

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 04-1056
CODE CHAPTER 5.01 TO IMPOSE A	)	
MORATORIUM UNTIL DECEMBER 31, 2005, ON	)	Introduced by Chief Operating Officer
APPLICATIONS FOR AND AUTHORIZATIONS	)	Michael J. Jordan, with the concurrence of
OF NEW SOLID WASTE TRANSFER STATIONS	)	Council President David Bragdon
WITHIN THE METRO REGION; AND	)	
DECLARING AN EMERGENCY	)	

WHEREAS, today approximately twice as much solid waste transfer capacity exists as is needed for the disposal of the region's municipal solid waste; and,

WHEREAS, the Metro Council is concerned with maintaining sufficient levels of tonnage to ensure efficient operations at all transfer stations, including the publicly owned facilities; and,

WHEREAS, it is in the public interest to ensure that the regional solid waste system operates efficiently; and,

WHEREAS, Metro is updating the Regional Solid Waste Management Plan and such update will involve facility regulation issues including the appropriate tonnage allocation among existing transfer stations, and the addition of new transfer facilities in the region.

WHEREAS, a moratorium on additions to the number of transfer facilities in the solid waste system will provide the time necessary to determine such facility regulation issues; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.01.060 is amended to read as follows:

5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;

- (3) A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the Solid Waste Facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents, proof of financial assurance for the costs of closure of the facility;
- (5) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the Licensee or Franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;
- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and
- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application, and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

(e) Notwithstanding any other provision in this Section, the Chief Operating Officer shall not accept for filing any application for authority to operate a Transfer Station during the period commencing with the effective date of this Ordinance and continuing until December 31, 2005.

SECTION 2. Metro Code Section 5.01.070 is amended to read as follows:

5.01.070 Issuance of Franchise

(a) Applications for Franchises filed in accordance with Section 5.01.060 shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed Franchise site.

(c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed Franchise complies with the Regional Solid Waste Management Plan, whether the proposed Franchise meets the requirements of Section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(d) The Chief Operating Officer shall provide the recommendations required by subsection (c) of this section to the Council together with the Chief Operating Officer's recommendation regarding whether the application should be granted or denied. If the Chief Operating Officer recommends that the application be granted, the Chief Operating Officer shall recommend to the Council specific conditions of the Franchise.

(e) Subsequent to receiving the recommendation of the Chief Operating Officer, the Council shall issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, such order shall be effective immediately.

(f) In determining whether to authorize the issuance of a Franchise, the Council shall consider, but not be limited by, the following factors:

- (1) Whether the applicant has demonstrated that the proposed Solid Waste Facility and authorized Activities will be consistent with the Regional Solid Waste Management Plan;
- (2) The effect that granting a Franchise to the applicant will have on the cost of solid waste disposal and recycling services for the citizens of the region;
- (3) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents;
- (4) Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood;
- (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise.

(g) The Council shall act to grant or deny a Franchise application within 120 days after the filing of a complete application. The deadline for the Council to act to grant or deny an

application may be extended as provided in this Section. If the Council does not act to grant or deny an application by the deadline for such action, the Franchise shall be deemed granted for the Solid Waste Facility or Disposal Site requested in the application, and the Chief Operating Officer shall issue a Franchise containing the standard terms and conditions included in other comparable franchises issued by Metro.

(h) At any time after the filing of a complete Franchise application the deadline for the Council to act to grant or deny the application shall be extended if:

- (1) The Council acts to extend the deadline for up to an additional 60 days, which the Council may do one time for any single application;
- (2) The applicant substantially modifies the application during the course of the review, in which case the 120 days review period for the Council to act shall be restarted as of the date Metro receives the applicant's modifications; or
- (3) The applicant and the Chief Operating Officer agree to extend the deadline for the Council to act for a specified period of time.

(i) An applicant may withdraw its application at any time prior to the Council's decision and may submit a new application at any time thereafter.

