



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND OR. 97201, 503/221-1646

METRO

A G E N D A SOLID WASTE POLICY ALTERNATIVES COMMITTEE

Date: February 23, 1981

Day: Monday

Time: 12:00 - 3:00 p.m.

Place: Metro Offices, Conference Room A-1, A-2

FOR DECISION: Recommendations concerning final draft
of Disposal Franchise Ordinance

Solid Waste Policy Alternatives Committee
January 19, 1981

ATTENDANCE

Members

Bill Culham
Frank Cooper
Bruce Walker
Howard Grabhorn
Robert Harris
Harold LaVelle
Warren Rosenfeld
Dick Howard
Shirley Coffin
Mike Sandberg
Dave Phillips

Staff

Merle Irvine
Norm Wietting
Dennis O'Neil
Terilyn Anderson
Judy Roumpf
Doug Drennen
Bev Bailey
Patti Polly

Guests

Jan Stewart, Hardy, McEwen,
Newman & Hanna
Bob Brown, DEQ
Gary Newbore, Riedel International
Ronald Watson, Attorney at Law
Jerry Powell, Resource Conservation
Consultants

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I. MINUTES OF DECEMBER 22, 1980

The minutes were approved as written.

II. DRAFT DISPOSAL FRANCHISE ORDINANCE revised

Bill Culham, Chairman, introduced Bruce Walker as the City of Portland's representative.

Terilyn Anderson updated the committee on the status of the draft Ordinance and directed the committee to the changes pointed out in her memorandum. Ms. Jan Stewart was introduced at this point and handed out suggested revisions to the draft Ordinance. This material, Titled Addendum to the Solid Waste Franchise Ordinance, Revised 1/8/81, is attached.

Bruce Walker pointed out that the committee voted on Section 5 subsection 2 last meeting and that unless someone withdrew their vote the committee should move onto other business. Frank Cooper took this up as a motion and Bruce Walker seconded. Discussion was called for and Warren Rosenfeld discussed the impact of flow control with the rest of the committee. Dennis O'Neil pointed out that Section 5 subsection 2 was retained for the time being since staff was investigating whether eliminating it would interfere with bond sales for the resource recovery plant. The motion read: That Section 5 subsection 2 be removed from the Draft Ordinance. Roll vote:

Mr. Cooper:	Yes
Mr. Cozzetto:	Absent
Mr. Culham:	No
Mr. Grabhorn:	Yes
Mr. Harris:	Yes
Mr. Howard:	Absent
Mr. LaVelle:	Yes
Ms. Coffin:	Yes
Mr. Phillips:	No
Mr. Sandberg:	Yes
Mr. Rosenfeld:	Yes
Mr. Trout:	Absent (excused)
Mr. Walker:	Yes

The committee asked if the draft Ordinance had been forwarded to major industries in the area for their information and review. Terilyn Anderson informed the committee that each of the businesses concerned with the draft Ordinance was sent a copy of their information. Committee supported by voice vote a concern of Mike Sandberg's to make sure that staff get this Ordinance to all major concerns in the industry.

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Gary Newbore asked the committee to look at Section 5 subsection 1b and to tell him why that section should not be deleted. Harold LaVelle moved that Section 5 subsection 1b be deleted.

Gary Newbore said that if Section 5 subsection 1b were deleted that it would put all of the industry on the same level. Metro would have to conform to the same requirements as everyone else. Dennis O'Neil pointed out that Metro already must conform to a DEQ permit, go through public hearings before the Council for rate changes, and make its accounting records available to the public. If subsection 1b were deleted, Metro would be reporting to itself with added expense. Roll vote:

Mr. Cooper:	Yes
Mr. Culham:	No
Mr. Grabhorn:	Yes
Mr. Harris:	Yes
Mr. LaVelle:	Yes
Ms. Coffin:	Yes
Mr. Phillips:	No
Mr. Rosenfeld:	Yes
Mr. Sandberg:	Yes
Mr. Walker:	No

