CHAPTER 5.01 )

WHEREAS, Metro Code Chapter 5.03 establishes fees for solid waste facilities that are franchised by Metro; and,

WHEREAS, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling Department’s budget, and has recommended that certain costs of regulating solid waste facilities, currently recovered from the Regional System Fee, instead be recovered from license or franchise fees; and,

WHEREAS, the FY 2004-05 Regional System Fee set forth in Metro Code section 5.01.045, as amended by Section 2 of Ordinance No. 04-1042, reflects the reallocation of certain regulatory costs to license and franchise fees; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 5.03 shall be retitled “License and Franchise Fees and Related Fees.”

Section 2. Metro Code Section 5.03.010 is amended to read:

5.03.010 Purpose and Authority

It is the purpose of this chapter to establish ~~solid waste disposal license and~~ franchise fees charged to persons regulated pursuant to Metro Code Section Chapter 5.01.140; fees on persons licensed to use a non-system facility pursuant to Metro Code section 5.05.035; and fees collected from users of facilities operating under special agreements with Metro adopted pursuant to Metro Code section 5.05.030, hereafter “Designated Facility Agreements.”

Section 3. Metro Code Section 5.03.020 is repealed.

Section 4. Metro Code Section 5.03.030 is amended to read:

5.03.030 Annual License, Franchise and Designated Facility Fees

(a) Licensees, Franchisees and parties to Designated Facility Agreements, issued a solid waste disposal franchise, shall pay to Metro an annual franchise fees as set forth in this section. Such fees shall be paid in the manner and at the time required by the Chief Operating Officer on or before January 1 of each year for that calendar year.

(b) Annual ~~solid waste disposal franchise~~ fees shall ~~be~~ consist of a fixed charge \$300 per site as set forth in the following table; plus a charge per ton of solid waste, exclusive of source-separated material, accepted by the site, as set forth in the following table.

<u>Entity</u>	<u>Fixed Site Fee</u>	<u>Tonnage Fee</u>
<u>Party to a DFA</u>	<u>\$0</u>	<u>\$0.77</u>
<u>Licensees:</u>		
<u>Tire Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Yard Debris</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Roofing Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Non-System</u>	<u>\$300</u>	<u>\$0.77</u>
<u>Mixed waste/other</u>	<u>\$3,000</u>	<u>\$0.77</u>
<u>Franchisee</u>	<u>\$5,000</u>	<u>\$0.77</u>

(c) ~~Notwithstanding the charges set forth in subsection (b), provided, however, that~~ said Fixed Site Fee shall be \$100 per site with no (\$0) Tonnage Fee for each non-system licensee franchised site that only transports/receives waste exclusively from ~~the a licensed or franchisee facility, or a company,~~ partnership or corporation ~~in~~ in which the franchisee has a financial interest in, and is held in the same name as, the non-system licensee.

(d) Licensees, franchisees and parties to Designated Facility Agreements who are issued licenses, franchises or Designated Facility Agreements during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that ~~one quarter the same proportion~~ of the annual fee shall be charged for any ~~quarter or~~ portion of a year quarter that the license, franchise or Designated Facility Agreement is in effect. The franchisee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise fees shall not for any reason be refundable in whole or in part. Annual franchise fees shall be in addition to franchise application fees.

Section 5. Metro Code Section 5.03.040 is amended to read:

5.03.040 Non-Payment of ~~Franchise Fees~~

(a) The issuance of any license, franchise or Designated Facility Agreement shall not be effective unless and until the annual franchise fee has been paid for the calendar year for which the franchise is issued.

(b) Annual franchise fees are due and payable on January 1 of each year. Failure to remit said fee by said date shall constitute a violation of the Metro Code and of the franchise and shall subject the franchisee to enforcement pursuant to Code Section 5.01.180 in addition to any other civil or criminal remedies Metro may have.

Section 6. Metro Code Section 5.03.050 is amended to read:

5.03.050 Transfer and Renewal

For purposes of this chapter, issuance of a franchise shall include renewal and transfer of a franchise; provided, however, that no additional annual franchise fee shall be paid upon transfer or renewal when the annual franchise fee for the franchise being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective.

