

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 21-1462
CODE CHAPTERS 5.02 AND 7.01 TO CHANGE	)	
THE DUE DATES FOR SOLID WASTE EXCISE	)	Introduced by Chief Operating Officer
TAXES AND REGIONAL SYSTEM FEES AND	)	Marissa Madrigal in concurrence with
ADD FINANCE CHARGES FOR LATE	)	Council President Lynn Peterson
PAYMENTS OF REGIONAL SYSTEM FEES TO	)	
ALIGN WITH SOLID WASTE EXCISE TAXES	)	

WHEREAS, the Metro Solid Waste Code is set forth in Title V of the Metro Code and Metro’s excise taxes are set forth in Title VII of the Metro Code; and

WHEREAS, Metro assesses a regional system fee (RSF) on every ton of solid waste is delivered to a Metro transfer station or otherwise disposed (Metro Code Chapter 5.02); and

WHEREAS, Metro assesses an excise tax on every ton of solid waste disposed at a solid waste system facility (Metro Code Chapter 7.01); and

WHEREAS, under current Metro Code Section 5.02.090, payment for the regional system fee is due to Metro on the 15<sup>th</sup> day of the month following the month in which the waste was disposed; and

WHEREAS, under current Metro Code Section 7.01.070, payment for the excise tax on solid waste disposed is due on the 15<sup>th</sup> day of the month following the month in which the waste was disposed; and

WHEREAS, both new and small businesses find it difficult at times to pay the regional system fee and excise tax to Metro on the 15<sup>th</sup> day of the month following the month of disposal, because often these businesses are required to pay those fees and taxes to Metro before the businesses have themselves received payment of these amounts from their customers; and

WHEREAS, requiring payment on the 15<sup>th</sup> day of the month can thus create a financial hardship on some businesses, which at times results in delinquent payment of fees and taxes to Metro and which in turn requires additional Metro staff and resources to send late notices and follow-up requests for payment; and

WHEREAS, amending the Metro Code to allow payment on the last day of the month rather than the 15<sup>th</sup> day may provide some financial relief to these businesses without having any substantial negative impact on Metro’s financial health; and

WHEREAS, although current code language authorizes finance charges for late *excise tax* payments, there is currently no finance charge assessed on delinquent *regional system fee* payments, which means there is no incentive to timely pay regional system fees as required by code; and

WHEREAS, both excise taxes and regional system fees are public monies held in trust by those responsible for payment to Metro, and those fees and taxes should therefore be paid timely or should otherwise incur finance charges when paid late; and

WHEREAS, providing businesses with more time to pay Metro's regional system fees and excise taxes on solid waste should have the effect of both reducing delinquency rates while also reducing financial hardships on small and new businesses in the solid waste system; and

WHEREAS, establishing reasonable finance charges for late payments of regional system fees will help ensure that public monies are paid timely, that Metro maintains its obligation to be a good steward of those public monies, and that Metro's costs associated with collecting late payments will be at least partly reimbursed; and

WHEREAS, establishing late payment finance charges on regional system fees will also align the practices for late payment of excise taxes with those of regional system fees; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Sections 5.02.090, 7.01.070 and 7.01.080 are amended as set forth in the attached Exhibit A, with underlined words representing new language and strikethrough text representing deleted language.

ADOPTED by the Metro Council this 25th day of February 2021.



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Lynn Peterson, Council President

Attest:



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Jaye Cromwell, Recording Secretary

Approved as to Form:



\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

**EXHIBIT A**  
Ordinance 21-1462

### 5.02.090 Due Date of Regional System Fees

- (a) Regional system fees accumulate on a monthly basis. A person liable for regional system fees must pay the accumulated fees to Metro by the last day ~~15th day~~ of the month for waste disposed of in the preceding month. For example, regional system fees for the month of April would be due on May 31. If the last day ~~15th day~~ of the month occurs on a holiday or weekend, amounts are due by the end of the first business day that follows.
- (b) Finance Charges. In addition to any penalties imposed for late payment, Metro will assess a finance charge of 1.5 percent on all delinquent regional system fees required to be remitted under this chapter. Metro will assess finance charges on the first day of the month following the month in which regional system fees are due, and on the first day of each month thereafter until paid. For example, if regional system fees are due on the last day of April, then Metro will assess finance charges on the first day of May. Metro will assess finance charges only on unpaid delinquent balances and penalties, and not on previously assessed finance charges.