Ronald Watson asked why Section 7 subsection 2d was in the Ordinance. Jan Stewart responded that this provision helps enforce Section 13, subsection 11. That provision in the Ordinance does not allow for a collector to have an interest in franchise facilities. Frank Cooper moved that Section 7, subsection 2d be modified from 1% to SEC rulings concerning share of corporate ownership. Dave Phillips seconded. Discussion called for. Jan Stewart recommended that exact language from SEC Code be used. Committee agreed. Roll vote:

Mr. Cooper:	Yes
Mr. Culham:	Yes
Mr. Grabhorn:	Yes
Mr. Harris:	Yes
Mr. LaVelle:	Yes
Ms. Coffin:	Yes
Mr. Phillips:	Yes
Mr. Rosenfeld:	Yes
Mr. Sandberg:	Yes
Mr. Walker:	Yes

The committee discussed Section 8, subsection 6 on the transferring of solid waste to other facilities. Committee members expressed concern on the changing of notification from 60 to 10 days and the impact it would have on the Council.

Frank Cooper moved that the committee change the wording from "The request for a hearing shall not stay action by the Executive Officer..." to "The request for a hearing shall stay action by the Executive Officer..." and also adding that transfer can only take place for the Resource Recovery Facility. Harold LaVelle seconded. Committee discussed the impact of the addition to the motion and agreed that the impact was too broad to include. The motion was amended to delete the addition of transfer to Resource Recovery Facility only. Roll, amended motion:

Mr. Cooper: Yes
Mr. Culham: Yes
Mr. Grabhorn: Yes
Mr. Harris: Yes
Mr. LaVelle: Yes
Ms. Coffin: Yes
Mr. Phillips: Yes
Mr. Rosenfeld: Yes
Mr. Sandberg: Yes
Mr. Walker: Yes

The committee discussed Section 9 subsection 1 on additional franchise terms. Gary Newbore pointed out that it would save paper work if the section were amended to read "shall be the estimated site longevity or 10 years whichever is less". Committee pointed out that with a landfill this might not be the case and that to change it to 10 years when there is less would distort the regional landfill situation. The committee than changed the wording to read "shall be the estimated site longevity or five years, whichever is less". Harold LaVelle made the motion and Frank Cooper seconded it. Roll vote:

Mr. Cooper: Yes
Mr. Culham: Yes
Mr. Grabhorn: Yes
Mr. Harris: Yes
Mr. LaVelle: Yes
Ms. Coffin: Yes
Mr. Phillips: Yes
Mr. Rosenfeld: Yes
Mr. Sandberg: Yes
Mr. Walker: Yes

The committee noted changes in Section 11 subsection 1 and discussed Section 11 subsection 2. Jan Stewart suggested that the committee adopt the wording in Section 8 subsection 6 to be the same in Section 11 subsection 2. Mike Sandberg moved that both Section 11 subsection 1 and 2 be adopted together as amended. Dave Phillips seconded. Roll vote:

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Mr. Cooper:	Yes
Mr. Culham:	Yes
Mr. Grabhorn:	Yes
Mr. Harris:	Yes
Mr. LaVelle:	Yes
Ms. Coffin:	Yes
Mr. Phillips:	Yes
Mr. Rosenfeld:	Yes
Mr. Sandberg:	Yes
Mr. Walker:	Yes

Terilyn Anderson pointed out the changes to Section 12. The committee voice voted to accept the staff recommendations. On Section 13 subsection 8 and 9, the committee asked how these tie together. Jan Stewart explained the two subsections and the committee voice voted to accept the new language. There was one dissenting vote by Frank Cooper.

