

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUBMITTING TO) RESOLUTION NO. 94-2045
THE VOTERS FOR THEIR APPROVAL)
ORDINANCE 94-556C "AN ORDINANCE) Introduced by
RELATING TO TAXATION, ESTABLISHING) Councilor Rod Monroe
A CONSTRUCTION EXCISE TAX)
REDUCING SOLID WASTE RATES AND)
REFUNDING PLANNING SERVICE FEES)
TO LOCAL GOVERNMENTS"

WHEREAS, The Metro Council has approved Ordinance No. 94-556C which contains a balanced package to finance Metro's Charter-mandated regional growth management planning function by establishing a new Construction Excise Tax, lowering the Metro excise tax and solid waste rates, and rebating voluntary payments from local governments; and

WHEREAS, Pursuant to Oregon law a prospective petition has been filed to seek the referral to the voters of only a portion of this package thereby potentially depriving the voters of an opportunity to approve or disapprove of the entire financial package as adopted by the Metro Council; and

WHEREAS, The Council finds that it is the best interests of the Metro region that the entire package of tax-related decisions made by the Council be placed before the voters of Metro for their approval or disapproval as soon as possible; now, therefore,

BE IT RESOLVED:

1. That the Metro Council hereby submits to the qualified voters of the District the question of approval of Ordinance No. 94-556C, a true copy of which is attached as described in Exhibit "A".

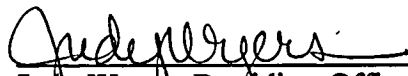
2. That the measure shall be placed on the ballot for a Special election held on the 16th day of May 1995 or the next earliest legally available election date thereafter.

3. That the District shall cause this Resolution and the Ballot Title attached as Exhibit "B" to be submitted to the Elections Officer and the Secretary of State in a timely manner as required by law.

4. That the Executive Officer pursuant to Oregon Law and Metro Code Chapter 9.02 shall transmit this measure, ballot title, an explanatory statement and arguments for or against, if any, to the County Elections Officers for inclusion in any county voters' pamphlets published for the election at which this measure is placed before the voters.

5. If it is approved by a majority of the voters Ordinance No. 94-556C shall become effective on the date specified in Section 39 of the 1992 Metro Charter. If Ordinance No. 94-556C is not approved by a majority of the voters Ordinance No. 94-556C shall not take effect.

ADOPTED by the Metro Council this 13th day of October, 1994.



Judy Wyers, Presiding Officer

gl
1191

I HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Cheri Arthur
Clerk of the Metro Council

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO TAXATION,)	ORDINANCE NO. 94-556C
ESTABLISHING A CONSTRUCTION EXCISE)	
TAX REDUCING THE METRO EXCISE TAX,)	Introduced by
REDUCING SOLID WASTE RATES AND)	Councilor Rod Monroe
REFUNDING PLANNING SERVICE FEES)	
TO LOCAL GOVERNMENTS)	

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Effective November 1, 1994 or the effective date of this Ordinance, whichever is the latest, the following Chapter 7.02 Construction Excise Tax is added to the Metro Code.

CHAPTER 7.02

CONSTRUCTION EXCISE TAX

SECTIONS:

- 7.02.010 Short title.
- 7.02.020 Construction.
- 7.02.030 Definitions.
- 7.02.040 Exemptions.
- 7.02.050 Rules and regulations promulgation.
- 7.02.060 Administration and enforcement authority.
- 7.02.070 Imposition of tax.
- 7.02.080 Rate of tax.
- 7.02.090 Failure to pay.
- 7.02.100 Statement of entire floor area required.
- 7.02.110 Intergovernmental agreements.
- 7.02.120 Rebates.
- 7.02.130 Hearings Officer.
- 7.02.140 Appeals.
- 7.02.150 Refunds.
- 7.02.160 Occupation of improvement without payment unlawful.
- 7.02.170 Enforcement by civil action.
- 7.02.180 Review.
- 7.02.190 Failure to pay -- Penalty.
- 7.02.200 Violation -- Penalty.
- 7.02.210 Rate stabilization.
- 7.02.220 Needs assessment.
- 7.02.230 Dedication of revenues.

7.02.010 Short title: This chapter shall be known as the "Construction Excise Tax Ordinance" and may be so pleaded.

7.02.020 Construction: The construction excise tax ordinance and all amendments hereinafter made thereto shall be referred to herein as "this chapter." This chapter and any terms not defined herein or elsewhere in this Code shall be construed to be consistent with definitions and terminology used in the Oregon State Building Code, 1993 Edition (the Uniform Building Code).

7.02.030 Definitions: As used in this chapter unless the context requires otherwise:

(a) "Building Official" means any person charged by a municipality with responsibility for the administration and enforcement of a building code.

(b) "Commercial Construction" means the construction of any building or structure, or portion thereof, that is classified as any occupancy other than a residential occupancy.

(c) "Construction" means erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law. Construction also includes the installation of a manufactured dwelling.

(d) "Contractor" means any person who performs Construction for compensation.

(e) "Executive Officer" means the Metro Executive Officer.

(f) "Improvement" means any newly constructed structure or a modification of any existing structure.

