

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 15-1363 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTERS 5.00, 5.02, AND 7.01

September 1, 2015

Prepared by: Warren Johnson
503-797-1836

Adoption of Ordinance No. 15-1363 will amend Metro Code Chapters 5.00 (Definitions), 5.02 (Disposal Charges and User Fees) and 7.01 (Excise Taxes). The proposed revisions include: clarifying and expanding the types of wastes that qualify for Metro's reduced regional system fee and excise tax rate, clarifying and narrowing the types of waste that qualify for a fee and tax exemption when delivered to a landfill, adding administrative procedure provisions and various other technical corrections that will make the Metro Code easier to use and provide greater transparency for fee and tax determinations.

As the agency tasked with management of the region's solid waste system, Metro has an obligation to the public to maintain a consistent, predictable and transparent framework for the assessment of fees and taxes on solid waste. Over the years, certain solid wastes have been subject to Metro's reduced fee and tax rate or otherwise exempted based on various circumstantial factors such as the generator intent, type of contaminant, or whether the waste is ultimately "used" at a disposal site. This has created different rules for similar types of wastes and prevented Metro from fulfilling its responsibilities to ensure consistent and transparent application of its fee and tax determinations.

The purpose of these proposed changes is to further achieve the public benefits of: 1) protecting human health and the environment, 2) providing good value in the solid waste system, and 3) being adaptive and responsive to a dynamic solid waste system. In addition, these changes further the objectives of making the Code more relevant and simpler to use so that all users of the solid waste system are subject to the same rules.

BACKGROUND

The regional solid waste system is dynamic and changing. Industry consolidation, technological innovation, improved efficiency, and the public's desire to see more sustainable solid waste practices all contribute to this dynamism. Metro continues to play a major role in shaping the region's solid waste system through implementation of its solid waste contracts (operations, transport, and disposal)¹ and its various other efforts to plan and provide direction for the future. In an effort to shape the future solid waste system to better attain public benefits and improved sustainability, Metro has undertaken a major planning effort (known as the "Solid Waste Roadmap") to set the future of the regional solid waste system for the next several years. In 2016, Metro will begin to consider its decennial plan, known as the Regional Solid Waste Management Plan, which will address material management strategies and waste prevention, reuse, and recycling opportunities for the region. In addition to the above-mentioned planning efforts, staff seeks to provide a clearer, more concise, and more equitable regulatory framework for the regional solid waste system.

Oregon statutes² give Metro broad authority to establish, maintain and amend solid waste fees and taxes to support solid waste and other important services. Metro levies a regional system fee and an excise tax on each ton of solid waste that is generated inside the region and ultimately disposed to help pay for the

¹ Metro's transfer station operations contracts expire in March 2017. Metro's transport and disposal contracts expire at the end of 2019.

² ORS 268.300

solid waste services that benefit the entire region.³ The fees and taxes are collected and remitted to Metro by either the disposal sites (through designated facility agreements) or directly by the haulers and generators of the waste (through non-system licenses).

Revenue from the regional system fee is deposited in Metro's solid waste fund and is used only for solid waste programs such as household hazardous waste collection, latex paint recovery, waste reduction and recycling programs, and cleanups of illegal disposal sites. Excise tax revenue is deposited in Metro's general fund and is used for general government activities.

Waste generated inside the Metro region is generally subject to the full regional system fee and excise tax rate (currently \$29.87 per ton combined) when delivered to a disposal site. However, current Code provides an exemption for certain wastes when deemed to be "useful materials" that are used productively in the operation of a disposal site and accepted at no charge (such as for use as alternative daily cover and road base).⁴ Additionally, Metro levies a reduced fee and tax rate (\$3.50 per ton)⁵ on certain wastes resulting from the cleanup of hazardous substances released into the environment whether they are simply disposed or used for beneficial purposes at a disposal site.

The Chief Operating Officer (COO) recommends that the Metro Council approve various changes to Metro Code Chapters 5.00, 5.02, and 7.01 to provide for more consistent application of fees and taxes, and clarify rate determinations for certain wastes as described in this staff report. This ordinance is intended to further improve the consistency, access, and usability of the Code.

I. Changes to Chapter 5.02 (Disposal Charges and User Fees)

Metro Code Chapter 5.02 (Disposal Charges and User Fees) governs the establishment and administration of appropriate fees and charges on solid waste generated within Metro or delivered to solid waste facilities regulated by or contracting with Metro. The COO recommends the proposed changes to Chapter 5.02 as described below (Exhibit A to Ordinance No. 15-1363).

