



# Agenda

SOLID WASTE POLICY ALTERNATIVES COMMITTEE

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METROPOLITAN SERVICE DISTRICT 527 S.W. HALL ST., PORTLAND, OREGON 97201 503 221-1646  
*Providing Zoo, Transportation, Solid Waste and other Regional Services*

*Date:* December 19, 1983

*Day:* Monday

*Time:* 12:00 noon - 2:00 p.m.

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

1. Roll call
2. Approval of the November 21, 1983 meeting minutes.
3. West Side Transfer Station Implementation Alternatives.

SWPAC MINUTES

SOLID WASTE POLICY ALTERNATIVES COMMITTEE

REGULAR MEETING

November 21, 1983

Committee Members Present: John Trout, Chairman; James Cozzetto, Shirley Coffin, Howard Grabhorn, Robert Harris, Dick Howard, Delyn Kies, Gary Newbore, Dave Phillips, Mike Sandberg, Edward Sparks,

Committee Members Absent: John Gray, Paul Johnson, Kelly Wellington, Bob Brown

Staff Present: Dan Durig, Norm Wietting, Doug Drennen, Dennis O'Neil, Dennis Mulvihill, Pat Kubala, Bonnie Langford

Guests: Lee Kell, Carl Miller, Dave Miller, Bruce Etlinger, Councilor; Alex Cross

Agenda Item 1.

The minutes of the special meeting of SWPAC on November 7, 1983, were approved as written except for line 3 on page two. The word "agreement" should be inserted so the sentence reads:

"They have received a clear indication that there is, on the part of the of the solid waste industry, agreement to change this part of the franchise ordinance."

Chairman John Trout, stated the sign-in sheet had not been getting around to all people and the secretary of the Committee would call the roll for each meeting.

Agenda Item 2.

Analysis of the Yard Debris Steering Committee Report

A report was sent out with the minutes and agenda so the members could familiarize themselves with the analysis. It was reviewed by Dennis Mulvihill, Waste Reduction Manager, who also diagramed the staff report on the blackboard. He talked about the Grant and the future of yard debris issue with Metro. The Committee and staff were to demonstrate publicly acceptable, feasible alternatives for the recovery of yard debris in the Portland Metropolitan Area. Based on the final evaluation of the project, they were to recommend an implementable regional yard debris recovery program.

The goals and objectives weren't entirely met by that project and the main reason was because the total system was undeveloped. There are three yard debris program elements; collection, processing and markets. Without all of these we don't have any program. The processors declared the program wouldn't work unless Metro could make sure the public participates. Can Metro impact the system enough to generate the supply? How much supply is needed? What is the quality the markets want and what is the value of the recyclables? The three processing sites in the area seem to be holding their own. We do not feel we can recommend implementable regional yard debris programs at this time.

Yard debris does impact at landfills and it is probably in Metro's best interest to do something about it. This needs to be determined in the context of the whole system. Metro is in the process of doing a systems plan and this information will be used by the Council to determine what the priorities are. If they do choose yard debris as being important in their systems planning effort, then they could follow the alternatives covered in the report. So the information is useful from that standpoint. The project was performed in the first place because of the air-quality issue. This project demonstrated reasonable alternatives for the Environmental Quality Commission and they have asked staff to develop rules for implementing a burning ban. The burning ban would probably have an impact but not too much on the landfill.

Delyn Kies asked what the time line on the EQC ruling was and Mr. Mulvihill answered they were going to get back to them at the January meeting with what we think the rules ought to be and if they agree with that they will send it out by next fall.

In answer to a question by Dave Phillips, Mr. Mulvihill said they did not know how much would be necessary for the market to give a reasonable price that you could lower the cost --the tipping fee at the processors--to make that an incentive system under a curbside collection alternative. Right now the cost to take the debris to a landfill and take it to a processor is about the same so there is no incentive to take it to a processing center. Right now the markets are undeveloped and processors are only charging the public what it costs to store the debris and not process it. We don't have good data on what the total field equation is.

Mr. Phillips said there was data in the report indicating what the necessary volumes were to feed the system and make it a viable system. Mr. Mulvihill answered it did not include markets and that was the major flaw. Mr. Phillips mentioned one of the markets had gone out of business and it was because they couldn't get the volume. He felt the yard debris program was the cheapest per ton recovery and Mr. Mulvihill concurred with that. Mr. Mulvihill pointed out they didn't know what the market was going to be.

Councilor Etlinger stated Metro had spent six or seven hundred thousand dollars in the past three-four years on this topic. The processors have spent better than a million dollars on this. He believes Metro can come up with an implementable yard debris program and he was disappointed we didn't have some recommendations for the Council at this time.

Agenda Item 3. Consideration of Options for Implementing a Transfer Station in Washington County

Chairman Trout stated this was the agenda item at the special SWPAC meeting on November 7, but a quorum was not present so no action could be taken. Genstar and the Washington County haulers returned to make their presentation and Metro had further information being prepared for SWPAC and the Regional Services Committee.

Doug Drennen, Manager of Engineering at Metro, referred to the package sent out with the Agenda, the three reports sent to Regional Services Committee. These contain information generated to date. A fourth report is being concluded and will be sent to Regional Services Committee tentatively for December 8th.

Mr. Trout asked if there were any questions on the information in the packet? There being no discussion, Mr. Trout asked Genstar and the Washington County Haulers to make their presentation on developing a joint venture transfer station in Washington County.

Alex Cross, the Vice President and Regional Manager for Genstar's Waste Technology Group went over the proposal that was their most recent submission to the Regional Services Committee, and a repeat of the November 7th presentation. He stated that the issue had been discussed for some time and was first brought before the Services Committee at the September meeting. After numerous meetings on the issue they submitted a proposal that Genstar and Washington County Refuse Collectors (WCRC) form a joint venture to site, design and construct and operate the Washington County Transfer and Recycling Center (WCTRC); (2) they were prepared to finance the capital requirements of the WCTRC; (3) the facility be designed to maximize the potential for recycling and to allow for other resource recovery alternatives as they became practical; (4) the facility be operated to serve the public and commercial refuse collectors. Mr. Cross also went into Metro's ordinances for franchising, and the portion that would now prohibit the haulers from entering into franchise service agreements. He added that after talking with Metro's Executive Officer and individual Council members that this part of the ordinance could probably be changed. They have worked effectively in other locations with recycling and could do so here, said Mr. Cross, since the Oregon State Legislature passed a bill (405) which would mandate that by 1986 recycling will be taking place curbside by every collector in the state. They will all be involved in source-separated recycling programs. They feel their proposal provides one of the possible avenues for encouraging complete transitions from waste to useable market products through the marketing capabilities of a joint venture. They would be carrying large quantities of recyclables to users who now encourage large influxes of waste material such as steel, newspapers and glass. The proposal also addresses the fact that there are some valid concerns over franchising versus contracting as far as the public is concerned. Mr. Cross said they were prepared to enter into a franchise agreement which will adequately protect the public's interest in every way. Control and cost are the main issues to be dealt with initially. He stated neither the Metro nor Genstar report should be used at this time for making a final decision. He asked the Committee to ask specific questions they might want clarified from either Metro or Genstar.

Mr. Trout asked Dave Miller if he had anything to add from the haulers perspective and Mr. Miller answered from the haulers, no, but from an individual standpoint he would like to question various issues in the Metro report.

Mr. Trout indicated he would be called upon after the questions and discussion with Mr. Cross.

Discussion followed on recycling and marketing and the feasibility of one-truck operators going into curbside collection. Mr. Miller said storing the recyclables would be a problem. However, if they worked as a group it could be done at one large facility.