Ronald Watson asked what the effect was if a collection business has submitted an application for a certificate before the ordinance goes into effect (example 122nd and San Rafael) in relation to Section 13, subsection 11. Committee discussed setting a deadline for submitting an application for a permit for operating a disposal facility, transfer station or processing facility. Frank Cooper moved that Section 13, subsection 11 be amended to add "...which are operating on the effective date of this Ordinance or have an application on file as of January 1, 1981." Bob Harris seconded. Roll vote:

Mr. Cooper:	Yes
Mr. Culham:	No
Mr. Grabhorn:	Yes
Mr. Harris:	Yes
Mr. LaVelle:	Yes
Ms. Coffin:	Yes
Mr. Phillips:	No
Mr. Rosenfeld:	Absent
Mr. Sandberg:	Yes
Mr. Walker:	No

Frank Cooper made the motion that Section 13 subsection 11 be deleted in its entirety. Howard Grabhorn seconded the motion. Discussion on the motion included Dave Phillips who pointed out that it is too easy to get trucks through without paying unless there are safeguards. Dennis O'Neil pointed out that this subsection was inserted at the request of collection industry representatives who are members of SWPAC. The collection industry has complained about discriminatory practices in the past, and fears rate preferences when a competing collector also runs the disposal site.
Role vote:

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Mr. Cooper: Yes
Mr. Culham: No
Mr. Harris: Yes
Mr. LaVelle: No
Ms. Coffin: No
Mr. Phillips: No
Mr. Sandberg: No
Mr. Walker: No

The committee lost the quorum at 2:30 p.m., but continued with discussion on the franchise ordinance.

Terilyn Anderson continued going over the changes as pointed out in her memorandum. Harold LaVelle asked that after the word investment, in Section 19 subsection 4d, the rest of the wording be dropped. Dave Phillips disagreed with Harold LaVelle. On Section 20 subsection 1 Harold LaVelle wanted to add the words "...reasonable time..." before "after written notice". On Section 20 subsection 5, Terilyn Anderson changed "may" to "shall". Frank Cooper disagreed and didn't want the word "shall" because it's mandatory.

The committee adjourned at approximately 3:15 p.m.



METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

METRO

MEMORANDUM

Date: February 13, 1981
To: SWPAC
From: Terilyn Anderson *TA*
Regarding: Draft Disposal Franchise Ordinance

Please note the following changes in the disposal franchise draft dated February 3, 1981. (This draft is an update of the January 8, 1981 draft.)

Section 2(22) Revised definition of transfer station.

Section 7(2)(a) Revised language.

Section 7(2)(d) Revised language.

Section 8(5)(b) Revised language

Section 8(6) Revised language.

Section 9(1) Old language deleted, new language inserted.

Section 9(2) Old language deleted, new language inserted.

Section 11(2) Old language deleted, new language inserted.

Section 13(8) Language revised.

Section 13(11) Language revised.

Section 20(1) Language revised.

Section 20(5) Language revised.

Section 21 Language revised.

New section added:

Section 24 Severability

TA:bb

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

For the Purpose of)
Amending Section 4.03.020) ORDINANCE NO. _____

Section 1: The Council of the Metropolitan Service District
ordains:

Code Section 4.03.020 User Fees is hereby amended to
read:

During Phase I of the Metro program, the following user fees shall be collected and paid by the operators of solid waste disposal sites [in accordance with Chapter 4.02 and 4.04 of the Metro Code]:

- (a) Noncompacted solid waste: 20¢ per cubic yard delivered
- (b) Compacted solid waste: 34¢ per cubic yard delivered
- (c) All material delivered in private cars, stationwagons, vans, single and two-wheel trailers, trucks with rated capacities of less than one (1) ton: 20¢ per cubic yard with a minimum charge of 45¢ per load.
- (d) User fees for solid waste delivered in units of less than a whole cubic yard shall be determined and collected on a basis proportional to the fractional yardage delivered. (For example, 4-1/2 cubic yards of noncompacted solid waste would require a user fee of 90¢.)

Section 2: This Ordinance shall take effect on the _____
day of _____, 1980.