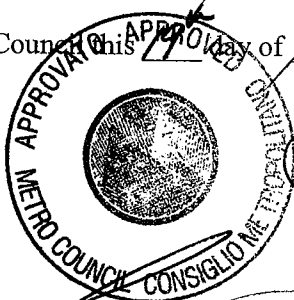
(j) If a request for a Franchise is denied, no new application for this same or substantially similar Franchise shall be filed by the applicant for at least six months from the date of denial.

(k) The term of a new or renewed Franchise shall be not more than five years.

(l) Notwithstanding any other provision in this Section, no application for authority to operate a Transfer Station shall be granted during the period commencing with the effective date of this Ordinance and continuing until December 31, 2005.

**SECTION 3.** This Ordinance being necessary for the health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this 17<sup>th</sup> day of August, 2004.



David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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## **STAFF REPORT**

IN CONSIDERATION OF ORDINANCE NO. 04-1056 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO IMPOSE A MORATORIUM UNTIL DECEMBER 31, 2005, ON APPLICATIONS FOR AND AUTHORIZATIONS OF NEW SOLID WASTE TRANSFER STATIONS WITHIN THE METRO REGION; AND DECLARING AN EMERGENCY

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Date: July 14, 2004

Prepared by: Bill Metzler

### **SUMMARY**

This report recommends that the Regional Solid Waste Management Plan (RSWMP) and Chapter 5.01 of the Metro Code be amended to implement a moratorium on new solid waste transfer stations in the Metro region until December 31, 2005.

With the RSWMP currently under review and its policies and practices scheduled to be updated in 2005, the Council has requested a review of system regulation issues, including: (a) allocating wet waste to facilities and haulers; (b) capping tonnage at all private transfer stations; (c) authorizing new transfer facilities; and (d) implementing host fees at all transfer stations.

The magnitude of this planning effort necessitates deferring consideration of new transfer station capacity until discussions with Metro Council and the RSWMP update process have both concluded.

A moratorium on new transfer capacity will not negatively impact the region's solid waste system. The region's transfer and disposal needs are well served by six Metro authorized transfer stations, and transfer capacity for wet waste exceeds current need by approximately 1.1 million tons.

### **BACKGROUND**

When adopted in 1995, the Regional Solid Waste Management Plan (RSWMP) stated that the three existing transfer stations (Metro Central, Metro South and Forest Grove) had sufficient capacity to handle the future demand for transfer services. The recommended practice was to build no new transfer stations. A new transfer station could only be authorized upon a finding that (a) the regional waste reduction program had not performed as expected; or (b) regional growth was greater than expected, and service levels could not be maintained because of lack of capacity.