Carl Miller stated that 70-80 percent of recyclables are now being taken to landfills because it is mixed and can't be taken anywhere else.

Mr. Cross stated at their facility in Los Angeles the collectors are working together with the transfer operation and recycling operation and sometimes literally hand-sort refuse to redeem the recyclables, and it is very successful.

Norm Wietting mentioned there would be a proposal coming in for a franchise from Merle Irvine to have a sorting facility similar to that in North Portland.

Shirley Coffin asked if they had addressed the concern from the staff about the possibility of disputes or labor problems? Mr. Cross said under either a franchise or a contract you would be able to deal with the problem.

Mr. Sandberg said the primary concern seemed to be the degree of control or the lack of control. He asked staff if they could define why a franchise, properly prepared, couldn't address the issue.

Doug Drennen commented that the Services Committee asked Staff to look at options two versus three. Some of the issues are-- what happens if a separate transfer facility would come into being by another hauling company; what would happen if you were doing a joint venture and the partners would have disputes which could close the facility?--You have to look at the "what ifs" if you are going to protect the public against possible emergencies. We think public ownership is the avenue of control which might eliminate some of these problems.

Asked by Ms. Coffin how uniform rates would be imposed, Mr. Drennen replied that establishing a uniform rate would be more complex if part of the system is publicly owned and another facility was privately owned and franchised. In the case of franchising, the purpose of rate regulation is to control profit.

Mr. Drennen stated if you are looking at a franchise you are trying to determine from information submitted by the company, if salaries are adequate or if the equipment on site is adequate. These are difficult things to regulate closely and put in the current rate structure. He said Metro was currently trying to increase the amount of material going into limited use sites in order to protect St. John's life. This whole effort affects the rate schedule and how we implement it and it's a difficult issue to determine.

Delyn Kies asked if the franchise term would be over a five-year period rather than a 20-year period.

Mr. Drennen stated a condition in the current franchise ordinance is another of Metro's concerns. The franchise ordinance, to date, was written to handle the landfill situation and not to cover all situations. A 5-year term was based on the permit life DEQ allows. Mr. Drennen said a franchise needs to be tailored in terms to be sure you are covering all events. The franchise should fit your situation with the landfill and is quite complex. You can write in certain eventualities but you can't cover all of these. It has to be by mutual consent.

Dave Phillips commented since S.B. 405 passed the county was going to tell its franchised haulers that have 5 to 10 year franchises that they are going to have to provide curbside collection and they wouldn't negotiate with them. When they sign the franchise they agree to abide by the rules and regulations provided in the laws.

Mr. Cross declared the process would become more complex for evaluating but you won't have some tangible data on the real cost. The areas of concern are valid but Metro's own Counsel has said it is possible to structure an agreement to consider these situations. The franchise ordinance is not an agreement, but the basis by which an agreement would be drawn up and the agreement would have to satisfy that ordinance. He said the franchise agreement could be very broad based and much more specific in the areas it covers and the authority it gives to the agency. In his mind the hands-on control by Metro is significantly greater and not reduced at all.

Mr. Durig stated the difference between the franchise and the contract was a different legal relationship. Franchising is basically the grant of authority given to a government agency and you're vesting that grant and authority to someone else. Typically, what follows from that, is a long-term relationship. It's ridiculous to look at five years when you're looking at a capital investment, in this case which should be at least 20 years. You tend to grant the franchise for the life of the capital improvement. When you establish a long-term relationship with the franchisor, if you have changing conditions out there, you do not have the flexibility to bring about the changes you want to make. You're giving away something that has value to it over a long period of time. Under a contract you're simply buying an established service. When that contract terminates, it stops and there is no obligation beyond that point. Under a franchise that is not true. If you don't renew the franchise, the franchisee has the right to contest the case. Under a contract we don't look at the books, we ask for the best price. It's the American competition approach because other people are also giving us their best price. In franchising you look at his costs, rates and expenditures. If franchising were just like contracting you wouldn't have both options. It's a different relationship.

Mr. Trout added under a franchise you get a quality operator, one that you're comfortable with and know, and you get the quality of service you really expect. We feel we can get a quality contractor and operator in there with Genstar and the haulers. Under the bid basis you can get a cheaper bid from some folks but you sometimes wind up with a contractor that's operating in the gray area. This happened to the City of Portland and it wasn't good for anybody.

Mr. Durig said you could end up with good or bad in either case.

Mr. Durig commented that it depends on how the franchise or contract is written, whether you do your background work and specify the kind of service you want. Can you take a franchise and apply conditions that make it like a contract? He said the answer to that was "no". The very nature of franchising is different from contracting. It's a longer term of relationship, you're giving the grant of authority, once the franchise is granted the burden of proof shifts away from the franchisee and back to the government. The question then becomes--why do you want to enter into a long-term relationship when your system is still changing and evolving? What Doug was trying to express was that we don't know what is going to happen out there, both the industry and this system is changing. Can we anticipate everything to put into a franchise? It was Mr. Durig's experience with franchises that about the third month someone would say they forgot to put in this or that.

Mr. Cross said both Metro's and Genstar's legal counsel would address that issue and satisfy Metro one way or another. He agreed the industry was evolving and the changes will continue to happen and this is a positive issue. If Metro wanted to make a change at CTCRC that cost two-million dollars Metro would have a great deal of trouble getting that approved since they've been in the operation only eight months. If Genstar made the decision, as a private company, at their own risk, their decision would be only if it's wise from a profit-making standpoint, not a political standpoint.

Gary Newbore, stated Metro also has a letter of interest on file from a company--one of several companies interested in this project--including his company. In looking at the options Metro would probably be a little foolish to go with a sole-source franchise. The options should be studied and perhaps other national companies would also like to get into the process.

Delyn Kies said she also had this concern about sole-source versus going out for competitive bid. She recommended that Metro take the time to go through a competitive bidding process, whether through a franchise or contract, in the beginning. As a public agency you'll save time later on. There are still questions being decided in the courts on exclusive franchising. In a recent case in California a federal court judge ruled that a city and county in California could not issue a franchise without competitive bid and was in violation of federal anti-trust. So there are some issues that Metro should look at which point toward competitive bidding. The bottom line is what is it going to cost the public? Unless there is more time for more thorough financial analysis and presentations to Metro Council, they can't make that decision.

Bruce Etlinger felt the Services Committee had ruled out the sole-source option. Dan Durig said they did not take formal action but there was a strong consensus that they would rule it out.

Shirley Coffin asked what public tax dollars would go into Option two? What public monies are we risking by franchising. Mr. Durig said under Oregon law we have the right to grant a sole source franchise. However, as Delyn Kies mentioned, the similar law in California left them open for a lawsuit when another person wanted to bid. The anti-trust is not so much whose money you use as the process you've used.

Mr. Cross said he didn't believe the issue should have been raised and the specifics of an issue should be looked at before raising an assumption. Ms. Kies stated she felt the Committee should look into these various issues because, as a part of a policy-making group, she wasn't comfortable with the sole-source issue. Mr. Durig added it was important because other companies had already expressed an interest in bidding. As a public agency we have to deal with that issue. The question is how do you select the best process for everybody's benefit.

Mr. Carl Miller declared the difference between franchising to somebody who owns the property is that they will be paying property tax on the station and property. Mr. Wietting answered the taxes would be paid by the same rate payer that pays taxes--the users.