(g) "Major Renovation" means any renovation, alteration or remodeling of an existing building or structure, or portion thereof, that will result in a change in occupancy classification of the building or structure, or portion thereof, from a residential occupancy classification to a non-residential occupancy classification, or from one non-residential occupancy classification to another.

(h) "Manufactured Dwelling" means any building or structure designed to be used as a residence that is subject to regulation pursuant to ORS ch 446, as further defined in ORS 446.003(26).

(i) "Occupancy Classification" means any occupancy group or division of any occupancy group as defined by the Oregon State Building Code.

(j) "Person" means and includes individuals, domestic and foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

(k) "Residential Construction" means the Construction or installation of any building or structure, or portion thereof, that is classified as a residential occupancy and includes all accessory buildings and structures. The installation of a Manufactured Dwelling is included within the meaning of the term Residential Construction.

(l) "Total Combined Floor Area" means the sum of the floor areas of each floor created by the Construction. Total Combined Floor Area shall be also construed to mean the newly created floor area added to an existing building or structure by any renovation, alternation or remodeling.

(m) "Total Renovated Floor Area" means the Total Combined Floor Area of an existing building or structure, or portion thereof, that is the subject of a Major Renovation.

7.02.040 Exemptions:

(a) No obligation to pay the tax imposed by Section 7.02.070 shall arise from the Construction of any Improvement that is owned by any government entity whether federal, state or local.

(b) The Executive Officer shall pursuant to Sections 7.02.050, 7.02.060 and 7.02.110 exempt from the duty to pay the tax imposed by Section 7.02.070 any Person who would be entitled to a rebate pursuant to Section 7.02.120(a)(2) or Section 7.02.120(a)(3).

7.02.050 Rules and regulations promulgation: The Executive Officer may promulgate rules and regulations necessary for the administration and enforcement of this chapter.

7.02.060 Administration and enforcement authority:

(a) The Executive Officer shall be responsible for the administration and enforcement of this chapter. In exercising the responsibilities of this section of the Executive Officer may act through a designated representative.

(b) In order to carry out the duties imposed by this chapter, the Executive Officer shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require attendance of witnesses at hearings to determine compliance with this chapter, rules and regulations; to require production of relevant documents at public hearings; to swear witnesses; and take testimony of any Person by deposition.

7.02.070 Imposition of tax: An excise tax is imposed on every Person who engages in the act of engaging in Construction within the District. The tax shall be measured by the Total Combined Floor Area constructed or the Total Renovated Floor Area constructed as set forth in Section 7.02.080. If no additional floor area is created or added by the Construction and if the Construction does not constitute a Major Renovation then there shall be no tax due. The tax shall be due and payable at the time of the issuance of any building permit, or installation permit in the case of a manufactured dwelling, by any building authority. Liability for this tax shall attach upon every owner or occupant of property on which the Construction is located and every Contractor who engages in Construction; provided, however, that only one tax must be paid.

7.02.080: Rate of tax: The rate of tax to be paid is set forth in this section for each specific category of Construction:

(a) The rate of tax to be paid for Residential Construction or Commercial Construction shall be 12 cents for each square foot of Total Combined Floor Area constructed.

(b) The rate of tax to be paid for any Major Renovation shall be one-half the rate for Commercial Construction per square foot of Total Renovated Floor Area.

(c) If any Major Renovation results in the addition of additional floor area to an existing building or structure, then the tax to be paid shall be the total tax due pursuant to subsections (a) and (b).

7.02.090 Failure to pay: It shall be unlawful for any Person to fail to pay all or any portion of the tax imposed by this chapter.

7.02.100 Statement of entire floor area required: It shall be unlawful for any Person to fail to state or to misstate the full floor area of any Improvement or Manufactured Dwelling. When any Person pays the tax, within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the floor area of the Improvement or Manufactured Dwelling is the floor area as determined by the Building Official at the time of issuance of the building permit or installation permit. When any Person fails to pay the tax within the time provided for payment of the tax, the floor area constructed shall be as established by the Executive Officer who may consider the floor area established by the Building Official but may consider other evidence of actual floor area as well.

7.02.110 Intergovernmental agreements: The Executive Officer may enter into intergovernmental agreements with other governments to provide for the enforcement of this chapter and the collection of the Construction Excise Tax. The agreements may provide for the governments to retain no more than 5 percent of the taxes actually collected as

reimbursement of administrative expense and be reimbursed for the government's reasonable, one time, start up costs as set forth in the agreements.

7.02.120 Rebates:

(a) The Executive Officer shall rebate to any Person who has paid a tax the amount of tax actually paid, upon the Person establishing that:

- (1) The tax was paid for the Construction of a single family residence that was sold to its original occupant for a price less than \$100,000; provided that the maximum amount that may be refunded for any one residence is \$125; or
- (2) The Person who paid the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the Construction is used for residential purposes and the property is restricted to being occupied by Persons with incomes less than 50 percent of the median income for a period of 30 years or longer; or
- (3) The Person who paid the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) and the Construction is dedicated for use for the purpose of providing charitable services to Persons with incomes less than 50 percent of the median income.

(b) In the event the tax was paid for Construction that is eligible for a rebate for only a portion of the Construction, the Executive Officer shall rebate only the tax paid for the eligible portion.

(c) The Executive Officer may require any Person seeking a refund to demonstrate that the Person is eligible for a refund and that all necessary facts to support the refund are established.