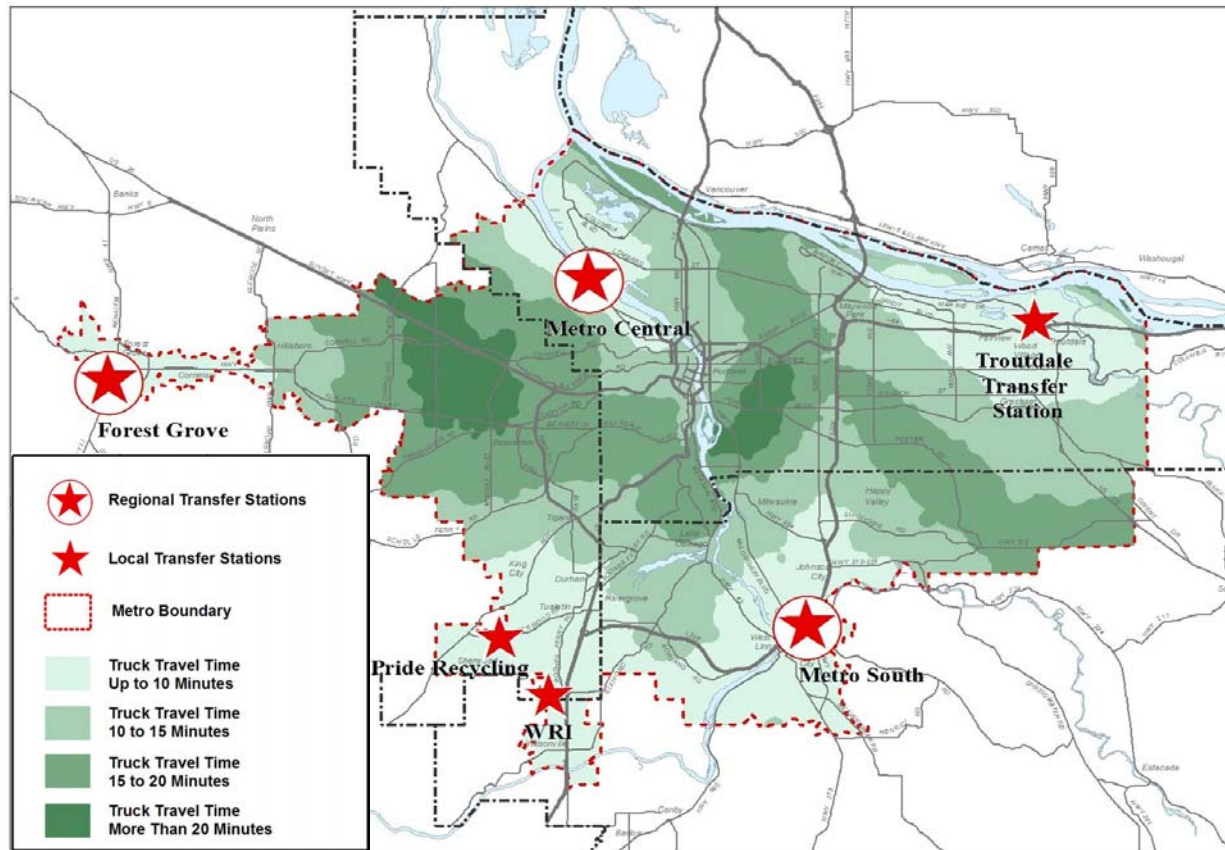
Five years later, in June 2000, the Metro Council amended the RSWMP transfer station provisions (Ordinance No. 00-865) to allow consideration of new transfer stations. The intent was to affirm a need for medium-scale facilities in the solid waste system, and to specify the level of public obligations and operating conditions that would be required of them. Three local transfer stations were authorized with a disposal tonnage cap of 50,000 tons per year, based on the total combined wet and dry waste disposed (excluding recovery).

In October 2001, the Council amended Chapter 5.01 of the Metro Code to establish service areas for transfer stations and revised the definition of a local transfer station (Ordinance No. 01-916C). In

addition, the Council removed the caps on dry waste to increase dry waste recovery, and increased the wet waste tonnage caps at local transfer stations to 65,000 tons per year.

Currently, the region is served by six transfer stations (three local and three regional transfer stations) providing access to disposal and recovery services. The location of the transfer stations are illustrated below in Figure A, with truck travel time zones estimated for each facility.

**Figure A-Solid Waste Transfer Stations in the Metro Region with Truck Travel Time Zones\***



\* Mid-day truck travel time – based on data from Metro’s Travel Demand Model.

## ANALYSIS/INFORMATION

During a June 22, 2004, Council Work Session to review a staff report on transfer station service areas, it was suggested that new transfer station applications be deferred until the system issues are resolved, and that the following short- and long-term approach to resolving solid waste system issues should be considered:

### Short-term (next 3 months):

- establish a moratorium on new transfer station capacity until the transfer station service area, and related solid waste system issues have been resolved. Metro will defer consideration of new transfer capacity until January 2006 to coincide with the conclusion of the RSWMP update;