Mr. Trout asked when the issue would be brought back to Regional Services and on to the full Council. Mr. Durig answered there was a tentative date set for December 8th but not finalized. The fourth option would go to them at that point. They have the option of making the decision or taking more time. They have not taken formal action but have indicated they want a competitive process. It's not a matter of Metro evaluating Genstar or anyone else, we are trying to evaluate a process. Whatever we end up with in guidelines, yardsticks, these will be applied to Genstar as well as everyone else in the competitive process.

Delyn Kies asked if it would be a proper role for the SWPAC Committee to be a part of the process that develops the RFP evaluation criteria? Is this where we should direct our energies?

Mr. Trout answered that he felt the SWPAC committee should definitely make a recommendation to both the Regional Services Committee and the full Council. SWPAC should recommend the plan that best fits the needs of the Solid Waste Program.

There was further discussion clarifying the four options in answer to Mr. Sandberg's questions. Mr. Durig summed up that the two major issues were still who will own the facility and competitive or non-competitive bidding. Around these there can be five or six different approaches such as the CTRC model, the franchise model, etc.



Mr. Trout said the SWPAC Committee should make a recommendation-- were they prepared to do so at this time? Mr. Phillips asked when the fourth staff report was due. Mr. Durig said approximately December 6th. Mr. Phillips asked Mr. Cross when they were prepared to have a more detailed proposal or agreement for submission. Mr. Cross felt they would have it in the hands of the special committee by December 1st. It would be a portion of the total proposal and they would be happy to distribute this also, as Metro is, to all interested parties. The Committee agreed to wait until they had more information before taking action.

Mr. Trout asked Mr. O'Neil to send out notice of the special SWPAC meeting for December 5th, and the final portion of the report.

Mr. Trout asked for any special reports.

Mr. Durig reported on the success of the meeting with Oregon City and said the tonnage limit at CTCRC had been lifted to operate on an average of 800 tons per day using a 30 day average. A new contract was signed with the City of Portland concerning St. Johns Landfill.

Changes in the contract included an extension of the deadline for siting a landfill to July 1, 1985. The City asked for a report from Metro by July 1, 1984 giving possible alternatives if we were not successful in siting Wildwood. The City also indicated they would like to formalize the agreement to come in and do an audit of finance/management operation at St. Johns. They also want the opportunity to keep track of St. Johns Landfill income and expenditures as a separate item, which is good financial management. They also want a trust fund set up for final cover and perpetual maintenance and that if the landfill should ever go back to them also that money goes back to them. This is also reasonable. Those are the key items in the contract changes. He said it was a pleasure to work with the City group that conducted the audit.

Mr. Trout asked what happened to the coffee allocation for the SWPAC meetings? Mr. Durig stated Metro had changed its policy and now each individual pays for their own. He said if the majority of people want coffee it could be charged to the budget. Mr. Trout stated since they were all donating their time to assist as an advisory committee, he believed coffee should be provided.

Dave Miller asked to talk separately from the joint venture to cover a few things with the staff report. He stated that two issues were always mentioned--whether we franchise or don't franchise, and the ownership, but he believed foremost was credibility. He wanted the group to make a credible decision. He said some time back he had been asked by the City of Tualatin to represent them on the transfer station committee as a "public" person and not from industry. At the second meeting he resigned from the public position because no one had been put on from industry, as had been formally assured by Metro.

He was further questioning the report that said the Wildwood site would be open only to transfer trucks and he felt this was not 100 percent true and other collectors and people could have gone to that site. He was disturbed that Metro was making these decisions and not the state.

SWPAC members stated that the transfer station requirement was not state law but was conditioned by Multnomah County. Doug Drennen said the statements were not meant to mislead people. The second statement about state law referred to EFU zones and Wildwood is not so zoned. Mr. Miller said it was confusing when one statement said they could go in by state law and another said they couldn't because of the County. He wanted the reports kept straight. He brought in rates and trying to get straight figures. Mr. Durig asked if he would mark any parts of the report he felt were incorrect and Mr. Durig would like to respond to them. Mr. Miller was concerned that any of the haulers would think there would be a disposal site where their trucks couldn't go. He was concerned about the options and that Services Committtee got the issues before SWPAC. Mr. Durig replied it had been in SWPAC several times. Mr. Wietting said it was up to the Services Committee where it should be referred and that also the Council could decide which committees they might want a subject referred to. Mr. Miller was concerned about the three options and felt enough consideration hadn't been given to the hauler-Genstar proposal. Mr. Durig confirmed to him that they had the legal right to ask for a sole-source franchise and it was among those considered. Mr. Miller said he would be glad to answer any questions on his concerns.

There being no questions the meeting adjourned at 2:10 p.m.



# Memo

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METROPOLITAN SERVICE DISTRICT 527 S.W. HALL ST., PORTLAND, OREGON 97201 503 221-1646  
Providing Zoo, Transportation, Solid Waste and other Regional Services

Date: 12-19/83

To: Everlee

From: Bonnie

Regarding: Swapac meeting today

It is the consensus of SWPAC present today, that the Committee recommend to the Metro Council that SWPAC should reject item #1 under the proposal for Metro's ownership of a transfer station in Washington County and recommends that Metro proceed with a competitive process which will provide private ownership and operation of a Washington County Transfer Center with adequate regulatory controls and protection of public health, safety and interests.

Present: Shirley Coffin, Vice Chairman  
Robert Harris  
Paul Johnson,  
Gary Newbore  
Dave Phillips  
Mike Sandberg  
Edward Sparks

It is the consensus of SWPAC present today that the Council

~~Recommend to Council that SWPC~~ <sup>should</sup> reject ~~the~~ item

~~it~~ ~~under the proposed~~ <sup>for Metro's ownership of</sup> ~~resolutions~~ ~~for implementing~~  
a transfer station in Washington Co. and

~~further~~ recommends that METRO proceed with

<sup>competitive</sup> ~~a~~ process which will provide private ownership  
& operation of a Wash Co. Transfer Center

which ~~will~~ <sup>with</sup> have adequate regulatory controls  
and protection <sup>public's</sup> of health, safety and interests.



# Memo

METROPOLITAN SERVICE DISTRICT 527 S.W. HALL ST., PORTLAND, OREGON 97201 503 221-1646  
Providing Zoo, Transportation, Solid Waste and other Regional Services

Date: 12/19/83

To: Everlee

From: Bonnie

Regarding: 12/19/83 SWPAC Meeting

Committee Member Robert Harris recommended the following:

In the absence of a quorum, it is the consensus of SWPAC members present today, that the Committee recommend to the Metro Council that SWPAC should reject item #1 under the proposal for Metro's ownership of a transfer station in Washington County and recommends that Metro proceed with a competitive process which will provide private ownership and operation of a Washington County Transfer Center with adequate regulatory controls and protection of public health, safety and interests.

Present:

Shirley Coffin, Vice Chairman  
Robert Harris  
Paul Johnson  
Gary Newbore  
Dave Phillips  
Mike Sandberg  
Edward Sparks

SOLID WASTE POLICY ALTERNATIVES COMMITTEE

PROPOSED REGULAR MEETING SCHEDULE - 1984

Usual Time: 12:00 noon - 2:00 P.M.