(d) The Executive Officer shall either rebate all amounts due under this section within 30 days of receipt of a complete application for the rebate or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

7.02.130 Hearings Officer: The Executive Officer shall appoint a hearings officer to conduct hearings related to enforcement or appeals of this Chapter. All hearings shall be conducted in accordance with rules and regulations adopted by the Executive Officer.

7.02.140 Appeals: Any Person who is aggrieved by any determination of the Executive Officer regarding liability for payment of the tax, the amount of tax owed, or the amount of tax that is subject to refund or rebate may appeal the determination in accordance with Section 7.02.140. All appeals must be in writing and must be filed within 10 days of the determination by the Executive Officer. No appeal may be made unless the Person has first paid the tax due as determined by the Executive Officer.

7.02.150 Refunds:

(a) Upon written request, the Executive Officer shall refund any tax paid upon the Person who paid the tax establishing that Construction was not commenced and that any building permit issued has been cancelled as provided by law.

(b) The Executive Officer shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

7.02.160 Occupation of improvement without payment unlawful: It shall be unlawful for any Person to occupy any Improvement unless the tax imposed by this chapter has been paid.

7.02.170 Enforcement by civil action: The tax and any penalty imposed by this chapter constitutes a debt of the Person liable for the tax as set forth in Section 7.02.070 of this chapter and may be collected by the Executive Officer in an action at law. If litigation is necessary to collect the tax and any penalty, the prevailing party shall be entitled to reasonable attorney fees at trial or on appeal. The Office of General Counsel is authorized to prosecute any action needed to enforce this chapter as requested by the Executive Officer.

7.02.180 Review: Review of any action of the Executive Officer taken pursuant to this chapter, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved Person may demand such relief by writ of review.

7.02.190 Failure to pay -- Penalty: In addition to any other fine or penalty provided by this chapter, failure to pay the tax within fifteen days of the date of issuance of any building permit for any Improvement or installation permit for any Manufactured Dwelling shall result in a penalty equal to the amount of tax owed or \$50.00, whichever is greater.

7.02.200 Violation -- Penalty:

(a) In addition to any other civil enforcement provided herein, violation of this chapter shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars.

(b) Violation of this chapter by any officer, director, partner or other Person having direction or control over any Person violating this chapter shall subject each such Person to such fine.

7.02.210 Rate stabilization: In order to protect against the cyclical nature of the construction industry and development patterns, the Council shall annually as part of the budget process create reserves from the revenues generated by the construction excise tax that are designed to protect against future fluctuations so as to promote stability in the rate of tax needed to support required programs.

7.02.220 Needs assessment: Prior to July 1, 1998, the Council shall conduct a needs assessment review of the Construction Excise Tax to determine whether it is necessary to continue the tax beyond the period of adoption and implementation of the Regional Framework Plan. In conducting the assessment, the Council shall hold at least two public hearings.

7.02.230 Dedication of revenues: Revenue derived from the imposition of this tax after deduction of necessary costs of collection shall be dedicated solely to carrying out the Regional Planning Functions of Metro mandated by Section 5 of the 1992 Metro Charter.

Section 2. Section 7.01.020 of the Metro Code is amended to read as follows:

7.01.020 Tax Imposed:

(a) For the privilege of use of the facilities, equipment, systems, functions, services, or Improvements owned, operated, franchised, or provided by the District, each user shall pay a tax in the amount established in subsection 7.01.020(b) but not to exceed six (6) percent of the payment charged by the operator or the District for such use. 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 annual period commencing 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 the annual budget 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.

Section 3. Metro Code Section 5.02.025 and 5.02.045 is amended to read as follows:

5.02.025 Disposal Charges at Metro South Station, Metro Central Station and the Metro Household Hazardous Waste Facilities:

(a) Total fees for disposal by credit account customers shall be \$73.00 per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station.

(b) Total fees for disposal by cash account customers shall be \$100.00 per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station. A cash account customer delivering a load of waste such that no portion of the waste is visible to Metro scalehouse personnel (unless the waste is only visible through a secure covering), shall receive a 25 percent rebate.

(c) The total disposal fees specified in subsection (a) and (b) of this section include:

- (1) A disposal fee of \$37.70 per ton;
- (2) A regional transfer charge of \$7.10 per ton;
- (3) The user fees specified in Section 5.02.045;
- (4) An enhancement fee of \$.50 per ton; and
- (5) DEQ fees totaling \$1.05 per ton.

(d) Notwithstanding subsection (b) of this section, cash account customers using Metro South Station or Metro Central Station, who have separated and included in their loads at least one half cubic yard of recyclable material (as defined in ORS 459.005) shall receive a \$3.00 credit toward their disposal charge if their load is transported inside a passenger car or in a pickup truck not greater than a 3/4 ton capacity.

(e) The minimum charge shall be \$19.00 for all credit account vehicles and shall be \$25.00 for all cash account vehicles. The minimum charge shall be adjusted by the covered load rebate as specified in subsection (b) of this section, and may also be reduced by application of the recycling credit provided in subsection (d) of this section. If both the rebate and the recycling credit are applicable, the rebate shall be calculated first.

