

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 7.01) ORDINANCE NO. 06-1116
RELATING TO THE METRO SOLID WASTE)
EXCISE TAX) Introduced by Council President David
) Bragdon and Councilor Rod Park

WHEREAS, the Metro Solid Waste Excise Tax is a component of the fee for disposal of solid waste at the Metro South and Metro Central Transfer Stations that is set forth in Metro Code Section 5.02.025; and

WHEREAS, pursuant to Metro Code section 7.01.020(e)(1), Metro has traditionally established the beginning of each fiscal year as the effective date for any changes in the Metro solid waste excise tax rate; and

WHEREAS, in 2004, the Metro Council established September 1 as the effective date for modifications to the disposal charges for solid waste adopted pursuant to amendments to Metro Code Section 5.02.025; and

WHEREAS, adjusting the fee for disposal of solid waste at the Metro transfer stations at both the start of the Metro fiscal year and on September 1st of each year creates hardships for both the local government units that annually set collection rates for solid wastes, and for private solid waste companies that change their rates concurrently with any adjustment that Metro makes to the fee for disposal of solid waste; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.020(e)(1) is amended as follows:

7.01.020 Tax Imposed

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by Metro, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or Metro for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax

provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by Metro. If the Council so establishes a lower rate of tax, the Chief Operating Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements, owned, operated, licensed, franchised, or provided by Metro, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro's contractor for disposal of putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. In addition, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro's contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 7.01.023 for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2002, the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue of \$6,050,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.

(e)(1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) compostable organic waste delivered to Metro Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in sub-section (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under sub-section (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro's excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2006-07, and each fiscal year thereafter, the rate determined by this subsection shall be effective as of September 1st unless another effective date is adopted by the Metro Council.

(f) By ~~December 1, 2000, and by~~ March 1st of each year ~~thereafter~~, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:

- (1) For the twelve (12)-month period ending the previous December 31; the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to Section 7.01.050(a) of this chapter, and
- (2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

<u>Year</u>	<u>Regional Recovery Rate</u>
1999	43%
2000	46%
2001	48%
2002	50%
2003	52%
2004	54%
2005	56%
2006	56.5%
2007	57%
2008	57.5%
2009	58%

The result of such calculation by the Chief Operating Officer shall be used to determine the excise tax rate under sub-section (e)(1).

(g) (1) A solid waste facility which is licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each ~~six (6)~~ twelve (12) month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be equal to the amount resulting from reducing the Excise Tax due by the amount corresponding with the Facility Recovery Rates - no greater than as provided on the following table:

Excise Tax Credit Schedule		
Facility Recovery Rate		Excise Tax
From	Up To &	Credit of no more than
Above	Including	
0%	30%	0.00
30%	35%	1.92
35%	40%	2.75
40%	100%	3.51

- (2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.
- (3) The Chief Operating Officer may establish procedures for administering the Excise Tax Credits set forth in sub-section (g)(1), including, but not limited to establishing eligibility requirements for such credits and establishing incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (g)(1).

SECTION 2. Metro Code Section 7.01.023 is amended as follows:

Commencing September 1, ~~2004,~~ 2006, the additional excise tax authorized in Section 7.01.020(c) shall be ~~\$3-~~ \$3.14 per ton. ~~Of such additional excise tax, \$2.50 per ton shall be dedicated to funding Metro's Regional Parks and Greenspaces programs, and \$0.50 per ton shall be dedicated to funding Metro's Tourism Opportunity and Competitiveness Account.~~ For each fiscal year following fiscal year ~~2004-05-2006-07,~~ the additional excise tax ~~dedicated to Metro's Regional Parks and Greenspaces programs and Metro's Tourism Opportunity and Competitiveness Account~~ shall be not less than the amount of the additional excise tax in the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Salem (All Urban Consumers) reported for the first six (6) months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Chief Operating Officer deems appropriate and shall be effective as of September 1st each year unless another effective date is adopted by the Metro Council.

SECTION 3. Metro Code Section 7.01.028 is amended as follows:

7.01.28 Budgeting of Excess Revenue

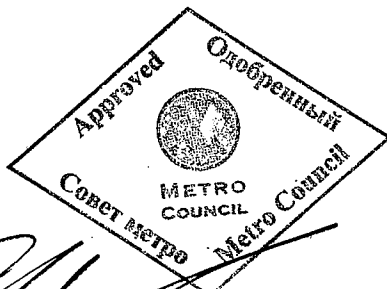
Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020 (e) exceed the net excise tax revenue amount set forth in Section 7.01.020 (d) as adjusted by Section 7.01.022, such additional revenue shall be apportioned as follows:

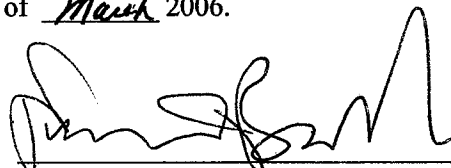
(a) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code ~~Section 7.01.020(e)~~ Chapter 7.01 during the period of the two (2) most recent Metro fiscal years. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.

(b) If at the end of any fiscal year, the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.01.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter.

(c) Any remaining excess revenue over the amounts apportioned in subsections (a) and (b) of this section shall be placed in the account established in subsection (a).