Usual Place: Metro Offices, 527 SW Hall St., Portland, Or. 97201  
Conference Rooms A1, A2

JANUARY

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1984

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF DECLARING ) RESOLUTION NO.  
METRO'S INTENT TO PROCEED TO )  
IMPLEMENT A TRANSFER STATION ) Introduced by the  
IN WASHINGTON COUNTY )

WHEREAS, Metro has the authority under ORS 268.317 to construct, operate and maintain transfer facilities necessary for the solid waste disposal system of the District; and

WHEREAS, A transfer station to service Washington County is a recommended element of the adopted Solid Waste Management Plan; and

WHEREAS, Metro sought public input regarding a transfer station in Washington County and was subsequently advised by the Washington County Transfer Station Committee that a transfer station facility was needed in this area; and

WHEREAS, The firm of Price Waterhouse Co. was retained in 1980 and recommended that Metro ownership and operation, or contracting for the operation, of all transfer stations best met Metro's identified objectives; and

WHEREAS, Metro is successfully managing a transfer station in the southern portion of the District; now, therefore,

BE IT RESOLVED,

1. Metro declares its intent to build a transfer station and recycling center in Washington County that will provide transfer and recycling services to both the public and commercial haulers.

2. Metro solid waste staff will develop a process which provides maximum involvement from the solid waste industry and local governments regarding the location and design of the transfer station.

3. Metro solid waste staff will consult with haulers in the western portion of the District to coordinate current or future site requirements of the collection industry.

4. Metro will continue to provide the opportunity for all interested and qualified private sector parties to compete on an equitable basis for design, construction, and operation contracts through a comprehensive, public bid process while maintaining public ownership of the physical facilities.

5. Metro solid waste staff will research and provide information detailing a full-service procurement strategy to the Regional Services Committee.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_ day of \_\_\_\_\_, 1983.

\_\_\_\_\_  
Presiding Officer

DD/srb  
0404C/366  
12/07/83



SPECIAL MEETING - REGIONAL SERVICES COMMITTEE

DECEMBER 7, 1983

Rock Creek Campus, Portland Community College

Committee Members Present: Bob Oleson, Corky Kirkpatrick,  
Jack Deines, Ernie Bonner, Gary  
Hansen.

Other Council Members Present Dick Waker, Bruce Etlinger

Staff Present: Rick Gustafson, Andy Jordan,  
Dan LaGrande, Dan Durig, Norman  
Wietting, Doug Drennen, Ed Stuhr,  
Eric Dutson, Bonnie Langford

Meeting Called to Order at 7:10 p.m.

Agenda Item: Consideration of Options for  
Implementing a Transfer Station  
in Washington County.

Mr. Hansen, Chairman of the Committee, introduced Mr. Durig for a brief overview of his report and asked that those who wished to testify fill out the yellow cards and would be called upon during the meeting.

Mr. Durig called their attention to the staff report which had been given the Committee and other parties attending, and said it was composed of two distinctive, complimentary parts. The first portion is the staff report completed by Solid Waste people and the second part of the report is a portion of a report completed in October of 1980 by Price-Waterhouse and company, which also addresses this issue of management strategy for Solid Waste. In the staff report there are the background fees, some of the previous history, and procurement strategies of the past, a detailed breakdown between two options; one being the franchise option and one the contract option. Major differences between the two were highlighted, a section on findings highlighted, and a section on conclusion --nine in number, and finally, the Executive Officer's recommendation. Mr. Durig said there were two primary issues before the Services Committee tonight. The first one being should this contract franchise to operate the Washington County Transfer Station be awarded on a competitive or non-competitive basis? Metro currently has three parties that have expressed interest in being a participant in the eventual operation of this facility. The second issue is a question of ownership by Metro versus non-Metro ownership, ownership by the private sector... That breaks down into two basic components; a franchising private ownership versus a public ownership by Metro with Contracting operations. Metro does have the option legally to franchise or contract the operation of the facility. Secondly, we currently use the private sector and use CTCRC as one model to design, construct and currently have an operations contract for that facility.

Rick Gustafson, Executive Officer, stated before the Committee was a Resolution with his recommendation which covered some key points in the proposal for a Washington County Transfer Station. He indicated it was appropriate for the Council Committee to deliberate over the Recommendation. He believed the issue centered around over whether a franchise was granted or a fixed-term contract. He added there were advantages on both sides as the Committee would note from their deliberation over the past few months. There are advantages to establishing a long-term relationship with a single company to provide a disposal service, as has been demonstrated in many cases with people in the garbage business. There are also advantages demonstrated by a fixed-term contract. The decision before the Regional Services Committee then, is to make a determination between the two options. Mr. Gustafson commented that although there were advantages to both sides it was to Metro's advantage to maintain their long-term flexibility. He then recommended that the Council approve a publicly-bid fixed-term contract for the operation of the Washington County Transfer Station and that we get on with the business. He said it is appropriate, and based on Council interest, to recognize the importance of a full private sector involvement and full involvement of the industry in the design and operation of the facility. Mr. Gustafson said he supported and encouraged it and hoped that the Resolution that was before them responds to some of the issues that have been raised in the previous months.

Chairman Hansen asked for Testimony from the Public.

Alex Cross, Vice President of Genstar, introduced Lee Kell, Attorney for Genstar, and DeMar Batchelor, Attorney for Washington County Refuse Collectors. Mr. Cross stated they agreed with the presentation by Mr. Gustafson and Mr. Durig that the question of ownership is a key question, with the concern of control. We believe that Metro must maintain control, said Mr. Cross. He added that private industry involvement was not an attempt to somehow or other subvert the necessary political control. Mr. Cross wanted to remind people that they did not decide on their own to investigate the possibilities of a transfer station, it was at the request of Metro staff that they pursue this subject. It was because of the staff, he said, that they got together with the Washington County haulers. He referred to a memo of May 7 1982, from the Executive Director to the Regional Services Committee where he requests implementation options for developing a Washington County transfer station. He recommends to Council that a private firm be selected through RFP process to site, design construct and operate a transfer station and Metro should develop the RFP and a selected firm be awarded an exclusive franchise. Genstar felt this was clear direction. They delivered a proposal to Metro the first week of December. Mr. Cross highlighted the fact that they stayed in the area of design, public and Metro involvement, they stayed in the area of construction and public bidding of the actual construction of facility. They stated in the area of operation that disposal rates and user fees be set by Metro, and further cooperative measures. They hoped they had responded somewhat to Metro's plans.

Lee Kell stated one of the misconceptions is the relationship between control and ownership. Genstar feels the issue of flexibility for Metro is in the concept of control, not necessarily an ownership. He said these were not synonymous concepts within the law but are part of a larger ideal which the law calls property rights, such as possession, control, ability to use and enjoy the property, etc. It is possible to have complete control of the property without having any ownership right at all and it is also possible to have title over the property and have no control or possession. Their proposal lists many areas that would be granted to Metro where they would have control over this facility without, in fact, having any ownership of it. Mr. Kell reviewed some of the issues and options for Metro in granting their proposal, adding Metro could have all the flexibility they want in granting the franchise, and with the right kind of agreement Metro could have more than enough control to carry out their present and future solid waste management plan.

DeMar Batchelor commented the haulers and Genstar had been appearing before the staff and Committee to explain their proposal and its issues. He believed in general the effort had been cooperative, but he wasn't sure the time and money expended had been well spent. After attending various meetings with Metro he understood one of the key issues was the ultimate ownership of the facility. The Haulers had been asked to be more specific than in their conceptual proposal so the document presented was a format to identify provisions which could be included in a franchise agreement addressing the issues of concern, and that there are other conditions that could be included, such as a performance bond, which are ordinarily a part of these agreements. He reviewed his report and added these examples addressed the flexibility issue in terms of the length of franchise and renewability, and indicated it could be done. The whole fiscal administration program would be reviewed and approved and would have all the capability and qualifications of a franchise. Elements of control can be built into the franchise agreement as identified by the staff. He felt they were there responding to what they thought Metro was asking for.