(f) Total fees assessed at Metro facilities shall be rounded to the nearest whole dollar amount (a \$.50 charge shall be rounded up) for all cash account customers.

(g) A fee of \$5.00 is established to be charged at the Metro Household Hazardous Waste facilities for each load of Household Hazardous Waste.

(h) A fee of \$10.00 is established at the Metro Household Hazardous Waste facilities for special loads.

(i) The following table summarizes the disposal charges to be collected by Metro from all persons disposing of solid waste at Metro South Station and Metro Central Station:

**METRO SOUTH STATION
METRO CENTRAL STATION**

Fee Component	\$/Ton	Tonnage Rate
Disposal Fee		\$37.70
Regional User Fee		17.25
Metro User Fee		9.40
Regional Transfer Charge		7.10
Total Rate		\$71.45
Additional Fees		
Enhancement Fee		\$.50
DEQ Fees		1.05
Total Disposal Fee		\$73.00
Minimum Charge		
Per Charge Account Vehicle		\$19.00
Per Cash Account Vehicle (subject to possible covered load rebate and recycling credit)		25.00

Tires	Type of Tire	Per Unit
	Car tires off rim	\$ 1.00
	Car tires on rim	3.00
	Truck tires off rim	5.00
	Truck tires on rim	8.00
	Any tire 21 inches or larger diameter off or on rim	\$12.00

5.02.045 User Fees:

The following user fees shall be collected and paid to Metro by the operators of solid waste disposal facilities, whether within or outside of the boundaries of Metro, for the disposal of solid waste generated, originating, collected or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150:

(a) Regional User Fee:

For compacted or noncompacted solid waste, \$17.25 per ton delivered.

(b) Metro User Fee:

\$9.40 per ton for all solid waste delivered to Metro-owned or operated facilities.

(c) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete, broken asphaltic concrete and wood chips used at the St. Johns Landfill for cover, diking, road base or other internal use shall be exempt from the above user fees.

(d) User fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(e) Notwithstanding the provisions of (a) and (b) above, Metro User Fees may be assessed as may be appropriate for solid waste which is the subject of a Non-System License under Chapter 5.05 of the Metro Code.

Section 4. The Executive Officer shall rebate to each local government that has made a voluntary payment to Metro in lieu of the per capita payments required by the provisions of former ORS 268.513 for fiscal year 1994-95 an amount equal to amount of the payment made to Metro multiplied by a fraction equal to the number of days remaining in fiscal year 1994-95 on the effective date of this Ordinance divided by 365.

Section 5. The Metro Construction Excise Tax established pursuant to Metro Code Chapter 7.02 shall not be imposed on and no person shall be liable to pay any tax for any construction activity that is commenced pursuant to a building permit issued on or after July 1, 2000.

ADOPTED by the Metro Council this 25th day of August, 1994.


Ed Washington, Deputy Presiding Officer

ATTEST:


Clerk of the Council

gl1166i

EXHIBIT "B"

- "Caption: New Metro Construction tax, will lower excise tax, garbage fees."
- "Question: Shall Metro charge new tax on construction dedicated to voter required growth planning; reduce excise tax and solid waste rates?"
- "Explanation: Sets tax on new construction. Tax is twelve cents per square foot. Tax rate for remodeling is six cents per square foot. Exempts low cost homes and low income housing. Exempts most home remodels. Tax proceeds are dedicated to voter required growth management planning. Tax ends July 1, 2000. Lowers Metro excise tax on solid waste, zoo and convention center from 7.5 percent to 6 percent. Lowers solid waste tip fees from 75 dollars per ton to 73. Gives rebates of fees to local governments."

gl
1191

**METRO**

Date: October 4, 1994

To: Metro Council

From: Rod Monroe, Finance Committee Chair

A handwritten signature in cursive script, appearing to read "RM", positioned to the right of the "From:" line.

Re: Introduction of Resolution No. 94-2045

Please find attached a copy of Resolution No. 94-2045 which I have introduced for Council consideration and action. **The resolution submits the entire Construction Excise Tax Ordinance (94-556C) to the voters at the May 16, 1995 election or at the next available election in 1995.**

This resolution has been introduced to present the entire financial package to the voters rather than merely the imposition of the Construction Tax. This will avert a potential financial short fall of approximately \$1,000,000 during the current fiscal year. It will also enable the voters to make a choice of adopting a more balanced approach to funding Metro's planning program or continue to rely mostly on taxing the users of the solid waste system. Since I last talked to most of you I have changed the proposed election date to the May 16, 1994 election to avoid placing the measure on the same ballot as the Greenspaces measure. This date does not take into account the potential problem of Ballot Measure 5 which could force those two measures to be on the same ballot.

This resolution will be on the October 12, 1994 Finance Committee agenda. I have asked the Presiding Officer to schedule the resolution on the October 13, 1994 Council agenda should the resolution be favorably acted upon by the Finance Committee. Please review the resolution and call me or Don Carlson if you have any questions or need additional information.

cc: Rena Cusma
Jennifer Sims
Don Carlson

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO TAXATION,)
ESTABLISHING A CONSTRUCTION EXCISE)
TAX REDUCING THE METRO EXCISE TAX,)
REDUCING SOLID WASTE RATES AND)
REFUNDING PLANNING SERVICE FEES)
TO LOCAL GOVERNMENTS)

ORDINANCE NO. 94-556C
Introduced by
Councilor Rod Monroe

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Effective November 1, 1994 or the effective date of this Ordinance, whichever is the latest, the following Chapter 7.02 Construction Excise Tax is added to the Metro Code.

