

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)
METRO CODE SECTIONS 5.02.055)
AND 7.01.080 RELATING TO THE)
COLLECTION OF USER FEES AND)
EXCISE TAXES FROM FRANCHISED)
AND OTHER DESIGNATED SOLID WASTE)
FACILITIES, AND DECLARING AN)
EMERGENCY)

ORDINANCE NO. 94-533
Introduced by Rena Cusma,
Executive Officer

WHEREAS, On September 9, 1993, the Metro Council adopted Ordinance No. 93-509, standardizing credit policy and payment schedules for franchised and other designated facilities; and

WHEREAS, Ordinance No. 93-509 provided that franchised and other designated facilities must remit user fees and excise taxes charged each month by the 15th day of the following month; and

WHEREAS, Ordinance No. 93-509 also provided that if such fees and taxes were not paid when due, a finance charge would be imposed on the last day of the month, allowing a 30-day period between the month in which the facility assessed the charges and the date on which Metro would impose a finance charge against the facility; and

WHEREAS, Metro allows users of its own facilities a 45-day period before finance charges are imposed; and

WHEREAS, This Ordinance would provide an additional 15 days before imposition of a finance charge against franchised and other designated facilities, for a total of 45 days; and

WHEREAS, For reasons stated in section 3 of this Ordinance, an emergency is declared, and this Ordinance will take effect upon passage; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.02.055 is amended to read:

"5.02.055 Remittance to Metro of User Fees and Other Charges by Franchisees and Other Designated Facilities:

(a) Franchisees and other operators of facilities designated to receive waste under Code Section 5.05.030 shall remit user fees and charges other than excise taxes to Metro as specified in this section.

(b) User fees shall accrue on a monthly basis, and shall be remitted to Metro by the fifteenth day of the month for waste disposed of in the preceding month. User fees and other charges are considered to be delinquent if not received by Metro on or before the due date, by personal delivery to the Metro Department of Finance and Management Information during business hours or, if delivered by mail, by receipt in Metro's mail room. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows.

(c) A finance charge of one and one-half percent shall be assessed on all delinquent user fees and other charges. For user fees, the finance charge shall be assessed on the ~~last fifteenth~~ day of the month ~~following the month~~ in which they are due, and on the ~~last fifteenth~~ day of each month thereafter, until paid. For other charges, the finance charge shall be assessed ~~fifteen~~^{thirty} days after the due date, and on the same day of each subsequent month, until paid. Finance charges will be assessed only on unpaid delinquent balances, and not on previously assessed finance charges, and will continue to be assessed on negotiated repayment schedules. Payments will be applied first to finance charges and then to the oldest delinquent amount."

Section 2. Metro Code Section 7.01.080 is amended to read:

"7.01.080 Penalties and Finance Charges:

(a) **Fraud.** If the Executive 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 twenty-five percent (25%) 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 one and one-half 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 ~~last fifteenth~~ day of the month ~~following the month~~ in which taxes are due, and on the ~~last fifteenth~~ day of each month thereafter, until paid. 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 Executive Officer for waiver and refund of the penalties and finance charges or any portion thereof and the Executive 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."

Section 3. This Ordinance is intended to address an undue burden that has been placed on franchised and other designated facilities related to the imposition of finance charges. Because the regional welfare necessitates treating franchised and other designated

facilities in a manner similar to the treatment of credit accounts at Metro facilities, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this 14th day of April, 1994.



Judy Wyers, Presiding Officer

ATTEST:



Clerk of the Council

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FINANCE COMMITTEE REPORT

ORDINANCE NO. 94-533 AMENDING METRO CODE SECTIONS 5.02.055 AND 7.01.080 RELATING TO THE COLLECTION OF USER FEES AND EXCISE TAXES FROM FRANCHISED AND OTHER DESIGNATED SOLID WASTE FACILITIES; AND DECLARING AN EMERGENCY

Date: April 1, 1994

Presented By: Councilor McLain

COMMITTEE RECOMMENDATION: At its March 23, 1994 meeting the Committee voted four to one to recommend Council adoption of Ordinance No. 94-533. Committee members voting in favor were Councilors Devlin, Kvistad, McLain, and Monroe. Councilor Van Bergen voted against and Councilors Buchanan and Gardner were absent.

COMMITTEE DISCUSSION/ISSUES: Ms. Jennifer Sims, Finance Director, presented the Staff Report. Ms. Sims indicated the purpose of the ordinance is to make the finance charge policies applied against users of non-Metro solid waste facilities consistent with the policies applied to users of Metro facilities. Currently, Metro facility users are not assessed a finance charge until 45 days after the last usage date of the month and non-Metro facility users are assessed a finance charge within 30 days of the last usage date of the month. Such discrepancy may provide an unfair advantage for the use of Metro facilities.