METRO SOLID WASTE DISPOSAL FRANCHISE ORDINANCE

Section 1. Short Title

This Ordinance shall be known as the "Metro Solid Waste Disposal Franchise Ordinance" and may be so pleaded; it shall be cited herein as "this Ordinance."

Section 2. Definitions

As used in this Ordinance, unless the context requires otherwise:

- (1) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this Ordinance.
- (2) "Code" means the Code of the Metropolitan Service District.
- (3) "Council" has the same meaning as in Code Section 1.01.040.
- (4) "DEQ" means the Department of Environmental Quality of the State of Oregon.
- (5) "Director" means the head of the District Solid Waste Department.
- (6) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.
- (7) "District" has the same meaning as in Code Section 1.01.040.
- (8) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.
- (9) "Executive Officer" has the same meaning as in Code Section 1.01.040.
- (10) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

- (11) "Franchisee" means the person to whom a franchise is granted by the District under this Ordinance.
- (12) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.
- (13) "Person" has the same meaning as in Code Section 1.01.040.
- (14) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.
- (15) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.
- (16) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.
- (17) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic, and oil, which materials will be transported or sold to third parties for reuse or resale.
- (18) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.
- (19) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.
- (20) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt,

broken concrete and bricks; provided that this definition does not include:

- (a) Hazardous wastes as defined in ORS 459.410, and
 - (b) Radioactive wastes as defined in ORS 469.300, and
 - (c) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and
 - (d) Explosives.
- (21) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.
- (22) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.
- (23) "User Fee" means a user fee established by the District under ORS 268.515.
- (24) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

Section 3. Findings and Purpose

- (1) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities, and resource recovery facilities.
- (2) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this Ordinance to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (a) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state, and local agencies to benefit all citizens of the District.
- (b) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (c) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (d) Prohibit rate preferences and other discriminatory practices.
- (e) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (f) Maximize the efficiency of the District's Solid Waste Management Plan.
- (g) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations, and resource recovery facilities.
- (h) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

Section 4. Prohibited Activities

Except as provided in this Ordinance, it shall be unlawful:

- (1) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee or exempted by Section 5 of this Ordinance.
- (2) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.
- (3) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or exempted by Section 5 of this Ordinance.

- (4) For a franchisee to charge any rate not established by the Council or Executive Officer under this Ordinance.

Section 5. Exemptions

- (1) The following are exempt from the provisions of this Ordinance governing franchisees:

- (a) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (b) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (c) Recycling drop centers.
- (d) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick, and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivatives at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
- (e) Existing disposal sites located within the District authorized by DEQ to accept food wastes and which, on March 1, 1979 were franchised by a county or owned by a city.
- (f) Persons who process, transfer or dispose of solid wastes which:
 - (i) are not putrescible;
 - (ii) have been source separated;
 - (iii) are not and will not be mixed by type with other solid wastes; and

(iv) will be reused or recycled.

For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.

- (2) Notwithstanding Section 5(1)(b), the District shall comply with Section 19 (Determination of Rates) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 7(2)(a).

Section 6. Administration

The Director shall be responsible for the administration and enforcement of this Ordinance.

Section 7. Applications

- (1) Applications for a franchise or for transfer of any interest in, modification, expansion, or renewal of an existing franchise shall be filed on forms provided by the District.
- (2) In addition to the information required on the forms, applicants must submit the following to the District:
- (a) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the District may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
 - (b) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchise.
 - (c) Proof that the applicant has public liability insurance, including automotive coverage, in the amount of not less than \$300,000 for each occurrence, \$500,000 for bodily injury or death for each person, and property damage insurance in the amount of not less than \$300,000 per occurrence, or such other amounts as may be required by state law for public contracts.