CHAPTER 7.02

CONSTRUCTION EXCISE TAX

SECTIONS:

7.02.010	Short title.
7.02.020	Construction.
7.02.030	Definitions.
7.02.040	Exemptions.
7.02.050	Rules and regulations promulgation.
7.02.060	Administration and enforcement authority.
7.02.070	Imposition of tax.
7.02.080	Rate of tax.
7.02.090	Failure to pay.
7.02.100	Statement of entire floor area required.
7.02.110	Intergovernmental agreements.
7.02.120	Rebates.
7.02.130	Hearings Officer.
7.02.140	Appeals.
7.02.150	Refunds.
7.02.160	Occupation of improvement without payment unlawful.
7.02.170	Enforcement by civil action.
7.02.180	Review.
7.02.190	Failure to pay -- Penalty.
7.02.200	Violation -- Penalty.
7.02.210	Rate stabilization.
7.02.220	Needs assessment.
7.02.230	Dedication of revenues.

7.02.010 Short title: This chapter shall be known as the "Construction Excise Tax Ordinance" and may be so pleaded.

7.02.020 Construction: The construction excise tax ordinance and all amendments hereinafter made thereto shall be referred to herein as "this chapter." This chapter and any terms not defined herein or elsewhere in this Code shall be construed to be consistent with definitions and terminology used in the Oregon State Building Code, 1993 Edition (the Uniform Building Code).

7.02.030 Definitions: As used in this chapter unless the context requires otherwise:

- (a) "Building Official" means any person charged by a municipality with responsibility for the administration and enforcement of a building code.
- (b) "Commercial Construction" means the construction of any building or structure, or portion thereof, that is classified as any occupancy other than a residential occupancy.
- (c) "Construction" means erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law. Construction also includes the installation of a manufactured dwelling.
- (d) "Contractor" means any person who performs Construction for compensation.
- (e) "Executive Officer" means the Metro Executive Officer.
- (f) "Improvement" means any newly constructed structure or a modification of any existing structure.
- (g) "Major Renovation" means any renovation, alteration or remodeling of an existing building or structure, or portion thereof, that will result in a change in occupancy classification of the building or structure, or portion thereof, from a residential occupancy classification to a non-residential occupancy classification, or from one non-residential occupancy classification to another.
- (h) "Manufactured Dwelling" means any building or structure designed to be used as a residence that is subject to regulation pursuant to ORS ch 446, as further defined in ORS 446.003(26).
- (i) "Occupancy Classification" means any occupancy group or division of any occupancy group as defined by the Oregon State Building Code.

(j) "Person" means and includes individuals, domestic and foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

(k) "Residential Construction" means the Construction or installation of any building or structure, or portion thereof, that is classified as a residential occupancy and includes all accessory buildings and structures. The installation of a Manufactured Dwelling is included within the meaning of the term Residential Construction.

(l) "Total Combined Floor Area" means the sum of the floor areas of each floor created by the Construction. Total Combined Floor Area shall be also construed to mean the newly created floor area added to an existing building or structure by any renovation, alternation or remodeling.

(m) "Total Renovated Floor Area" means the Total Combined Floor Area of an existing building or structure, or portion thereof, that is the subject of a Major Renovation.

7.02.040 Exemptions:

(a) No obligation to pay the tax imposed by Section 7.02.070 shall arise from the Construction of any Improvement that is owned by any government entity whether federal, state or local.

(b) The Executive Officer shall pursuant to Sections 7.02.050, 7.02.060 and 7.02.110 exempt from the duty to pay the tax imposed by Section 7.02.070 any Person who would be entitled to a rebate pursuant to Section 7.02.120(a)(2) or Section 7.02.120(a)(3).

7.02.050 Rules and regulations promulgation: The Executive Officer may promulgate rules and regulations necessary for the administration and enforcement of this chapter.

7.02.060 Administration and enforcement authority:

(a) The Executive Officer shall be responsible for the administration and enforcement of this chapter. In exercising the responsibilities of this section of the Executive Officer may act through a designated representative.

(b) In order to carry out the duties imposed by this chapter, the Executive Officer shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require attendance of witnesses at hearings to determine compliance with this chapter, rules and regulations; to require production of relevant documents at public hearings; to swear witnesses; and take testimony of any Person by deposition.

7.02.070 Imposition of tax: An excise tax is imposed on every Person who engages in the act of engaging in Construction within the District. The tax shall be measured by the Total Combined Floor Area constructed or the Total Renovated Floor Area constructed as set forth in Section 7.02.080. If no additional floor area is created or added by the Construction and if the Construction does not constitute a Major Renovation then there shall be no tax due. The tax shall be due and payable at the time of the issuance of any building permit, or installation permit in the case of a manufactured dwelling, by any building authority. Liability for this tax shall attach upon every owner or occupant of property on which the Construction is located and every Contractor who engages in Construction; provided, however, that only one tax must be paid.