Chairman Hansen said that in policy questions he wanted to clarify that in this area of franchisers and contractors, Metro Council is the policy making body. He added at this point he would like to thank Genstar and Washington County Haulers for the effort that they have made to give the Council a very good proposal on a franchise. It is the purpose of the Regional Services Committee to analyze and reach the best conclusions they can. At no time is there a shut door. The members of the committee that worked with the Council, he was proud to commend for interest they've shown in this issue and the open-mindedness with which they faced the whole issue.

Mr. Batchelor thanked the Committee for the many times they had made themselves available to them to identify concerns and they appreciated that knowing they weren't paid and didn't get anything out of it but made a good-faith effort to communicate the issues to them. But what he was trying to identify was where the staff is, and if the facility would be implemented in an exclusive franchise. If there were misunderstandings he regretted them.

Councilor Bonner asked questions of the lawyers on the franchise and said his own experience with TV franchises was that there was a great deal of latitude in determining exactly what a franchise provision really says and was thunderstruck by the kind of things that a franchisee can get away with and he wondered what the value of the franchise would be, are there specific ways a franchisee can operate at less cost than a contractor? Can one give greater service for the same cost? Could there be a takeover if you failed to perform? Is this or that provision properly interpreted?

Mr. Batchelor answered the simple answer was yes, if it was written in the agreement. The difficult answer is upon what basis are you going to entice a franchisee to agree. It involves the calculation of value. The risk to the franchisee is that Metro, for any reason, can issue the order declaring its intent to take over the facility, then that has to be calculated into the value of the facility as a business risk.

Mr. Cross added it was a difficult issue to decide which would provide the least-cost facility. They believed they could provide greater service for the same cost with the flexibility of being the owner and not having the restrictions of a contract. We would take risks with our investment that you wouldn't take with public monies. We would only know the difference after-the-fact.

Councilor Oleson said we had heard the issues and sub-issues that need to be resolved and appreciated the work done so far in the joint venture. His question was --Why is ownership so important?

Mr. Cross said he had already alluded to that. To them, ownership means the right to make business decisions. They can now make internal decisions but if there is risk involved they could risk their own money without changing the rates, if they owned the company.

Mr. Batchelor said you won't find anyone to design, or construct a facility who knows they have only a three to five year chance to operate. It means you may be building a facility for a competitor at the end of the contract period since it's out for bids to anybody.

Mr. Batchelor wondered why, after two years, we have just gotten down to the sensitivity of franchises?

Mr. Deines added we have asked people to spend private dollars and are now saying we don't recommend that course of action after they have done the research and he could understand the haulers resentment in this situation.

Chairman Hansen reminded the Committee they still had more testimony to hear and he would caution them to hold their statements and comments of general nature until we have general discussion on the issues. He called on public testimony at that time.

Mr. Kell said he would like to add that this state was the forerunner of franchising and a number of men in the audience were in the business and knew it could work.

Mr. Gustafson responded to the comments that had been directed to the Committee which he felt might more appropriately have been addressed to him or the staff. A major issue of the evening was the terms of encouragement Genstar and the Haulers of Washington County felt they had been given in developing a proposal for a franchise. Mr. Gustafson said they were correct in pointing out the resemblance in the report that suggests an exclusive franchise be issued. The Council, he advised, should not be made to feel guilty for that kind of a situation, for their policies were clear from the beginning. The Council specifically requested the Committee that was formed over a year ago to evaluate the procurement strategy and it was clear, in their position that they were to look for options. The expenditures that have been spent in the past four months have been because the Committee required a review of the options. Mr. Gustafson said he assumed any other responsibility in working with the haulers and Genstar. He addressed the Committee that they should not allow any arguments to influence a decision which they need to make in the public's interest. He apologized for any misunderstanding but at the same time, he stated, there were explanations for both sides and he would be happy to talk to the Council on this if they wished. Mr. Gustafson stated the Council had a very deliberative process, and the expenditures for engineering on the part of anybody was done for their own interest without the encouragement from Metro. The Committee was formed to look at procurement options to evaluate what was in the best interest of the area for disposal issues. He cautioned the Committee to deliberate the issues and not let the various arguments cloud the question confronting them.

Questions and discussion followed from those on the Committee to The previous testifiers covering essentially the same information as had been given.

Councilor Hansen called on Wes Myllenbeck for public testimony. Mr. Myllenbeck was representing the Washington County Board of Commissioners and came to the meeting to read the motion made at their recent meeting and approved by the Board. It was moved by the Washington County Board of Commissioners (1) Endorse the immediate need of Washington County Transfer and Recycling Station. (2) Acknowledge the merits of the Genstar-Washington County Refuse Disposal Association, Inc., Joint-Venture Proposal. (3) Acknowledge the advisory Committee's recommendation of a package proposal. (4) Encourage Metro to move in the most expedient manner to secure a transfer station by either granting exclusive franchise agreement to the proposed joint venture or to let bids for proposals that include the package of siting/design, construction and operation. (Motion 83-634, Motion-Hays, Second Meek, Vote 4-1).

After brief discussion another motion was offered to clarify their indications that they would prefer private ownership without invalidating the impact of their previous motion.

The Washington County Board of Commissioners has a policy of recognizing private enterprise whenever it is possible and it is the intent of the Board to do so in this case as well, if it can be done. (Motion Warren, Second-Hays, Vote 3-2). Killpack felt one was mandatory and

the other is encouragement and could not support this. Myllenbeck felt the decision was Metro's and the Board should allow them to follow their process. The W.Co. Board of Commissioners also moved:

The motion was restated and Hays concurred: That this Board send a statement to Metro to its Advisory Committee Meeting tomorrow night, December 7, 1983, that we would prefer the use of private enterprise in their transfer station agreement which would be in line with our Commission policy of using private enterprise whenever possible.

The above was read by Commissioner Myllenbeck to the Regional Services Council during public testimony. He also stated whether the issue is private or public it will be difficult to site.

Gary Newbore, Killingsworth Disposal, testified a year and a half ago Metro started the procurement process for what was to be done in Washington County. He reviewed the May, 1983 letter which said Metro should develop an RFP process to solicit proposals. The Sept. 13, letter the clause said Metro should select criteria for the selection of a contract. Mr. Newbore said he was not there to argue the merits of a franchise versus contract and there are benefits and problems to both and either could be worked out. Since the landfill has not been sited or approved, Killingsworth would like to be involved on a competitive basis, with the other three parties now on record as wanting an RFP process and would encourage Metro to ask for the submission of a proposal and select through a public bidding process after submitting the criteria for the transfer station. We have been one of the first parties on record saying we would like to be a part of that process. He added if he had known it was a simple matter to have the ordinance changed to include haulers in the franchise, he would have been interested in this aspect at that earlier time, also. He added he had also been talking to staff over 1½ years and had been assured it would be a public bid process.

Councilor Kirkpatrick asked Mr. Newbore if his company was interested in taking over the whole package? Mr. Newbore answered yes, and he felt the project should be advertised with the criteria so that all interested parties could bid.

Mr. Deines asked if Mr. Newbore was an advocate of public or private ownership? Mr. Newbore answered there was more flexibility with private ownership although there were advantages to both.

Councilor Bonner commented he had been involved in public bidding where no one showed up and Mr. Newbore added they could be sure of two bids. Mr. Newbore said whatever process was decided upon by Metro they would like to be involved.

Chairman Hansen asked If Metro was to finance the project with our current bonding situation, what would be the rate of interest? Doug Drennen answered about ten percent in state control bonds.