- (d) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
 - (e) A duplicate copy of the information required by or submitted to DEQ pursuant to Chapter 459, Oregon Revised Statutes.
 - (f) Signed consent by the owner(s) of the property to the proposed use of the property.
 - (g) Such other information as the Director deems necessary to determine an applicant's qualifications.
- (3) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this Ordinance under a District Certificate and which have filed an abbreviated application form provided by the District within thirty (30) days after receipt of such application, may continue service until the final decision of the District on the application is made. Applications filed pursuant to this section shall not be unreasonably denied.
- (4) An incomplete or insufficient application shall not be accepted for filing.

Section 8. Issuance of Franchise

- (1) Applications filed in accordance with Section 7 shall be reviewed by the Director. The Director or his designated representative may make such investigation as the Director deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this Ordinance, the Code and all other applicable laws, rules and regulations.
- (2) Upon the basis of the application, evidence submitted and results of any investigation, the Director shall determine whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number

of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

- (3) The Director shall recommend to the Executive Officer whether the application should be granted, denied, or modified. Following such determination, the Executive Officer shall issue an order granting, denying or modifying the application. The Executive Officer may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises.
- (4) If the Executive Officer does not act to grant, or deny, a franchise application within ninety (90) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Director notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The ninety (90) days will not begin until the Director has accepted the application as complete and ready for processing.
- (5) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:
 - (a) Enter into a written franchise agreement with the District,
 - (b) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and
 - (c) Name the District as an additional insured for the insurance required by Section 7(2)(c).
- (6) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise. To ensure a sufficient flow of solid waste to the District's resource recovery facilities or to carry out the other purposes of this Ordinance, the Executive Officer may, at any time during the term of the franchise, upon sixty (60) days prior written notice, to direct solid wastes away from the franchisee or to limit the types of solid wastes which the franchisee may receive. Any franchise receiving said notice shall

have the right to a contesting case hearing before the Council pursuant to Code Chapter 5.02. A request for a hearing shall not stay action by the Executive Officer. Notice or hearing shall not be required if the Executive Officer finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.

Section 9. Term of Franchise

- (1) The term for a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In determining site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term.
- (2) Franchises shall be renewed unless the Director determines that the proposed renewal does not meet the criteria of Section 8(2), provided that the franchisee files an application for renewal not less than ninety (90) days prior to the expiration of the franchise term, together with a statement of material changes in its initial application for the franchise and any other information required by the District. The Executive Officer, upon recommendation from the Director, may attach conditions or limitations to the renewed franchise.

Section 10. Transfer of Franchises

- (1) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with Section 7 and has been granted. The proposed transferee must meet the requirements of this Ordinance.
- (2) The District shall not unreasonably deny an application for transfer of a franchise. If the District does not act on the application for transfer within sixty (60) days after filing of the application, the application shall be deemed granted.
- (3) The term for any transferred franchise shall be for the duration of the original term unless the Executive Officer establishes a different term based on the facts and circumstances at the time of transfer.

Section 11. Appeals

- (1) The Executive Officer's denial of an application, in whole or in part, to issue, renew or transfer a franchise, shall not become effective until thirty (30) days after the date of said denial, except that the denial may be effective immediately if the Executive Officer finds there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay and the franchisee has failed to take corrective action as required by the Executive Officer.
- (2) Any applicant or franchisee is entitled to a contested case hearing before the Council pursuant to Code Chapter 5.02 upon the Executive Officer's suspension, revocation, modification, or refusal to issue, renew or transfer a franchise.

Section 12. Variances

- (1) The Executive Officer, upon recommendation of the Director, may grant specific variances from particular requirements of this Ordinance to such specific persons or class of persons upon such conditions as it may deem necessary to protect public health, safety and welfare, if it finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:
 - (a) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
 - (b) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
 - (c) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.
- (2) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Director may make such investigation as he deems necessary and shall make a recommendation to the Executive Officer within thirty (30) days after receipt of the variance request.
- (3) If the Executive Officer denies a variance request, the Director shall notify the person requesting the variance

of the right to a contested case hearing pursuant to Code Chapter 5.02 which shall be held before the Council.