7.02.080: Rate of tax: The rate of tax to be paid is set forth in this section for each specific category of Construction:

(a) The rate of tax to be paid for Residential Construction or Commercial Construction shall be 12 cents for each square foot of Total Combined Floor Area constructed.

(b) The rate of tax to be paid for any Major Renovation shall be one-half the rate for Commercial Construction per square foot of Total Renovated Floor Area.

(c) If any Major Renovation results in the addition of additional floor area to an existing building or structure, then the tax to be paid shall be the total tax due pursuant to subsections (a) and (b).

7.02.090 Failure to pay: It shall be unlawful for any Person to fail to pay all or any portion of the tax imposed by this chapter.

7.02.100 Statement of entire floor area required: It shall be unlawful for any Person to fail to state or to misstate the full floor area of any Improvement or Manufactured Dwelling. When any Person pays the tax, within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the floor area of the Improvement or Manufactured Dwelling is the floor area as determined by the Building Official at the time of issuance of the building permit or installation permit. When any Person fails to pay the tax within the time provided for payment of the tax, the floor area constructed shall be as established by the Executive Officer who may consider the floor area established by the Building Official but may consider other evidence of actual floor area as well.

7.02.110 Intergovernmental agreements: The Executive Officer may enter into intergovernmental agreements with other governments to provide for the enforcement of this chapter and the collection of the Construction Excise Tax. The agreements may provide for the governments to retain no more than 5 percent of the taxes actually collected as

reimbursement of administrative expense and be reimbursed for the government's reasonable, one time, start up costs as set forth in the agreements.

7.02.120 Rebates:

(a) The Executive Officer shall rebate to any Person who has paid a tax the amount of tax actually paid, upon the Person establishing that:

- (1) The tax was paid for the Construction of a single family residence that was sold to its original occupant for a price less than \$100,000; provided that the maximum amount that may be refunded for any one residence is \$125; or
- (2) The Person who paid the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the Construction is used for residential purposes and the property is restricted to being occupied by Persons with incomes less than 50 percent of the median income for a period of 30 years or longer; or
- (3) The Person who paid the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) and the Construction is dedicated for use for the purpose of providing charitable services to Persons with incomes less than 50 percent of the median income.

(b) In the event the tax was paid for Construction that is eligible for a rebate for only a portion of the Construction, the Executive Officer shall rebate only the tax paid for the eligible portion.

(c) The Executive Officer may require any Person seeking a refund to demonstrate that the Person is eligible for a refund and that all necessary facts to support the refund are established.

(d) The Executive Officer shall either rebate all amounts due under this section within 30 days of receipt of a complete application for the rebate or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

7.02.130 Hearings Officer: The Executive Officer shall appoint a hearings officer to conduct hearings related to enforcement or appeals of this Chapter. All hearings shall be conducted in accordance with rules and regulations adopted by the Executive Officer.

7.02.140 Appeals: Any Person who is aggrieved by any determination of the Executive Officer regarding liability for payment of the tax, the amount of tax owed, or the amount of tax that is subject to refund or rebate may appeal the determination in accordance with Section 7.02.140. All appeals must be in writing and must be filed within 10 days of the determination by the Executive Officer. No appeal may be made unless the Person has first paid the tax due as determined by the Executive Officer.

7.02.150 Refunds:

(a) Upon written request, the Executive Officer shall refund any tax paid upon the Person who paid the tax establishing that Construction was not commenced and that any building permit issued has been cancelled as provided by law.

(b) The Executive Officer shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

7.02.160 Occupation of improvement without payment unlawful: It shall be unlawful for any Person to occupy any Improvement unless the tax imposed by this chapter has been paid.

7.02.170 Enforcement by civil action: The tax and any penalty imposed by this chapter constitutes a debt of the Person liable for the tax as set forth in Section 7.02.070 of this chapter and may be collected by the Executive Officer in an action at law. If litigation is necessary to collect the tax and any penalty, the prevailing party shall be entitled to reasonable attorney fees at trial or on appeal. The Office of General Counsel is authorized to prosecute any action needed to enforce this chapter as requested by the Executive Officer.

7.02.180 Review: Review of any action of the Executive Officer taken pursuant to this chapter, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved Person may demand such relief by writ of review.

7.02.190 Failure to pay -- Penalty: In addition to any other fine or penalty provided by this chapter, failure to pay the tax within fifteen days of the date of issuance of any building permit for any Improvement or installation permit for any Manufactured Dwelling shall result in a penalty equal to the amount of tax owed or \$50.00, whichever is greater.

7.02.200 Violation -- Penalty:

(a) In addition to any other civil enforcement provided herein, violation of this chapter shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars.

(b) Violation of this chapter by any officer, director, partner or other Person having direction or control over any Person violating this chapter shall subject each such Person to such fine.

7.02.210 Rate stabilization: In order to protect against the cyclical nature of the construction industry and development patterns, the Council shall annually as part of the budget process create reserves from the revenues generated by the construction excise tax that are designed to protect against future fluctuations so as to promote stability in the rate of tax needed to support required programs.

7.02.220 Needs assessment: Prior to July 1, 1998, the Council shall conduct a needs assessment review of the Construction Excise Tax to determine whether it is necessary to continue the tax beyond the period of adoption and implementation of the Regional Framework Plan. In conducting the assessment, the Council shall hold at least two public hearings.