### 7.01.070 Due Date; Returns and Payments

- (a) The tax shall be collected from the operator by Metro as provided for in Section 7.01.030. All amounts of such taxes reported by any operator are due and payable to Metro by the ~~last on the 15th~~ day of each month for the preceding month.; For example, excise taxes for the month of April would be due on May 31. ~~and Taxes~~ are delinquent if not received by Metro as specified in subsection (d) of this section by the due date. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows. The initial return under this chapter may be for less than a full month preceding the due date. Thereafter, returns shall be made for the applicable monthly period.
- (b) On or before the 15th ~~last~~ day of the month following each month of operation of a Metro facility, a return for the preceding month's tax shall be filed with the Chief Operating Officer. The return shall be filed in such form as the Chief Operating Officer may prescribe by every operator liable for payment of tax.
- (c) Returns shall show the amount of tax due for the related period. The Chief Operating Officer may require returns to show the total receipts upon which tax was collected or otherwise due, gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of receipts exempt, if any.
- (d) The person required to file the return shall deliver the return, together with the tax due, to the Metro Administration Services Department of Finance and Management Information. Payment is considered to be delinquent if not received by Metro on or before the due date, by personal

delivery to the Metro Administration Services Department of Finance and Management Information during business hours or, if delivered by mail, by receipt in Metro's mail room.

(e) The Chief Operating Officer, if deemed necessary in order to ensure payment or facilitate collection by Metro of the amount of taxes in any individual case, may require returns and payment of the amount of taxes more frequently than monthly periods.

#### **7.01.080 Penalties and Finance Charges**

(a) Fraud. If the Chief Operating Officer determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this section.

(b) Finance Charges. In addition to any penalties imposed, a finance charge of 1.5 percent shall be assessed on all delinquent taxes required to be remitted by an operator under this chapter. Finance charges shall be assessed on the ~~15th~~first day of the month following the month in which taxes are due, and on the ~~15th~~first day of each month thereafter, until paid. For example, if taxes are due on the last day of April, then Metro will assess finance charges on the first day of May. Finance charges will be assessed only on unpaid delinquent balances and penalties, and not on previously assessed finance charges, and will continue to be assessed on negotiated repayment schedules.

(c) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties and finance charges herein stated, provided, however, the operator may petition the Chief Operating Officer for waiver and refund of the penalties and finance charges or any portion thereof and the Chief Operating Officer may, if a good and sufficient reason is shown, waive and direct a refund of the penalties or finance charges or any portion thereof.

IN CONSIDERATION OF ORDINANCE NO. 21-1462 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTERS 5.02 AND 7.01 TO CHANGE THE DUE DATES FOR SOLID WASTE EXCISE TAXES AND REGIONAL SYSTEM FEES AND ADD FINANCE CHARGES FOR LATE PAYMENTS OF REGIONAL SYSTEM FEES TO ALIGN WITH SOLID WASTE EXCISE TAXES

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Date: January 15, 2021

Prepared by: Shane Abma and Brian Kennedy

Department: Finance and Regulatory Services

Presenter: Brian Kennedy

Meeting date: February 11, 2021

Length: 10 minutes

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### **ISSUE STATEMENT**

Metro staff seek to amend Metro Code Chapter 5.02 (Regional System Fee) and Chapter 7.01 (Excise Tax) to provide extra time for payment of Metro's solid waste fees and taxes before incurring any penalties or finance charges.

The amendment makes payment of Metro's regional system fee and excise tax due at the end of the month rather than on the 15<sup>th</sup> of the month. This should benefit small businesses and new entrants into the solid waste system that may have difficulty paying taxes and fees within 15 days because of limited capital flow.

In addition, staff seek to add a finance charge for late payment of regional system fees to align with the excise tax finance charge and to encourage higher paid-on-time rates.

### **ACTION REQUESTED**

Adopt Ordinance No. 21-1462 to amend Metro Code Chapter 5.02 (Regional System Fee) and Chapter 7.01 (Excise Taxes) to change the due dates for solid waste excise taxes and regional system fees and add finance charges for late payments of regional system fees to align with solid waste excise taxes.