1. Regional System Fees (Section 5.02.045):

Under current Code,⁶ regional system fees do not apply to "useful material" that is used productively in the operation of a disposal site and accepted at no charge. Over time, implementation of the useful material exemption has caused inequities among the solid waste industry, costing the ratepayers more, without increasing regional recovery and without a clear sustainability benefit.

The useful material exemption is primarily sought after for wastes that are delivered to a landfill and applied as "alternative daily cover" (ADC)⁷ over the exposed solid waste at a disposal area. The Oregon Department of Environmental Quality (DEQ) has regulatory authority of the use of ADC at landfill's in Oregon. Although the use of ADC and other cover materials minimize the need for clean fill such as soil at landfills, the use of waste as cover is not considered to be recycling. The use of wastes as ADC is considered the same as disposal for the purpose of calculating the region's recovery rate. "Shaker screen fines" is an example of waste that has been claimed as ADC. Such

³ Metro Code Sections 5.02.045 (Regional System Fees) and 7.01.020 (Tax Imposed). Effective July 1, 2015, the regional system fee rate is \$18.39 per ton and the excise tax rate is \$11.48 per ton.

⁴ Metro Code Sections 5.02.045(c) (Regional System Fee) and 7.01.050(a)(10) (Exemptions)

⁵ Metro Code Sections 5.02.047 (Regional System Fees on Cleanup Material Contaminated by Hazardous Substances) and 7.01.020(e)(2) (Tax Imposed). The reduced regional system fee rate for cleanup material is \$2.50 per ton and the reduced excise tax rate for cleanup material is \$1.00 per ton.

⁶ Metro Code Section 5.02.045(c)(3) (Regional System Fees)

⁷ Alternative daily cover (ADC) is material used for cover over the exposed solid waste at a landfill that provides the performance equivalent to six inches of earthen soil and that is approved for long-term use by the state environmental protection agency.

“fines” are small-sized pieces of waste that fall through screening equipment at material recovery facilities – it is simply miniature-sized solid waste that is small enough to be shifted out from larger pieces of waste debris when shaken across a conveyor. Shaker screen fines are often required to be mixed with soil before being useable as approved cover material.

It is inappropriate to base Metro’s fee and tax exemptions on how a material is used at disposal sites or when based on approvals by another unaffiliated agency. In the case of the agency that approves the use of alternative cover, DEQ, it relies primarily on whether the waste functions in a similar manner to soil and does not impact human health or the environment. Additionally, Metro does not have the regulatory jurisdiction to effectively monitor or verify the actual application of ADC at landfills that are located outside of the region. The COO recommends that the Council remove the fee exemption based on use of waste at a disposal site as described in this report. The proposed changes under Ordinance 15-1363 would remove the exemption for ADC, however, it would not limit the ability of a landfill to continue using waste as cover (as approved by the DEQ) or limit DEQ’s ability to approve such uses.

The COO recommends retaining a fee exemption for three materials, regardless of whether they are used or disposed at a landfill: tire processing residual, automobile shredder residual, and dredge materials. There are special considerations for each that warrants further evaluation from a fee and tax policy perspective which is outside the scope of this Code change package. This evaluation is more appropriate under Project 6 of the Solid Waste Roadmap that will consider the larger issues of solid waste fee and tax policy in the region.

The proposed changes to this section of Code provide clarification as to which materials qualify for a fee exemption when delivered to a disposal site. Staff has also developed administrative procedures that establish the terms and conditions under which solid waste may qualify for an exemption or the reduced regional system fee and excise tax rate. Adoption of this proposed ordinance would establish administrative procedures as provided in Exhibit C.

2. Regional System Fees on Cleanup Material (Section 5.02.047):

The proposed changes are non-substantive technical amendments that include moving a paragraph in one section⁸ of Chapter 5.02 to new section.⁹ As mentioned above, staff has developed administrative procedures that establish the terms and conditions under which solid waste may qualify for an exemption or the reduced regional system fee and excise tax rate. Adoption of this proposed ordinance would establish administrative procedures as provided in Exhibit C.

The COO recommends that the Council broaden the reduced fee and tax rate to include other types of contaminated soil and natural media as established in the administrative procedures. For instance, under the proposed administrative procedures, the following are examples of wastes that would qualify for the reduced fee and tax rate when delivered to disposal site:

- Soil from construction and excavation projects;
- Street sweepings;
- Dredge material;
- Natural filter media from stormwater catch basins;
- Natural media from the clean out of ponds, bioswales, catch basins, and other similar sources.