- (4) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

Section 13. Responsibilities of Franchisee

A franchisee:

- (1) Shall provide adequate and reliable service to the citizens of the District.
- (2) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.
- (3) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for compliance with this Ordinance and the terms and conditions of the franchise.
- (4) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by franchisee for possible review by the District.
- (5) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 7(2)(c) or such other amounts as may be required by state law for public contracts and shall give thirty (30) days written notice to the District of any lapse or proposed cancellation of insurance coverage or performance bond.
- (6) Shall file an annual operating report on forms provided by the District on or before March 1 of each year for the preceding year.
- (7) Shall comply with all provisions of this Ordinance, the Code, ORS Chapter 459, DEQ permit and any other applicable laws, rules or regulations.

- (8) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this Ordinance.
- (9) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.
- (10) Shall implement a program based on District guidelines and approved by the Director for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.
- (11) Shall not own, either in whole or in part, operate, maintain, have a proprietary interest in, or be financially associated with any individual, partnership, or corporation involved in the business of collecting residential, commercial, industrial, or demolition refuse within the District. This section shall not apply to disposal sites, transfer stations, and processing facilities which are operating on the effective date of this Ordinance under a District Certificate for which an application has been filed and is pending as of January 1, 1981, unless an application for modification or expansion thereof is filed.

Section 14. Administrative Procedures for Franchisees.

- (1) Unless otherwise specified by the Director, the following accounting procedure shall be used for charging, collecting and recording fees and charges:
 - (a) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.
 - (b) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee shall total the fees and

charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee shall reconcile the bank account each month.

- (c) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
 - (d) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.
- (2) Each month at the time of payment, the franchisee must file with the Director, a statement including without limitation the following information:
- (a) Name and address of the franchisee.
 - (b) District registration number.
 - (c) Month and year of each report.
 - (d) Number of truckloads received daily.
 - (e) Daily number of cars, pickups, trailers, and other small hauling vehicles.
 - (f) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads.
 - (g) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 16(5).
 - (h) Signature and title of the franchisee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a franchise pursuant to Section 18 or penalties as provided in Section 20.
- (3) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the Director may require. The Director, or his author-

ized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

- (4) Fees and charges owing to the District from the franchisee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid.

Section 15. Franchise Fee

- (1) The Council shall establish an annual franchise fee which it may revise at any time upon thirty (30) days' written notice to each franchisee and an opportunity to be heard.
- (2) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.
- (3) The franchisee shall pay the franchise fee in the manner and at the time required by the District.

Section 16. User Fees.

- (1) The Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District.
- (2) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.
- (3) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.
- (4) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.
- (5) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible

provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account thereafter, in whole or in part, is collected, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

- (6) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

Section 17. Reports from Collection Services.

Upon request of the District, a solid waste collection service shall file periodic reports with the District, containing information required by the District.

Section 18. Rate Review Committee

- (1) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.
- (2) Initially, three members shall serve two-year terms and two members shall serve one-year terms, in order to provide continuity in Rate Review Committee membership. Thereafter, Rate Review Committee members shall serve two-year staggered terms.
- (3) The members of the Rate Review Committee shall be as follows:
 - (a) One Certified Public Accountant with expertise in cost accounting and program auditing.
 - (b) One Certified Public Accountant with expertise in the solid waste industry.
 - (c) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.
 - (d) Two members of the public.

- (4) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee.

Section 19. Determination of Rates

- (1) No franchisee shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.
- (2) Upon granting a franchise, the Council shall establish the rate(s) to be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this Section.
- (3) Before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.
- (4) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:
- (a) Operating and nonoperating revenues.
 - (b) Direct and indirect operating and nonoperating expenses including franchise fees.
 - (c) Nonfranchise profits.
 - (d) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.
 - (e) Any other factors deemed relevant by the Council.
- (5) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 19, paragraph (3):
- (a) At any time by the Executive Officer or Rate Review Committee after giving ten (10) days written notice to the franchisee of the intent to review; or

- (b) Upon written request by the franchisee on forms provided by the District, which request may be made not more than once every six months; or
- (c) In the event the District exercises its right to control the flow of solid waste as provided in Section 8(6).