Nancy Hoover was called by Chairman Hansen. She said she needed clarification. She understood from the meeting that we seemed to have asked someone to go out and work for Metro and now it's going to open to a bidding process. Mr. Gustafson explained this is a process we have

gone through in identifying a need for a transfer station in Washington County. Two years ago a proposal was made by Metro to build a facility in Washington County and questions were raised regarding the need for that facility. In response to that we asked each of the jurisdictions in the Washington County area to participate on a committee to assist in assessing the need for a facility. In September the Washington County Haulers had approached us with a proposal for building the facility. I informed them at that time that it was a requirement, in my opinion, and my recommendation to the Council would be that it would have to be through a public bidding process. I did indicate that I was prepared to support an amendment to the Council ordinance which prohibits haulers from being involved in the disposal business, but that must be through a public bidding process. At that time we also referred Genstar to look into that situation to see if there was a possibility that we might be able to take advantage of the expertise of that company and the haulers in that area to assist in the construction and operation of a facility out there. It is incorrect to say that the option of the contract was precluded at that time by myself or the Council. In fact, the Committee was asked to assist in two questions: (1) Should a facility be built in Washington County? (2) What is the procurement procedure that should be used in seeking that facility? Option two had the most appeal, and the diagram which describes that correctly says franchise or contract is the issue. In the wording in the report it doesn't correctly state that, which is a mistake on our part but there is some confusion about that but directly the committee was asked to make a recommendation on the procurement procedures. At the end of one year the Committee returned with its recommendation which said the facility should be built and that the Metro Council should decide how the procurement should proceed--whether it be a franchise or a contract. That is the question which is essentially before the Council this evening--should they issue a franchise or a fixed-term contract for the operation of the facility. Genstar and the Washington County Haulers have offered a proposal and I've offered a recommendation which says there are advantages in the franchise but it would appear at this time that with the uncertain nature of our business that a fixed-term contract would be more fitting. There being no further questions from Ms. Hoover, Chairman Hansen called on Dick Weitzel for testimony.

Mr. Weitzel said as a hauler he was interested in the Washington County Facility since he had watched the CTRC in Oregon City being built. He felt improvements could be made in the facility being planned for Washington County and he would like to be a part of the planning. He felt they had to be involved to make it work and transferring to a landfill makes the most sense of all. He said if they put their money in with the idea that they are going to be there as long as their collection business is there--you are talking about generations of family business.

Mr. Bonner asked that he make a list of what he felt was wrong with CTRC and they would see if some corrections could be made and it would come in handy for whoever designs the next transfer station.

Councilor Hansen asked if there were any further questions and requested John Trout, Chairman of the SWPAC Committee to report any recommendations from SWPAC.

Special Meeting - continued  
Regional Services Committee  
December 7, 1983

Mr. Trout stated SWPAC received basically the same information at their meeting as the Committee had tonight. The Committee wanted a little more time, but based on the importance of Regional Services Committee making a decision they didn't want the SWPAC Committee to influence them. The next meeting of Solid Waste Policy Alternatives Committee would be on the Monday, the 19th of December and they would be making a recommendation to the full Council.

Chairman Hansen asked the Regional Services Committee to refer to the proposed resolution before them and he would make the following motion:

Councilor Hansen  
MOTION: Moved the Regional Services Committee adopt  
the Resolution presented by the Metro Staff.\*  
(See attached Resolution)

(Discussion below. Final vote on page 10)

Motion: Councilor Oleson made a motion the above resolution  
be amended to read at the end of number four:

"However, there shall be a renewal clause  
that allows for the extension of any existing  
agreement without rebidding." \*\*

Vote: Aye: Deines, Oleson  
Nay: Kirkpatrick, Hansen, Bonner

Motion Failed

\*Discussion:

Chairman Hansen said the elements included in the Resolution were a vehicle that would resolve the ownership question, the contract versus franchise question, resolves the public bid process, and Councilor Hansen wanted the staff to analyze on how we provide either a one-bid, full-service contract or a package proposal for one company to do the whole job for us without following the CTRC example of splitting building and operation. That issue is a very complicated issue which the Regional Services Committee should decide when they have further studied the information.

Councilor Bonner said when the idea first came off --having a joint venture and a franchise he first thought it was a good idea, however he now feels the Council should come out with a contractual arrangement and he agreed with the resolution.

\*\*Councilor Oleson said he thought they should pick out the best of pieces of both approaches and do what is best in the public interest. He felt both approaches had things they should put into the overall plan they advocate. He said public ownership was not the all-important issue and we should address some of the concerns of the haulers... should have a cost-effective operation. We should modify the resolution so we can achieve what we want to and address all of the concerns.



Mr. Oleson said that is why he would add his amendment to paragraph four.

Mr. Gustafson noted that there was a renewal clause in the contracts that provide legal option for the Council to use.

Mr. Bonner and Mr. Oleson wondered if the matter might be better left to a later meeting where they could see it in a more specific language.

(Votes on these issues were taken see page eight)

Counselor Hansen asked staff to prepare language which has the spirit of this amendment by Councilor Oleson to add to the options of the resolution.

Councilor Deines said we don't have a site, no operational plan or transfer station plan. The basic plan was a burner but Oregon City wouldn't go for it. He felt the CTCRC was less than what it could be and we need to encourage private enterprise to put their dollars into the facility. He felt it was difficult for them to appease both Metro and the State. He said when two enterprises are publicly owned the dye was cast across the region and private enterprise won't want to get involved in ownership or development. Councilor Deines stated if we do have a solid waste disposal monopoly, we will not be constrained to hold prices down. There will be no measuring stick to measure it against. Need to view the budget in what it will do to solid waste rates. He felt Metro had spent thousands of dollars without any great results in projects or programs and he would like to see the private sector take the risk or possible reward of building and operating transfer stations, recycling facilities or landfills. He felt whether we put it out for franchise or contract Metro needed to get out of the solid waste operating business.

MOTION: Councilor Deines made a motion we table the resolution until March and between now and then look at the policy issues as to where we've been before.

Vote: Aye: Deines, Kirkpatrick  
Nay: Hansen, Oleson, Bonner  
Motion failed

Mr. Gustafson said we had been involved in the process a long time and the issues are known. He didn't believe the Council or Committee would benefit from several more months of wrangling. The question in front of you is a commitment to a contract versus a commitment to a franchise. He felt they would not be well served by continuing to delay a commitment.

Mr. Cross supported Councilor Deines. He thought they should table the issue and talk over the concepts and they would like to get involved in the discussion and take two-three months to wrestle the policy issues.

Councilor Kirkpatrick said she was committed to competitive bid process. She felt Metro would short-change the public if they did not do that. She felt the ownership issue should be talked over. She said she was prepared to vote for the motion and hoped the Council would talk about that issue since she was still persuadable.

Councilor Waker, attending from the Council, said he understood the matter and had given it some consideration. As he saw the issue the main question was whether we were going to franchise or contract for the operation. He felt if we were going to contract for the operation the ownership issue goes away. The group probably would not want to own the facility if they did not have a perpetual operating right to stay with it. He said he did not intend to support the franchise route because he had not been persuaded there was any reason to franchise this type of operation or that the free enterprise system could best be served by this type of franchising, but rather incentive for having lower costs of operation is to periodically bid out the operation and not get into a mode of examining the books and saying --you spent that money so we'll give you a raise. He intended to support the contract and public bidding process of periodic renewal when it comes up for vote.

Councilor Etlinger said he took the opposite direction and felt they needed to air these issues at Council since it was a key component of solid waste management. He was concerned with some of the single purpose efforts at Metro--not just in solid waste--Johnson Creek, the garbage burner, we need to be aware of what comprehensive systems planning really means and should be trying to get the elements of the plan in place, and in agreement. He felt we could have the best transfer station under either option but he leaned toward the franchise. He felt the expertise of the private sector far exceeded Metro's ability to operate those kinds of facilities.