Councilor Van Bergen expressed concern that the Metro policy of waiting 45 days before assessing a finance charge is too lenient and does not reflect the financial policies of the rest of the community, particularly the business community. In response to a question from Councilor Van Bergen, Ms. Sims indicated this policy change will result in an estimated \$2,000 annual loss of revenue to Metro.

Councilor Kvistad agreed with Councilor Van Bergen and expressed the opinion that finance charges at all facilities should be assessed after 30 days rather than after 45 days. Ms. Sims indicated that the choice of number of days is certainly a policy decision to be made by the Council. Councilor Kvistad suggested staff bring back an analysis of all the issues involved in moving to a 30 day finance charge period for general discussion. Chairman Monroe asked that the Solid Waste Department be made aware that the Committee would be interested in a proposal to move to a uniform 30 days allowance for paying a solid waste bill.

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 94-533 FOR THE PURPOSE OF AMENDING THE METRO CODE SECTIONS 5.02.055 AND 7.01.080 RELATING TO THE COLLECTION OF USER FEES AND EXCISE TAXES FROM FRANCHISED AND OTHER DESIGNATED SOLID WASTE FACILITIES, AND DECLARING AN EMERGENCY

Date: March 2, 1994

Presented by Jennifer Sims

PROPOSED ACTION

This Ordinance amends sections 5.02.055(c) and 7.01.080(b) of the Metro Code relating to remittance of solid waste user fees and excise taxes and the assessment of a finance charge. The purpose is to increase consistency in the collection of user fees and excise taxes.

FACTUAL BACKGROUND AND ANALYSIS

In August of 1993 Ordinance 93-509 amended chapters 5 and 7 of the Metro Code related to the remittance of solid waste user fees and excise taxes to increase consistency of finance charges, terms, and administration of policies with existing credit policy. A copy of the staff report related to that action is attached for your information. The purpose of this Ordinance is to correct a small deficiency in that amended policy that has been pointed out by customers.

The User Fees and Excise Tax are paid by customers that are in some ways competing for the same customers that use our Metro owned facilities. Our customers that use our Solid Waste Disposal facilities are not assessed a finance charge until 45 days after the last usage date in a month. The franchised and other designated facilities are assessed a finance charge within 30 days of the last usage date in a month.

If the franchisees and other designated facilities try to shorten their credit terms to their customers to collect funds in time to pay Metro, their customers may find it more prudent to be a direct Metro customer. This places an undue burden on the franchises and other designated facilities. We are therefore recommending the amendment of the Code to reflect the consistent terms as outlined in the proposed User Fee/Excise Tax.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-533.

JS:KF:kf

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 93-509
METRO CODE RELATING TO THE)
COLLECTION OF USER FEES AND) Introduced by Rena Cusma,
EXCISE TAXES FROM FRANCHISED) Executive Officer
AND OTHER DESIGNATED SOLID)
WASTE FACILITIES)

Whereas, Metro Code provisions relating to remittance of user fees and excise taxes by franchised and other designated solid waste facilities are not consistent; and

Whereas, Amendment of the Metro Code to standardize credit policy and payment schedules for franchised and other designated facilities will improve administration of the Code; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.01.130 is amended to read:

"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, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled 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, non-compacted, 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.~~

(d) Excise taxes and finance charges on excise taxes owing to the District shall be paid as specified in Metro Code Chapter 7.01. User fees, finance charges on user fees and other charges owing to Metro shall be paid as specified in Metro Code Section 5.02.055.

(e) The Executive Officer, if deemed necessary to ensure payment or facilitate collection of fees by the District in an individual case, may require returns and payment of fees more frequently than monthly."

Section 2. Metro Code Section 5.01.150 is amended to read:

"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. User Fees shall not apply to wastes received at franchised facilities that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(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.~~

~~(d) User fees and finance charges on user fees shall be paid as specified in Metro Code Section 5.02.055.~~

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible; provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account and documenting good faith efforts that have been made to collect the accounts. User fees may not be deemed uncollectible unless the underlying account is also uncollectible. 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 is thereafter collected, in whole or in part, 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."

Section 3. The following Section 5.02.055 is added to and made part of Metro Code Chapter 5.02:

"5.02.055 Remittance to Metro of User Fees and Other Charges by Franchisees and Other Designated Facilities:

(a) Franchisees and other operators of facilities designated to receive waste under Code Section 5.05.030 shall remit user fees and charges other than excise taxes to Metro as specified in this section.

(b) User fees shall accrue on a monthly basis, and shall be remitted to Metro by the fifteenth day of the month for waste disposed of in the preceding month. User fees and other charges are considered to be delinquent if not received by Metro on or before the due date, by personal delivery to the Metro Department of Finance and Management Information during business hours or, if delivered by mail, by receipt in Metro's mail room. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows.

(c) A finance charge of one and one-half percent shall be assessed on all delinquent user fees and other charges. For user fees, the finance charge shall be assessed on the last day of the month in which they are due, and on the last day of each month thereafter, until paid. For other charges, the finance charge shall be assessed fifteen days after the due date, and on the same day of each subsequent month, until paid. Finance charges will be assessed only on unpaid delinquent balances, and not on previously assessed finance charges, and will continue to be assessed on negotiated repayment schedules. Payments will be applied first to finance charges and then to the oldest delinquent amount."