Section 20. Enforcement of Franchise Provisions

- (1) The Director may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify, revoke, or refuse to renew a franchise as provided in this Section. If, in the opinion of the Director, there is sufficient evidence to suspend, modify, revoke or refuse to renew a franchise, the Director shall notify the franchisee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that a violation exists and that the franchisee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Director may make a recommendation to the Executive Officer that the franchise be suspended, modified, revoked, or that it not be renewed.
- (2) Upon recommendation by the Director, the Executive Officer may suspend, modify, revoke or refuse to renew a franchise upon finding that the franchisee has:
 - (a) Violated this Ordinance, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
 - (b) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;
 - (c) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so.
 - (d) Misrepresented the gross receipts from the operation of the franchised site, facility or station; or
 - (e) Failed to pay when due the fees required to be paid under this Ordinance.

- (3) Except as provided in subsection (4), suspension, modification, revocation or nonrenewal the franchise shall take effect not less than thirty (30) days after the date of the order by the Executive Officer and such order may be contingent on compliance with specified conditions. In the event of such action by the Executive Officer, the franchisee may request a hearing before the Council pursuant to Code Chapter 5.02.
- (4) In the event that the Executive Officer finds that there is a serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this Ordinance, he/she may suspend, modify, revoke or refuse to renew the franchise or may take whatever steps may be necessary to abate the danger without notice and without a hearing to the affected franchisee. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the land, site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or to abate the danger for so long as the danger continues.
- (5) Upon revocation or refusal to renew the franchise, all rights of the franchisee shall immediately be divested and, if the franchise is awarded to a new franchisee, then the new franchisee shall purchase the real and personal property relating to the operation of the prior franchisee for the fair market value of the tangible assets and the prior franchisee shall transfer all such property to the new franchisee immediately so as to allow continuity of service.

Section 21. Right to Purchase.

The District may purchase or condemn any real or personal property or any interest therein of the franchisee. If such purchase or condemnation occurs upon revocation or termination of the franchise, valuation of the real and personal property purchased or condemned shall not include any sum for the value of the franchise or any other intangible value.

Section 22. Penalties

- (1) Each violation of this Ordinance shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00).

Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

- (2) In addition to Subsection (1), any violation of this Ordinance 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 Five Hundred Dollars (\$500.00) per day for each day of violation.

Section 23. Conformance with Code

- (1) Chapters 4.02 and 4.04 of the Code shall apply to disposal sites, processing facilities or transfer stations operating under a District Certificate or agreement on the effective date of this Ordinance until the final decision of the Executive Officer on the application for a franchise.
- (2) Except as provided in this section, Chapters 4.02 and 4.04 of the Code are repealed.

Section 24. Severability.

If any section of this Ordinance shall be held invalid, the remainder of this Ordinance shall not be affected thereby.



METRO

METROPOLITAN SERVICE DISTRICT
527 S.W. HALL ST., PORTLAND, OR. 97201, 503/221-1646

MEMORANDUM

Date: February 9, 1981

To: SWPAC Members

From: Dennis O'Neil, Solid Waste Coordinator *SMD*

Regarding: SWPAC Meeting Date

When drawing up the 1981 calendar for SWPAC meetings, I forgot that the Metropolitan Service District office will be closed February 16, 1981 for Presidents' Day. Therefore, the next SWPAC meeting, originally scheduled for February 16, is postponed to February 23, 1981, noon to 3:00 p.m., Room A-1 and A-2.

On or before February 13, I will send you the latest revision of the Disposal Franchise Ordinance.

DO:bb

SOLID WASTE ADVISORY COMMITTEE

ATTENDANCE AND VOTE RECORD

Meeting Date 2/12/05

* E = Excused Absense

U = Unexcused Absense