

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: February 2, 2006
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS**
3. **RECOGNITION OF TRIBAL CONSERVATION TEAM RESTORATION** Triplett
EFFORTS
4. **SIGNIFICANT ACHIEVEMENT AWARD FROM AMERICAN ZOO AND AQUARIUM ASSOCIATION FOR EAGLE CANYON EXHIBIT** Vecchio
5. **OUTSOURCED RETAIL OPERATIONS – SOME BENEFITS REALIZED; BETTER ZOO OVERSIGHT NEEDED** Dow
6. **EXPANSION AREA PLANNING COMMITTEE REPORT** Wagner
7. **CONSENT AGENDA**
- 7.1 Consideration of Minutes for the January 26, 2006 Metro Council Regular Meeting.
8. **ORDINANCES – FIRST READING**
- 8.1 **Ordinance No. 06-1101**, Amending Metro Code Chapter 5.01 to Modify Financial Assurance Requirements for Solid Waste Facility License Applications.
- 8.2 **Ordinance No. 06-1102**, Amending Metro Code Chapter 5.01 to Prohibit The Disposal of Source-Separated Recyclable Materials.
- 8.3 **Ordinance No. 06-1103**, Amending Metro Code Chapter 5.02 to Require all Persons Transporting Solid Waste To Disposal Sites or Solid Waste Facilities to be responsible for Payments of Regional System Fees and to Clarify How Loads should be reported for Payment of Regional System Fees.

- 8.4 **Ordinance No. 06-1104**, Amending Metro Code Chapter 5.05 to Prohibit False Statements Regarding the Origin of Waste From Within the Metro Region.
- 8.5 **Ordinance No. 06-1105**, Amending Metro Chapter 5.05 to Increase the Maximum Duration of Newly Issued Full-Term Non-System Licenses up to Three years, to Clarify the Timeframe for Acting on Applications for License Renewals and to Clarify How Certain Loads should be reported for Payment of Metro Fees and Taxes.
- 8.6 **Ordinance No. 06-1106**, Amending Metro Code Chapter 5.05 to Clarify the Non-System License Exemption for the Destruction of Certain Wastes in order to Assure Public Safety and the Public Good.
- 8.7 **Ordinance No. 06-1107**, Amending Metro Code Chapter 5.09 Regarding Illegal Disposal of Solid Waste.

9. ORDINANCES - SECOND READING

- 9.1 **Ordinance No. 06-1111**, For the Purpose of Amending the FY 2005-06 Budget and Appropriations Schedule to Support the New Look Work Program, Transferring \$53,000 From Contingency to Personal Services in the Planning Department of the General Fund; Adding One Full-Time Senior Planner; Converting a Limited Duration Position to Regular Status; and Declaring an Emergency. Bragdon
- 9.2 **Ordinance No. 06-1112**, Amending the Provisions of Metro Code Chapter 2.17 to Modify the Expiration Dates of Lobbyist Registrations and to Repeal References to State Government Standards and Practices Commission. Hosticka
- 9.3 **Ordinance No. 06-1098B**, Amending Metro Code Chapter 5.01 and 5.05 and the Regional Solid Waste Management Plan to Impose a Temporary Moratorium Until December 31, 2007, on Certain New Non-Putrescible, Mixed Solid Waste Material Recovery or Reload Facilities, and Certain Non-system Licenses; and Declaring an Emergency. Park

10. CHIEF OPERATING OFFICER COMMUNICATION

11. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for Feb. 2, 2006 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 2 p.m. Thursday, Feb. 2 (live)</p>	<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, Feb. 5 2 p.m. Monday, Feb. 6</p>
<p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, Feb. 6</p>	<p>Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, Feb. 4 11 p.m. Sunday, Feb. 5 6 a.m. Tuesday, Feb. 7 4 p.m. Wednesday, Feb. 8</p>
<p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

MINUTES OF THE METRO COUNCIL MEETING

Thursday, January 26, 2006
Metro Council Chamber

Councilors Present: Carl Hosticka (Deputy Council President), Susan McLain, Robert Liberty, Rex Burkholder, Rod Park, Brian Newman

Councilors Absent: David Bragdon (excused)

Deputy Council President Hosticka convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Henry Kane, 112077 SW Camdon Lane Beaverton OR 97008 said he had filed a public records request to provide Council with all of the information it needed to decide if the Hwy 217 toll road option was viable. He would be submitting an analysis to the Council to see all of the pros and cons of this decision. Deputy Council President Hosticka said this decision had been delayed until a later date. Councilor Liberty asked the Metro Attorney about tolling. Mr. Dan Cooper said Mr. Kane had raised this issue previously. The Attorney General had advised Metro that they could proceed. At this point he did not see a constitutional issue.