Section 6. Metro Code Section 5.01.140 is amended to read:

5.01.140 License and Franchise Fees

(a) The annual fee for a solid waste License ~~or shall not exceed three hundred dollars (\$300), and the annual fee for a solid waste Franchise shall be as set forth in Metro Code Chapter 5.03 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 Chief Operating Officer.

Section 7. Effective Date

The provisions of this ordinance shall become effective on July 1, 2004 or 90 days from the date this ordinance is adopted, whichever is later.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WITHDRAWN  
David Bragdon, Council President

ATTEST:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

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Daniel B. Cooper, Metro Attorney

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 04-1043 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.03 TO AMEND LICENSE AND FRANCHISE FEES, AND MAKING RELATED CHANGES TO METRO CODE CHAPTER 5.01

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Date: February 24, 2004

Prepared by: Douglas Anderson

## BACKGROUND

### *Summary*

*Ordinance No. 04-1043, and a companion Ordinance No. 04-1042, would establish solid waste fees (but not excise tax) for FY 2004-05. The two ordinances are related, and changes to one should be reflected in changes to the other.*

*This Ordinance No. 04-1043 amends Metro Code Chapter 5.03 to establish new license and franchise fees to be charged at privately-owned facilities. These new fees, recommended by the Solid Waste Rate Review Committee, are designed to recover Metro's costs of regulating private facilities. Unlike Metro's other rates, the new license/franchise fees would not be incurred by customers of Metro transfer stations. By absorbing some of the costs currently recovered by the Regional System Fee, these new charges reduce the Regional System Fee. If Ordinance No. 04-1043 is not adopted, the level of the Regional System Fee in Ordinance No. 04-1042 would have to be adjusted.*

*Because of the budget schedule this year, the numerical values of the FY 2004-05 rates had not been reviewed by the Solid Waste Rate Review Committee as of the filing deadline for the ordinances. This review is expected before mid-March, and should be forwarded to Council prior to March 25, which is the last day to make substantive amendments to the ordinances and remain on track for a July 1 implementation date for the new rates.*

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This ordinance emerged from the detailed study of the Department's cost structure by the Rate Review Committee ("RRC") this year. A basic starting principle in rate-setting (and articulated by the RRC) is that recovery of costs should be related to the causes of those costs, all else equal. Through their work this year, the RRC came to understand that certain of Metro's costs—regulation and auditing—are incurred because of the existence and operation of private solid waste facilities. Therefore, according to the basic principle, the regulated community should bear those costs. The RRC recommended that Metro investigate annual license and franchise fees to recover those costs.

This ordinance amends Metro Code Chapter 5.03, Disposal Site Franchise Fees, to accomplish this task. As Ordinance No. 04-1043 is closely related to the elements of the annual rate ordinance amending Metro Code Chapter 5.02 (Ordinance No. 04-1042), the reader is directed to the staff report for that ordinance for more information on the RRC's findings and recommendation.

## INFORMATION/ANALYSIS

### 1. **Known Opposition.**

Although no specific opposition has been voiced as of this writing, this ordinance represents a new concept that has not had wide distribution and review.

Because this ordinance would reduce the Regional System Fee by reallocating costs to the new license and franchise fees, in general, persons who currently pay the RSF would be in favor of this ordinance. This is a broad class of persons, as the RSF is levied on all regional waste.

The licensees and franchisees who would be subject to the new fee can generally be assumed to be in opposition. However, two points argue against them being in strong opposition: (1) the license/franchise fee is less than the amount by which the RSF dropped, and so their entire fee burden will drop; (2) facility owners were well represented and participated in the public meetings when this fee was developed.

2. **Legal Antecedents.** Metro's license and franchise fees are set in Metro Code chapters 5.01 and 5.03 (where they currently conflict). Any change in these fees requires an ordinance amending Chapter 5.03 (and by implication, 5.01). This ordinance also corrects the discrepancies between Chapters 5.01 and 5.03.
3. **Anticipated Effects:** This ordinance will decrease the Regional System Fee levied on all regional ratepayers. The separate funding base helps to stabilize revenue.
4. **Budget Impacts.** These rates are designed to recover fully the department's costs of regulating private disposal facilities.

## RECOMMENDATION

The Chief Operating Officer agrees with the principles embodied in this ordinance. However, the Chief Operating Officer awaits the final findings and recommendations of the Solid Waste Rate Review Committee before taking a specific position on Ordinance No. 04-1043.