### **IDENTIFIED POLICY OUTCOMES**

Staff has identified the following policy outcomes:

- Help provide financial relief for small businesses and new entrants into the solid waste system by allowing them to pay Metro's fees and taxes on the last day of the month rather than the 15<sup>th</sup> of the month

- Decrease delinquency payments and increase on-time payment compliance by adding a finance charge to late payment of regional system fees (there is already a finance charge authorized for late payment of excise taxes)
- Protect Metro's financial health by authorizing finance charges on late payments, which should discourage late payments and compensate Metro for lost interest when it does not receive timely payments
- Treat late payment of fees and taxes consistently with respect to imposing finance charges
- Better enforcement of the Metro Code by consistently and equally applying code provisions related to late payments

### **POLICY QUESTION(S)**

1. Should the Metro Council provide financial relief to small businesses and new entrants in the solid waste system by extending the due day of fees and taxes from the 15th of the month to the end of the month?
2. Should the Metro Council add a finance charge for late payment of regional system fees to align that with the finance charge on excise taxes, thus creating an incentive to pay timely?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to amend Metro Code Chapters 5.02 (Regional System Fee) and 7.01 (Excise Tax) to extend the payment due date of Metro's solid waste regional system fees and excise taxes. There are minimal financial implications associated with the option.
2. Approve the ordinance as proposed to amend Metro Code Chapter 5.02 (Regional System Fee) to add a finance charge for late payment of fees, thus aligning it with the finance charge for late payment of excise taxes. There are possible negative financial implications associated with not approving the proposed ordinance in that Metro may continue to receive late payments of fees and taxes, which does not allow Metro to invest that money or receive interest on that money.
3. Amend the ordinance to either only adopt the extended due date or the late payment finance charge.
4. Do not approve the ordinance. This option will result in maintaining status quo. There may be negative financial implications associated with the option if Metro continues to receive late payments of fees and taxes.

### **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 21-1462 to amend Metro Code Chapters 5.02 (Regional System Fee) and 7.01 (Excise Tax).

## **KNOWN OPPOSITION**

There is no known opposition to the proposed revisions to Metro Code Chapter 5.02 and 7.01. Staff believe that those subject to the fees and taxes will approve of extending the due date for payment of these monies, and this is especially so for small businesses and new entrants to the solid waste system that may have cash flow concerns during their initial years in business.

It is possible that regulated entities would object to the addition of a finance charge on late payments of solid waste fees, but staff notes that a finance charge is already authorized for late payment of excise taxes. Further, the vast majority of those subject to Metro's fees and taxes pay timely and these changes will not negatively affect them.

## **PUBLIC OUTREACH**

Although staff have not conducted any formal public outreach, staff has informally heard from several solid waste facility entities that it is difficult at times for smaller business and newer entrants to pay Metro's fees and taxes on the 15<sup>th</sup> of the month when the entity may not be receiving those fees and taxes from its customers until later in the month.

## **LEGAL ANTECEDENTS**

Metro Charter, Title V and VII of the Metro Code and ORS Chapters 268 and 459.

## **ANTICIPATED EFFECTS**

Approval of this ordinance would likely encourage regulated entities that are consistently delinquent in paying the required fees and taxes to be timelier in their payments to avoid interest charges. By allowing regulated entities roughly an additional 15 days to pay, staff expects a reduced delinquency rate.

## **BUDGET IMPACTS**

Adoption of this ordinance should have positive budget impacts for Metro. Currently, some entities subject to Metro's solid waste fees and taxes are not paying them timely. In some cases, the delinquent payments are ongoing and amount to hundreds of thousands of dollars in late payments. This ordinance should encourage timely payment, thus allowing Metro to invest those monies and obtain interest. And when payments are late, Metro can assess a finance charge to help offset the cost of lost interest by not having the money on time.

## **BACKGROUND**

Staff has noticed an increase in late payment of Metro's fees and taxes over time. At times this has amounted to several hundred thousand dollars in late fees and taxes. With respect

to transfer stations, many of them have payment terms for their customers that are net 30 or, even, net 60. This means that those transfer stations are required to pay the fees and taxes to Metro before they have received payment from their customers. They are, in effect, “floating” the fees and taxes.

This can be financially difficult for small businesses and new entrants to the system, both of which often lack the capital reserves necessary to pay these fees and taxes before receiving payment from their customers. By extending the payment due date from the 15<sup>th</sup> to the last day of the month, staff hopes to provide some financial relief to these businesses and create a more realistic payment schedule given industry practices.

At the same time, it is important to encourage timely payments by including a finance charge on late payments and, just as importantly, enforcing that finance charge. Although a finance charge is required on late payment of excise taxes (but not regional system fees), Metro has not historically imposed this finance charge on late payments. Staff believes this has resulted in a growing number of delinquent payments. It is important to remember that those subject to remitting these fees and taxes to Metro are holding these monies in trust on behalf of Metro. They should be paid timely and not used as a loan or capital infusion for those subject to remitting them to Metro.

## **ATTACHMENTS**

None