Section 4. Metro Code Section 7.01.030 is amended to read:

"7.01.030 Collection of Tax by Operator; Rules for Collection:

(a) Every operator, unless specifically exempted under the terms of this Chapter, shall collect a tax from users as provided for in Section 7.01.020.

(b) The operator shall report the tax to the District consistent with the operator's basis of accounting, cash or accrual, except in the case of an operator of a solid waste facility. Solid Waste Facility operators shall report accrued revenue and excise tax calculated based upon loads or tons deposited at the site at the time of receipt of waste.

(c) For the purpose of reporting the tax owed to the District and notwithstanding the provisions of Section 7.01.040, the tax shall be presumed to be included in the amount imposed by the operator so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to the operator plus the excise tax owed to the District at the rate established herein.

(d) The District shall provide the operator with a blank return and instructions that shall be used by the operator to report the excise tax owing to the District. The amount of excise tax due shall be paid when the return is filed as provided for in Section 7.01.070.

(e) ~~Adjustments may be made for uncollectibles when they are recognized by the operator as uncollectible, and can be sufficiently documented to show a good faith collection effort~~ There is no liability for excise taxes on charge accounts that are worthless and charged off as uncollectible, provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account and documenting good faith efforts that have been made to collect the accounts. Excise taxes may not be deemed uncollectible unless the underlying account is also uncollectible. If the taxes 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 is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the taxes shall be paid with the return.

(f) ~~Installment payments of tax paid by the operator to the District shall be applied to the oldest tax, and interest and penalties that have been merged with the tax as set forth in Section 7.01.080~~ first to finance charges and penalties, and then to the oldest delinquent taxes.

(g) The Executive Officer shall enforce provisions of this Chapter and shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the Executive Officer shall give public notice of intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of this Code to violate rules and regulations duly adopted by the Executive Officer."

Section 5. Metro Code Section 7.01.070 is amended to read:

"7.01.070 Due Date; Returns and Payments:

(a) The tax shall be collected from the operator by the District as provided for in Section 7.01.030. All amounts of such taxes reported by any operator are due and payable to the District on the 15th day of each month for the preceding month, and are delinquent ~~on the last day of the month in which they are due~~ if not received by Metro as specified in subsection (d) of this section by the due date. If the ~~last day of the month due date~~ falls on a holiday or weekend, amounts are delinquent ~~on~~ 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 day of the month following each month of operation of a District facility, a return for the preceding month's tax shall be filed with the Executive

Officer. The return shall be filed in such form as the Executive 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 Executive 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 remittance of the amount of the tax due, to the Executive Officer Metro Department of Finance and Management Information, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies. Payment is considered to be delinquent if not received by Metro on or before the due date, by personal delivery to the Metro Department of Finance and Management Information during business hours or, if delivered by mail, by receipt in Metro's mail room.

~~(e) For good cause, the Executive Officer may extend for not to exceed one (1) month the time for making any return or payment of tax. No further extension shall be granted, except by the Executive Officer. Any operator to whom an extension is granted shall pay interest at the rate of 1.25 percent (1.25%) per month on the amount of tax due without proration for a portion of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall be added to the tax due for computation of penalties described elsewhere in this Chapter.~~

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

Section 6. Metro Code Section 7.01.080 is amended to read:

"7.01.080 Penalties and Interest Finance Charges:

~~(a) Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.~~

~~(b) Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of the ten percent (10%) penalty first imposed.~~

~~(e)~~(a) Fraud. If the Executive Officer determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a

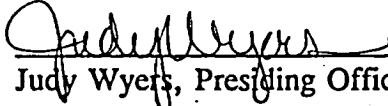
penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this Section.

~~(d)(b) Interest Finance Charges.~~ In addition to the ~~any~~ penalties imposed, any operator who fails to remit any tax imposed by this Chapter shall pay interest at the rate of 1.25 percent (1.25%) per month or fraction thereof without proration for portions of a month, on the amount of the tax due from the date on which the remittance first became delinquent until paid. ~~Interest shall be compounded monthly.~~ ~~a finance charge of one and one-half 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 last day of the month in which taxes are due, and on the last day of each month thereafter, until paid. 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.

~~(e) Penalties and Interest merged with tax.~~ Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the tax herein required to be paid. ~~If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new penalty and interest amounts.~~

~~(f)(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 Executive Officer for waiver and refund of the ~~penalty penalties and finance charges~~ or any portion thereof and the Executive Officer may, if a good and sufficient reason is shown, waive and direct a refund of the ~~penalty penalties or finance charges~~ or any portion thereof."

ADOPTED by the Metro Council this 9th day of September, 1993.



Judy Wyers, Presiding Officer

ATTEST:



Clerk of the Council

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