Councilor Bonner stated he felt we ought to decide. He didn't think we should elevate it to a discussion about a policy decision as to whether it should be public or private parties. The issue is do we have a facility with with a franchise and private operator or do we have a relatively short-term fixed contract with a private operator. He said they owed it to themselves, the people at the meeting, and to the public, to decide where we go from here. We have a clear decision between a fixed-term contract or a franchise and they should make the decision.

Chairman Hansen said he agreed with Councilor that they should make a decision. What would get them functioning the quickest? He couldn't get an honest feeling of where dollars could be saved by going the way of franchising. He felt going the contract route was paying on a dollar value for the work being done. He said he would feel uncomfortable being locked into a long-term commitment.

(as on page 8)

Motion to adopt the Resolution presented by Metro Staff was adopted.

Vote: Ayes Kirkpatrick, Hansen, Bonner  
Nay: Oleson, Deines  
Motion Carried.

## CHAPTER 5.01

### DISPOSAL SITE FRANCHISING

#### SECTIONS:

5.01.010	Definitions
5.01.020	Findings and Purpose
5.01.030	Prohibited Activities
5.01.040	Exemptions
5.01.050	Administration
5.01.060	Applications
5.01.070	Issuance of Franchise
5.01.080	Term of Franchise
5.01.090	Transfer of Franchise
5.01.100	Appeals
5.01.110	Variances
5.01.120	Responsibilities of Franchises
5.01.130	Administrative Procedures for Franchisees
5.01.140	Franchise Fee
5.01.150	User Fees
5.01.160	Reports from Collection Services
5.01.170	Rate Review Committee
5.01.180	Determination of Rates
5.01.190	Enforcement of Franchise Provisions; Appeal
5.01.200	Right to Purchase
5.01.210	Penalties
5.01.220	Acceptance of Tires at a Disposal Site

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

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "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.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "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.

(h) "Executive Officer" has the same meaning as in Code Section 1.01.040.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

(m) "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.

(n) "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.

(o) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

(p) "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.

(q) "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.

(r) "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.

(s) "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:

- (1) Hazardous wastes as defined in ORS 459.410, and
- (2) Radioactive wastes as defined in ORS 469.300, and
- (3) 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 or crops and the raising of fowls or animals, and
- (4) Explosives.

(t) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.

(u) "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.

(v) "User Fee" means a user fee established by the District under ORS 268.515.

(w) "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. (Ordinance No. 81-111, Sec. 2)

#### 5.01.020 Findings and Purpose:

(a) 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.

(b) 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 chapter to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS ch. 268 in order to:

- (1) 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.

- (2) 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.

(3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.

(4) Prohibit rate preferences and other discriminatory practices.

(5) Ensure sufficient flow of solid waste to District's resource recovery facilities.

(6) Maximize the efficiency of the District's Solid Waste Management Plan.

(7) 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.

(8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery. (Ordinance No. 81-111, Sec. 3)

5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) 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 5.01.040 of this chapter.

(b) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.

(c) 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 5.01.040 of this chapter except by written authority of the Executive Officer.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter. (Ordinance No. 81-111, Sec. 4)

5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

(1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.

(2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.

(3) Recycling drop centers.

(4) 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.

(5) Persons who process, transfer or dispose of solid wastes which:

(A) are not putrescible;

(B) have been source separated;

(C) are not and will not be mixed by type with other solid wastes; and

(D) are 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.

(6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.

(7) Temporary transfer stations or processing centers established and operated by a local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 4.07.180 (Determination of Rates) subsection 5.01.070(f), and Section 4.07.130, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1). (Ordinance No. 81-111, Sec. 5; amended by Ordinance No. 82-136, Sec. 1)

5.01.050 Administration: The Executive Officer shall be responsible for the administration and enforcement of this chapter. (Ordinance No. 81-111, Sec. 6)

5.01.060 Applications:

(a) 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 Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

(1) 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 Executive Officer 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.

(2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.

(3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.

(4) 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.

(5) A duplicate copy of the DEQ disposal site permit application and any other information required by or submitted to DEQ pursuant to ORS ch. 459.

(6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.



(7) Proof that the applicant has received proper land use approval.

(8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied provided, however, an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing. (Ordinance No. 81-111, Sec. 7; amended by Ordinance No. 82-136, Sec. 2)

5.01.070 Issuance of Franchise:

(a) Applications filed in accordance with Section 5.01.060 shall be reviewed by the Executive Officer. The Executive Officer or his/her designated representative may make such investigation as the Executive Officer 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 chapter, the Code, DEQ permit and franchise agreement.

(b) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding 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.

(c) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted, the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises. If the Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the

Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:

- (1) The proximity of existing and planned solid waste disposal facilities to the proposed site.
- (2) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
- (3) The capacity of existing and planned solid waste disposal facilities.
- (4) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
- (5) The hauling time to the proposed facility from waste generation zones established by the District.

(d) If the Council does not act to grant, or deny, a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer 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 one hundred twenty (120) days will not begin until the Executive Officer has accepted the application as complete and ready for processing.

(e) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:

- (1) Enter into a written franchise agreement with the District,
- (2) 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
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) Name the District as an additional insured in the insurance policy required by Section 5.01.060(b)(3).

(f) 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.

(1) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. Whenever possible the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.

(2) In emergency situations, to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to modification or revocation by the Council.

(g) In addition to the authority contained in Section 5.01.070(f)(1), for the purposes of this chapter, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council 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. The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Code Chapter 2.05. However, a request for a contested case hearing shall not stay action under this subsection. (Ordinance No. 81-111, Sec. 8; amended by Ordinance No. 82-136, Sec. 3)

5.01.080 Term of Franchise:

(a) The term for a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending 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. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.

(b) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 5.01.070(b), provided that the franchisee files an application for renewal not less than one hundred twenty (120) 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 Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise. (Ordinance No. 81-111, Sec. 9)

5.01.090 Transfer of Franchises:

(a) 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 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.

(b) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within ninety (90) days after filing of a complete application, the application shall be deemed granted.

(c) The term for any transferred franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer. (Ordinance No. 81-111, Sec. 10)

5.01.100 Appeals: Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the Council's suspension modification or revocation or refusal to issue, renew or transfer a franchise or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, the Council's refusal to renew a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(b) The Council's refusal to grant a variance, or to issue or transfer a franchise shall be effective immediately. The franchisee or applicant may request a hearing on such refusal within sixty (60) days of notice of such refusal.

(c) Upon a finding of serious danger to the public health or safety, the Executive Officer may suspend a franchise or the Council may refuse to renew a franchise and such action shall be effective immediately. If a franchise renewal is refused effective immediately, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing. (Ordinance No. 81-111, Sec. 11)

5.01.110 Variances:

(a) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this chapter to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or

(2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or

(3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.

(b) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council within sixty (60) days after receipt of the variance request.

(c) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(d) 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. (Ordinance 81-111, Sec. 12)

5.01.120 Responsibilities of Franchisees: A franchisee:

(a) Shall provide adequate and reliable service to the citizens of the District.

(b) 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.

(c) 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 chapter and the terms and conditions of the franchise.

(d) 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 each franchisee for possible review by the Executive Officer.

(e) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 5.01.070(e) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(f) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.

(g) Shall comply with all provisions of this chapter, the Code, ORS ch. 459, DEQ permit and franchise agreement.

(h) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.