7.02.230 Dedication of revenues: Revenue derived from the imposition of this tax after deduction of necessary costs of collection shall be dedicated solely to carrying out the Regional Planning Functions of Metro mandated by Section 5 of the 1992 Metro Charter.

Section 2. Section 7.01.020 of the Metro Code is amended to read as follows:

7.01.020 Tax Imposed:

(a) For the privilege of use of the facilities, equipment, systems, functions, services, or Improvements owned, operated, franchised, or provided by the District, each user shall pay a tax in the amount established in subsection 7.01.020(b) but not to exceed six (6) percent of the payment charged by the operator or the District for such use. 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 annual period commencing 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 the annual budget 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.

Section 3. Metro Code Section 5.02.025 and 5.02.045 is amended to read as follows:

5.02.025 Disposal Charges at Metro South Station, Metro Central Station and the Metro Household Hazardous Waste Facilities:

(a) Total fees for disposal by credit account customers shall be \$73.00 per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station.

(b) Total fees for disposal by cash account customers shall be \$100.00 per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station. A cash account customer delivering a load of waste such that no portion of the waste is visible to Metro scalehouse personnel (unless the waste is only visible through a secure covering), shall receive a 25 percent rebate.

(c) The total disposal fees specified in subsection (a) and (b) of this section include:

- (1) A disposal fee of \$37.70 per ton;
- (2) A regional transfer charge of \$7.10 per ton;
- (3) The user fees specified in Section 5.02.045;
- (4) An enhancement fee of \$.50 per ton; and
- (5) DEQ fees totaling \$1.05 per ton.

(d) Notwithstanding subsection (b) of this section, cash account customers using Metro South Station or Metro Central Station, who have separated and included in their loads at least one half cubic yard of recyclable material (as defined in ORS 459.005) shall receive a \$3.00 credit toward their disposal charge if their load is transported inside a passenger car or in a pickup truck not greater than a 3/4 ton capacity.

(e) The minimum charge shall be \$19.00 for all credit account vehicles and shall be \$25.00 for all cash account vehicles. The minimum charge shall be adjusted by the covered load rebate as specified in subsection (b) of this section, and may also be reduced by application of the recycling credit provided in subsection (d) of this section. If both the rebate and the recycling credit are applicable, the rebate shall be calculated first.

(f) Total fees assessed at Metro facilities shall be rounded to the nearest whole dollar amount (a \$.50 charge shall be rounded up) for all cash account customers.

(g) A fee of \$5.00 is established to be charged at the Metro Household Hazardous Waste facilities for each load of Household Hazardous Waste.

(h) A fee of \$10.00 is established at the Metro Household Hazardous Waste facilities for special loads.

(i) The following table summarizes the disposal charges to be collected by Metro from all persons disposing of solid waste at Metro South Station and Metro Central Station:

**METRO SOUTH STATION
METRO CENTRAL STATION**

Fee Component	\$/Ton	Tonnage Rate
Disposal Fee		\$37.70
Regional User Fee		17.25
Metro User Fee		9.40
Regional Transfer Charge		7.10
Total Rate		\$71.45
Additional Fees		
Enhancement Fee		\$.50
DEQ Fees		1.05
Total Disposal Fee		\$73.00
Minimum Charge		
Per Charge Account Vehicle		\$19.00
Per Cash Account Vehicle (subject to possible covered load rebate and recycling credit)		25.00

Tires	Type of Tire	Per Unit
	Car tires off rim	\$ 1.00
	Car tires on rim	3.00
	Truck tires off rim	5.00
	Truck tires on rim	8.00
	Any tire 21 inches or larger diameter off or on rim	\$12.00

5.02.045 User Fees:

The following user fees shall be collected and paid to Metro by the operators of solid waste disposal facilities, whether within or outside of the boundaries of Metro, for the disposal of solid waste generated, originating, collected or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150:

(a) Regional User Fee:

For compacted or noncompacted solid waste, \$17.25 per ton delivered.

(b) Metro User Fee:

\$9.40 per ton for all solid waste delivered to Metro-owned or operated facilities.

(c) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete, broken asphaltic concrete and wood chips used at the St. Johns Landfill for cover, diking, road base or other internal use shall be exempt from the above user fees.

(d) User fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(e) Notwithstanding the provisions of (a) and (b) above, Metro User Fees may be assessed as may be appropriate for solid waste which is the subject of a Non-System License under Chapter 5.05 of the Metro Code.

Section 4. The Executive Officer shall rebate to each local government that has made a voluntary payment to Metro in lieu of the per capita payments required by the provisions of former ORS 268.513 for fiscal year 1994-95 an amount equal to amount of the payment made to Metro multiplied by a fraction equal to the number of days remaining in fiscal year 1994-95 on the effective date of this Ordinance divided by 365.


Section 5. The Metro Construction Excise Tax established pursuant to Metro Code Chapter 7.02 shall not be imposed on and no person shall be liable to pay any tax for any construction activity that is commenced pursuant to a building permit issued on or after July 1, 2000.

ADOPTED by the Metro Council this 25th day of August, 1994.