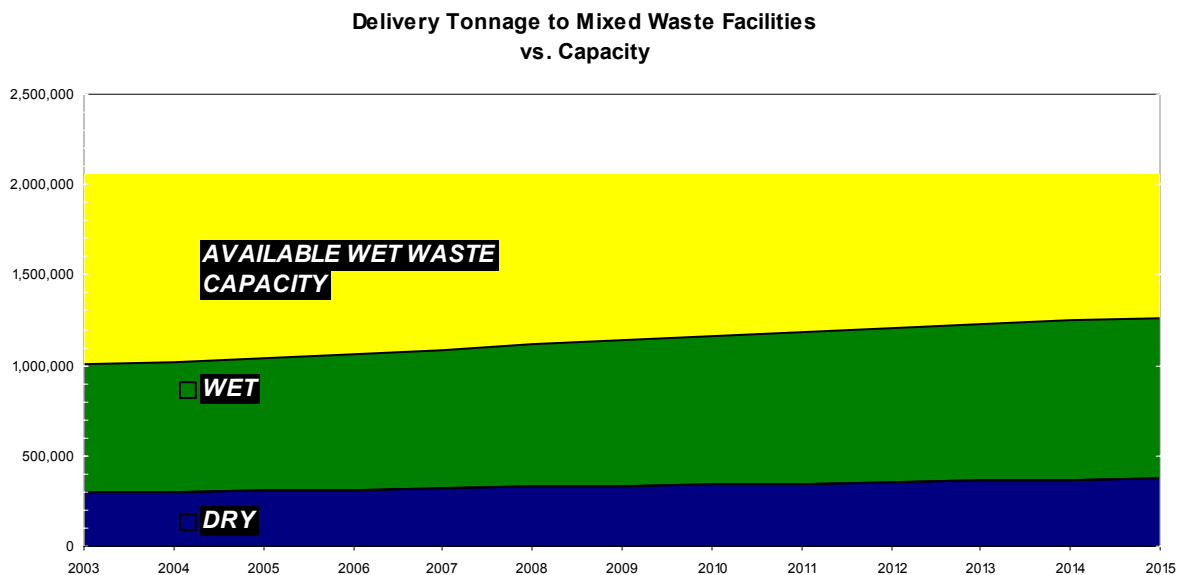
- resolve tonnage inequity issues attributable to service areas by legislatively authorizing a 5% tonnage cap adjustment to WRI, similar to the administrative increase granted to Troutdale Transfer Station.

Longer-term (next 18 months):

Undertake an examination of the solid waste system, including

- a) the public role in service provision and system regulation;
- b) allocation of wet-waste tonnage;
- c) instituting tonnage caps at all private transfer stations;
- d) review of policy for considering new transfer station capacity; and
- e) consideration of host fees and community enhancement grant programs for any community with a transfer station.

With a total of six solid waste transfer stations located in the Metro region, a moratorium on new transfer stations will not have adverse system impacts. The six transfer stations provide sufficient access and more than enough capacity. In April 2004, Metro issued its *Regional Transfer Capacity Analysis* report that addressed the question of how much capacity the region's solid waste facilities have to accept and load waste for transport to disposal sites service the region. The analysis concluded that (a) the region's transfer capacity for wet waste currently exceeds the needed capacity by approximately 1.1 million tons per year; and (b) by 2015, the transfer stations that service the region will still have 841,000 tons of unused capacity.



1. **Known Opposition.** Opposition is likely from haulers affiliated with an anticipated new transfer station applicant.
2. **Legal Antecedents.** The Regional Solid Waste Management Plan and Metro Code Chapter 5.01.
3. **Anticipated Effects.** Ordinance No. 04-1055 and Ordinance No. 04-1056, will amend the RSWMP and Chapter 5.01 of the Metro Code to implement a moratorium on new transfer stations in the Metro region until December 31, 2005, when the transfer station service area and associated wet-waste system issues are resolved in conjunction with the RSWMP update. Ordinance Nos. 04-1055 and 04-

1056, amending the RSWMP and Chapter 5.01 of the Metro Code are necessary for the immediate preservation of public health, safety and welfare by providing for the effective and comprehensive management of the regional solid waste system. An emergency is therefore declared to exist, and these two ordinances shall take effect immediately, pursuant to Metro Charter section 39(1).

4. **Budget Impacts.** There are no budget impacts.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Ordinances Nos. 04-1055 and 04-1056.

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