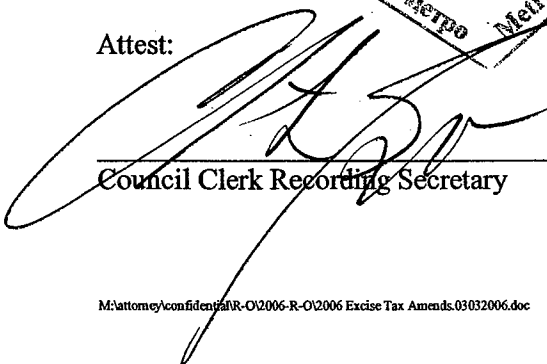
ADOPTED by the Metro Council this 30th day of March 2006.





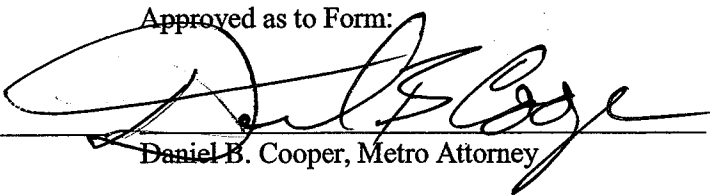
David Bragdon, Council President

Attest:



Council Clerk Recording Secretary

Approved as to Form:



Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1116, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 RELATING TO THE METRO SOLID WASTE EXCISE TAX

Date: March 6, 2006

Prepared by Karen Feher

BACKGROUND

One of the main purposes of this legislation is to align the Metro Excise Tax Code with Metro Financial Policies and the intent of the consolidation of the General Fund. By way of background on these issues, the FY 2005-06 Budget introduced changes in both process and presentation in order to provide greater transparency, provide stronger adherence to Financial Policies and dovetail with the Council's strategic planning process. This action is a continuation of those changes as well as accomplishing necessary housekeeping changes to Metro Code Chapter 7.01.

Over the years, Metro's growth has involved taking on unique activities that are deemed regional in nature. During that process Metro tacked on each of those activities budgetarily by creating separate Budget Funds for each activity. This was partially done to meet funding restrictions for those new activities or allow for time to decide or formalize permanent acceptance of the activities. The need for maintaining separate funds no longer exists, therefore, effective July 1, 2005 Metro combined all discretionary budgetary funds into one fund in order to more effectively accomplish the following:

- Provide fiscal and budgetary transparency
- Emphasize agency programs rather than department budgetary funds
- Relate programs to Council objectives
- Enable flexibility in setting of priorities for the overall agency as well as funding those priorities.

This was the first step in changing Metro's operational culture of separate department activities by setting Council priorities and constructing programs that meet those priorities. A natural outcome of these actions is to review performance measures to insure outcomes that are consistent with Metro Council goals and to review financial policies to insure consistency with generally accepted practices and Metro existing policies.

A review of the Excise Tax code demonstrated some inconsistencies with Metro's financial policies and evident constraints on the Metro Council's flexibility to meet the changing needs of Metro's programs. When a per-ton Excise Tax was provided to Regional Parks for funding Parks operations, and later to establish a Metro Tourism Opportunity and Competitiveness Account for MERC, those provisions were written into Metro Code. This action takes away those dedications in compliance with Metro's existing financial policies. The Council would make the distribution of Excise Tax each year during the budget process.

As the budget continues to consolidate and financial management of Metro continues to evolve, the review of this portion of excise tax code revealed that that funds accumulated by the Recovery Rate Stabilization Reserve should be tied to the broader goals of the entire agency. Therefore, the section of the Code that establishes an amount not to exceed in the Recovery Rate Stabilization is broadened to include all Excise Tax generated by Metro. (7.01.028(a))

Staff Report for Ordinance 06-6111

The housekeeping changes to this code are as follows:

- Sets the effective date of the new Excise Tax per ton rate to coincide with any other changes to the Solid Waste rates on September 1 of each fiscal year. (7.01.020(e)(1))
- Extend the Regional Recovery Rate used in the per-ton calculation to 2009. This Recovery rate is calculated by a linear interpolation of State goals, less the six percent recovery percentage points awarded for Metro's current waste reduction programs. (7.01.020(f)(1))
- The following two changes make the calculation of excise tax credits consistent with the Regional System Fee Credits (RSF) and current practice. These actions provide for administrative consistency between both the Regional System Fee and Excise Tax credit programs:
 - Authorize administrative procedures for excise tax credits that include establishing eligibility requirements, and interpolating credits between recovery rates. The existing language does not allow for degrees of recovery therefore discouraging the motivation to do any recover over the current step until the next higher step can be reached. (New section 7.01.020(g)(3))
 - Change the basis of recovery rate calculation from six months (rolling sum) to twelve months.

ANALYSIS/INFORMATION

1. Known Opposition: None known
2. Legal Antecedents: This amends the Metro Code Chapter 7.01
3. Anticipated Effects.
 - a. Provides consistency with Financial Policies
 - b. Provides Council greater flexibility in budgeting and strategic planning
 - c. Accomplishes housekeeping changes for consistency with other portions of the Metro Code.
4. Budget Impacts. This action places into code the change of the Excise Tax rate to September 1st. For the past several years that date has been used so this makes the Code consistent with practice. This action does not change the rate of or calculation of the Excise Tax per-ton rate but rather moves the dedication of those funds from Code to the Budget. Finally this action expands the section of the Code that establishes an amount not to exceed in the Recovery Rate Stabilization to include all Excise Tax generated by Metro. (7.01.028(a)) This change increases that amount from \$1,865,160 to \$2,408,397 in FY 2005-06.