Ed Washington, Deputy Presiding Officer

ATTEST:



Clerk of the Council

gl1166i

FINANCE COMMITTEE REPORT

RESOLUTION NO. 94-2045, SUBMITTING TO THE VOTERS FOR THEIR APPROVAL ORDINANCE 94-556C "AN ORDINANCE RELATING TO TAXATION, ESTABLISHING A CONSTRUCTION EXCISE TAX REDUCING SOLID WASTE RATES AND REFUNDING PLANNING SERVICE FEES TO LOCAL GOVERNMENTS"

Date: October 13, 1994

Presented by: Councilor Monroe

COMMITTEE RECOMMENDATION: At its October 12, 1994 meeting the Finance Committee voted 4-2 to recommend Council adoption of Resolution No. 94-2045. Councilors Monroe, Kvistad, Van Bergen, and Washington voted aye. Councilors Devlin and Gardner voted no. Councilors Buchanan and McLain were absent.

COMMITTEE DISCUSSION/ISSUES: General Counsel Dan Cooper explained the resolution. He said it would refer to the voters the question of approval or disapproval of Ordinance 94-556C, which would establish a construction excise tax, reduce solid waste rates and Metro's excise tax, and refund planning service fees to local governments. This matter would go to the ballot in May, 1995, or the first available election date thereafter in the event Ballot Measure 5 passes and election dates are changed.

Councilor Gardner asked Mr. Cooper what would happen if signatures were gathered and submitted to refer only the construction excise tax portion of the ordinance before the Council passed a resolution to refer the entire ordinance. Mr. Cooper said he has researched this issue and has developed an opinion, but noted that this situation has never been litigated in Oregon so there is no precedent. He said he believes that if the Council put the ordinance on the ballot prior to May 1996 and the ordinance were approved by the voters, there is a risk that the courts could rule that the partial referral should still be placed on the ballot in May 1996. He could not say with any certainty what that risk is. Councilor Monroe asked if the risk changed if the Council filed its referral prior to an outside referral. Mr. Cooper said yes, that no subsequent referral of an ordinance that has already been referred would be possible. Councilor Monroe added that reports are that the group seeking partial referral would stop working on that if the Council refers the ordinance. In response to a question from Councilor Gardner, Mr. Cooper reiterated his response to Councilor Monroe's question, saying that the courts would have an easier time ruling against a second election if the Council referred the full ordinance prior to submittal of a petition with sufficient signatures to refer only part of the ordinance.

Councilor Kvistad asked if the current tax structure, with the 7.5% excise tax, will remain in place if the ordinance is referred. Mr. Cooper said yes, that an action to refer suspends the ordinance. Councilor Kvistad asked if there is any loophole in the ordinance 94-556C or in the resolution under discussion that would enable the construction excise tax ordinance to be voided, requiring a second vote of the Council for approval. Mr. Cooper said he is not aware of any procedural or structural defect in the ordinance or its adoption. He discussed a lawsuit that has been filed, challenging the authority of the Council to implement the tax without a



METRO

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

October 19, 1994

The Honorable Judy Wyers
Metro Council Presiding Officer
600 N.E. Grand Avenue
Portland, OR 97232-2736

The Honorable Rena Cusma
Metro Executive Officer
600 N.E. Grand Avenue
Portland, OR 97232-2736

Dear Councilor Wyers and Executive Officer Cusma:

Re: Referral of Ordinance No. 94-556C

Pursuant to Resolution No. 94-2045, the Council has referred the question of approval or disapproval of Ordinance No. 94-556C to the electors of Metro. The Resolution, Ordinance, Ballot Title, and Explanatory Statement have been filed with Multnomah County Elections Director Vicki Ervin, the Metro elections officer, on Tuesday, October 18, 1994. The measure has been given No. 26-24 and will appear on the May 16, 1995 ballot unless that date is not legally available for voter consideration of a tax measure.

Yours very truly,

Daniel B. Cooper,
General Counsel

gl
1877\3.5.C

cc: Metro Council
Donald Carlson
Jennifer Sims

**METRO**

Date: October 4, 1994

To: Metro Council

From: Rod Monroe, Finance Committee Chair

A handwritten signature in cursive, appearing to read 'RM', written in black ink.

Re: Introduction of Resolution No. 94-2045

Please find attached a copy of Resolution No. 94-2045 which I have introduced for Council consideration and action. **The resolution submits the entire Construction Excise Tax Ordinance (94-556C) to the voters at the May 16, 1995 election or at the next available election in 1995.**

This resolution has been introduced to present the entire financial package to the voters rather than merely the imposition of the Construction Tax. This will avert a potential financial short fall of approximately \$1,000,000 during the current fiscal year. It will also enable the voters to make a choice of adopting a more balanced approach to funding Metro's planning program or continue to rely mostly on taxing the users of the solid waste system. Since I last talked to most of you I have changed the proposed election date to the May 16, 1994 election to avoid placing the measure on the same ballot as the Greenspaces measure. This date does not take into account the potential problem of Ballot Measure 5 which could force those two measures to be on the same ballot.

This resolution will be on the October 12, 1994 Finance Committee agenda. I have asked the Presiding Officer to schedule the resolution on the October 13, 1994 Council agenda should the resolution be favorably acted upon by the Finance Committee. Please review the resolution and call me or Don Carlson if you have any questions or need additional information.

cc: Rena Cusma
Jennifer Sims
Don Carlson