⁸ Metro Code Section 5.02.047 (Regional System Fees on Cleanup Material)

⁹ New Metro Code Section 5.02.090 (Adoption and Amendment of Administrative Procedures and Performance Standards)

3. Adoption of administrative procedures (proposed Section 5.02.090):

The proposed changes to this section of Code provide clarification that the COO may adopt and issue administrative procedures and performance standards to implement all provisions of Chapter 5.02. In addition, the proposed change requires that the COO provide public notice and the opportunity to comment on any substantial amendments to such administrative procedures.

II. Changes to Chapter 7.01 (Excise Tax)

Chapter 7.01 (Excise Tax) governs the establishment and administration of a tax for the privilege of the use of the facilities, equipment, system, functions, services, or improvements, owned, operated, licensed, franchised, or provided by Metro. The COO recommends the proposed changes to Chapter 7.01 as described below (Exhibit B to Ordinance No. 15-1363).

1. Exemptions (Section 7.01.050):

Under current Code,¹⁰ excise taxes do not apply to useful material that is used productively in the operation of a disposal site and accepted at no charge. This proposed change is a companion piece to the proposed regional system fee changes described above in Section I.1. of this staff report,

Specifically, the COO recommends that the Council remove the tax exemption based on use of waste at a disposal site as described in this report. The proposed changes under Ordinance 15-1363 would remove the exemption for ADC; however, it would not limit the ability of a landfill to continue using waste as cover (as approved by the DEQ).

The COO recommends retaining a tax exemption for three materials when delivered to a landfill: tire processing residual, automobile shredder residual, and dredge materials. There are special considerations for each that warrants further evaluation from a fee and tax perspective which is outside the scope of this Code change package.

As mentioned above, staff has developed administrative procedures that establish the terms and conditions under which solid waste may qualify for an exemption or the reduced regional system fee and excise tax rate. Adoption of this proposed ordinance would establish administrative procedures as provided in Exhibit C.

2. Due Date; Returns and Payments (Section 7.01.070):

The proposed change is a non-substantive technical amendment.

3. Adoption of administrative procedures (proposed Section 7.01.200):

The proposed changes to this section of Code provide clarification that the COO may adopt and issue administrative procedures and performance standards to implement all provisions of Chapter 7.01. In addition, the proposed change requires that the COO provide public notice and the opportunity to comment on any substantial amendments to such administrative procedures.

III. Changes to Chapter 5.00 (Solid Waste Definitions)

¹⁰ Metro Code Section 7.01.050(a) (Exemptions)

In 2014, the Council adopted changes to the Code that consolidated all of the solid waste-related definitions from Title V (Solid Waste Facility Regulation) into a new chapter. At that time, there were various redundant and duplicative defined terms. The number of definitions was subsequently reduced from 155 to 95 upon the adoption of Chapter 5.00. This ordinance proposes a number of additional changes to Chapter 5.00 which include term additions and amendments as detailed in Exhibit D. This is a further effort to ensure that Title V definitions provide appropriate clarity and purpose.

A. The COO recommends the following substantive changes to these terms:

1. **Cleanup material.** This term has been broadened to include excavated material as well as cleanup material. Additional materials are proposed to be included in the definition, such as street sweepings, non-hazardous contaminated soils not qualifying as clean fill, and contaminated debris resulting from cleanup or releases of chemical spills. Further clarification is made by adding a definition for “clean fill.”
2. **Useful material.** The definition is edited to account for other amended and new definitions.

B. The COO recommends that the following terms be added to Chapter 5.00 as specified below:

1. **Automotive shredder residual.** This is a new term to describe the processing residual that remains after recyclable metals have been removed from shredded automobiles and household appliances. This material has commonly been referred to as “auto fluff” in the past.
2. **Beneficial use.** This definition for establishing exemptions from solid waste fees and taxes. Same as DEQs definition in OAR 340-093-0030(13).
3. **Dismantler.** Clarifies reference used in proposed “used material” definition. Based on ORS 822.100. DEQ does not define.

ANALYSIS / INFORMATION

1. Known Opposition

There is known opposition from parties currently enjoying the useful material exemption.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 stipulates that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapters 5.02 and 7.01 as provided in Exhibits A and B. Approval of this ordinance would also establish administrative procedures which define the terms and conditions under which solid waste may qualify for an exemption or the reduced regional system fee and excise tax rate as provided in Exhibit C.

4. Budget Impacts

Recommended Action:

The COO recommends adoption of Ordinance No. 15-1363.

DRAFT 08/19/2015