(i) 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 chapter.

(j) 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.

(k) Shall, if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.

(l) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection. (Ordinance No. 81-111, Sec. 13)

5.01.130 Administrative Procedures for Franchisees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

(1) 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.

(2) 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.

(3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.

(4) 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.

(b) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:

(1) Name and address of the franchisee.

(2) District registration number.

(3) Month and year of each report.

(4) Number of truckloads received daily.

(5) Daily number of cars, pickups, trailers, and other small hauling vehicles.

(6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompact, minimum loads and special loads.

(7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).

(8) 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 or penalties as provided in Section 5.01.210.

(c) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations 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.

(d) 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. (Ordinance No. 81-111, Sec. 14)

5.01.140 Franchise Fee:

(a) 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.

(b) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.

(c) The franchisee shall pay the franchise fee in the manner and at the time required by the District. (Ordinance No. 81-111, Sec. 15)

5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, 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.

(b) 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.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.



(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectable provided that an affidavit is filed with the District stating the name and amount of each uncollectable 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.

(f) 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. (Ordinance No. 81-111, Sec. 16)

5.01.160 Reports from Collection Services: Upon request of the Executive Officer, a solid waste collection service shall file periodic reports with the District, containing information required by the Executive Officer. (Ordinance No. 81-111, Sec. 17)

5.01.170 Rate Review Committee:

(a) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.

(b) 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.

(c) The members of the Rate Review Committee shall be as follows:

(1) One Certified Public Accountant with expertise in cost accounting and program auditing.

(2) One Certified Public Accountant with expertise in the solid waste industry or public utility regulation.

(3) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.

(4) Two members of the public.

(d) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee. (Ordinance No. 81-111, Sec. 18)

5.01.180 Determination of Rates:

(a) No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this

chapter 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.

(b) At the time the Council grants a franchise, or after the Council grants a franchise it 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.

(c) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendaton to the Executive Officer. The Executive Officer shall forward the Committee's recommendaton 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.

(d) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:

- (1) Operating and nonoperating revenues.
- (2) Direct and indirect operating and nonoperating expenses including franchise fees.
- (3) Nonfranchise profits.
- (4) 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.
- (5) Any other factors deemed relevant by the Council.

(e) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 5.01.180(c):

- (1) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
- (2) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or
- (3) In the event the District exercises its right to control the flow of solid waste as provided in Section 5.01.070(f) or 5.01.070(g). (Ordinance No. 81-111, Sec. 19; amended by Ordinance No. 82-136, Sec. 4)

5.01.190 Enforcement of Franchise Provisions; Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause

to suspend, modify or revoke, a franchise as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise, the Executive Officer 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 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 Executive Officer may make a recommendation to the Council that the franchise be suspended, modified or revoked.

(b) The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee has:

- (1) Violated this chapter, the Code, ORS ch. 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise Ordinance.

(c) Except as provided in subsection (d) of this section, the Council's revocation, modification or suspension of a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this chapter, the Executive Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise and may take whatever steps may be necessary to abate the danger. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable

compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

(1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.

(2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter. (Ordinance No. 81-111, Sec. 20; amended by Ordinance No. 82-136, Sec. 5)

5.01.200 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. (Ordinance No. 81-111, Sec. 21)

5.01.210 Penalties:

(a) Each violation of this chapter 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.

(b) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by the District upon suit

in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day for each day of violation. (Ordinance No. 81-111, Sec. 22)

5.01.220 Acceptance of Tires at a Disposal Site:

(a) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted if the Disposal Site's Franchise Agreement allows such acceptance.

(b) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria: the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(c) The test shall be as follows:

(1) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and

(2) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container. (Ordinance No. 81-111, Sec. 25)

May 1982, Revised

*12-19-82*

SOLID WASTE POLICY ALTERNATIVES COMMITTEE

NAME	REPRESENTING	ADDRESS	PHONE	TERM OF OFFICE
James Cozzetto <i>o</i>	Collection Industry	P.O. Box 11457 Portland, OR 97211	285-0576	Feb. 1982-84
Shirley Coffin <i>✓</i> Vice Chairman	Public, Washington County	65 SW 93rd Portland, OR 97225	292-9338	Feb. 1982-84
Howard Grabhorn <i>o</i>	Landfill Operators	Route 1, Box 849 Beaverton, OR 97007	628-1866	Feb. 1982-84
John Gray <i>o</i>	Public, Multnomah County	3918 SE 116th Portland, OR 97266	288-7086	Feb. 1982-84
Robert Harris <i>✓</i>	Public, Clackamas County	32660 Lake Point Ct. Wilsonville, OR 97070	794-2370	Feb. 1982-84
Dick Howard <i>o</i>	Multnomah County	Dept. of Public Works 2115 SE Morrison Portland, OR 97214	248-3623	No Limit
Paul Johnson <i>✓</i>	Construction Industry	Copenhagen Utilities and Construction P.O. Box 429 Clackamas, OR 97015	654-3104	Feb. 1982-84
Delyn Kies <i>o</i>	City of Portland	Office of Public Works 621 SW Alder St. Portland, OR 97205	248-4390	No Limit
Gary Newbore <i>✓</i>	Landfill Operators	c/o Reidel Internat'l P.O. Box 3320 Portland, OR 97208	222-4210	Feb. 1982-84
Dave Phillips <i>✓</i>	Clackamas County	Dept. of Env. Services 902 Abernethy Rd. Oregon City, OR 97045	655-8521	No Limit
Mike Sandberg <i>✓</i>	Washington County	Dept. of Public Health 150 N. First St. Hillsboro, OR 97123	648-8609	No Limit
Edward Sparks <i>✓</i>	Recycling Industry	Publishers Paper Co. 4000 Kruse Way Pl. Lake Oswego, OR 97034	635-9741	Feb. 1982-84
John Trout <i>o</i> Chairman	Collection Industry	Teamsters Local 281 1020 NE Third Ave. Portland, OR 97232	23 <sup>a</sup> / <del>6</del> -8171	Feb. 1982-84
Kelly Wellington <i>o</i>	Public, City of Portland	5015 SW OUSA RD. 1513 SE Ash, #2 Portland, OR 97204	239-5083	Feb. 1982-84
Bob Brown <i>✓</i> Ex Officio	DEQ	P.O. Box 1760 Portland, OR 97207	229-5157	No Limit
Norman Harker Ex Officio	Clark County	Clark Co. Public Works P.O. Box 5000 Vancouver, WA 98668	(206) 699-2451	No Limit

*N Harker  
does not come  
says O B' Rail*

SOLID WASTE POLICY ALTERNATIVES COMMITTEE

PROPOSED REGULAR MEETING SCHEDULE - 1984

Usual Time: 12:00 noon - 2:00 P.M.

Usual Place: Metro Offices, 527 SW Hall St., Portland, Or. 97201  
Conference Rooms A1, A2

JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	(23)	24	25	26	27	28
29	30	31				

FEBRUARY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	(27)	28	29			

MARCH

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	(19)	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	(23)	24	25	26	27	28
29	30					

MAY

S	M	T	W	T	F	S
		1	2	3	4	5
5	7	8	9	10	11	12
13	14	15	16	17	18	19
20	(21)	22	23	24	25	26
27	28	29	30	31		

JUNE

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	(25)	26	27	28	29	30

JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	(23)	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	(20)	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
<sup>23/30</sup>	(24)	25	26	27	28	29

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	(22)	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	(19)	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	(17)	18	19	20	21	22
<sup>23/30</sup>	<sup>24/31</sup>	25	26	27	28	29

1984