3. MCTV VIDEO AWARDS

Jim Desmond, Regional Parks and Greenspaces Department, said Metro had received awards from National Association of Telecommunication Advisors on Metro Minutes. He provided background on the partnership with MCTV. Wade Ferguson, MCTV, had suggested providing short videos to help promote Metro's mission. Over 240,000 households in the region had seen these videos. Mr. Desmond provided kudos to Mr. Ferguson for his efforts. Rob Brady, MCTV Chief Executive Officer, said they were thrilled to have this partnership. He spoke to each award, an honorable mention for Metro's recycling paint program, a third place award for the Metro Minute concerning a series on Solid Waste and first place award for Metro Minute on Beavers at the Smith and Bybee Lakes.

Councilors commented on the awards. The group provided an excerpt of the first place video.

4. FINANCIAL STATEMENT AUDIT

Alexis Dow, Metro Auditor, said she would be presenting the result of the Financial Statement, the Comprehensive Annual Financial Report (CAFR). She introduced Gary Homsley, Grant Thornton and Don Cox and Karla Lenox, Metro Financial and Administration Services (FAS) Department. She explained what was included in the CAFR. As Metro Auditor she was responsible for contracting out the audit. This year there was an audit committee for Metro. This was considered a standard of good government. She noted the members of the committee.

Don Cox, FAS Department, said they had received 13 years of recognition and awards for their clean audits. He summarized the CAFR. He noted next year's report would be slightly different.

Mr. Homsley said he was proud to serve as the independent audit for Metro. He talked about the CAFR and the specific reports. These reports were all issued with a clean opinion. He noted a formal management letter was not prepared this year. The few matters that needed to be addressed were provided to management verbally. Councilor McLain thanked Ms. Dow for allowing a member of the Council to be involved in the audit committee. Councilor Liberty said he would be interested in the audit committee's comments. Mr. Homsley said he felt the committee was a best practice for financial audits. He felt the members of the committee were well qualified. Councilor Liberty said there had been an effort to consolidate accounts and did this account for a clean audit? Mr. Homsley said the finance staff had done a good job in the past. He felt the consolidation of accounts made their job simpler but felt the people made the difference. Councilor Burkholder talked about the presentation of the budget. He appreciated the fact that the information was prepared in such a way that it was clear and understandable. He acknowledged the good work of the Metro staff. Deputy Council President Hosticka concurred with the comment.

5. CONSENT AGENDA

5.1 Consideration of minutes of the January 19, 2006 Regular Council Meetings.

Motion:	Councilor Burkholder moved to adopt the meeting minutes of the January 19, 2006 Regular Metro Council.
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Vote:	Councilors Burkholder, Liberty, Park, and Deputy Council President Hosticka voted in support of the motion. The vote was 4 aye/2 abstain, the motion passed with Councilors McLain and Newman abstaining from the vote.
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6. ORDINANCES - FIRST READING

6.1 **Ordinance No. 06-1112**, Amending the Provisions of Metro Code Chapter 2,17 to Modify the Expiration Dates of Lobbyist Registrations and to Repeal References to State Government Standards and Practices.

Deputy Council President Hosticka assigned Ordinance No. 06-1112 to Council.

7. ORDINANCES – SECOND READING

7.1 **Ordinance No. 06-1098A**, Amending Metro Code Chapter 5.01 and 5.05 and the Regional Solid Waste Management Plan to Impose a Temporary Moratorium Until December 31, 2007, on Certain New Non-Putrescible, Mixed Solid Waste Material Recovery or Reload Facilities, and Certain Non-system Licenses; and Declaring an Emergency.

Motion:	Councilor Park moved to adopt Ordinance No. 06-1098A.
Seconded:	Councilor McLain seconded the motion

Councilor Park introduced the ordinance and explained the temporary moratorium and the facilities effected. The ordinance would take effect immediately. He noted a chart (in the meeting record) that would show the capacity of the current system. He explained the difference between the original version and the "A" version.

Deputy Council President Hosticka opened a public hearing on Ordinance No. 06-1098A.

Glenn Zimmerman, Pacific Land Clearing, 4044 N Suttle Rd, Portland OR 97217 said he opposed certain language in the inclusion of the moratorium. He said they had already submitted their application and were currently under review. He requested that they not be included in the moratorium because their application was already in process.

Councilor Liberty asked about the outstanding application. Paul Garrahan, Metro Assistant Attorney, said staff was correct that they had received an application. This ordinance would prohibit the granting of the license to the facility. Councilor McLain said her understanding was that the staff usually had opportunity to have a dialogue. She asked about the timing. Mr. Garrahan explained staff's letter to the applicant.

Jack Botkin, Pacific Land Clearing, 4044 N Suttle Rd, Portland OR 97217 talked about the moratorium. They had been told initially that they would not be included in the moratorium.

Larry Fulcher, Weyerhaeuser Co, P.O. Box 188, Longview, WA said Weyerhaeuser had been evaluating a proposal for a dry waste materials recovery facility. Passage of this ordinance placed all activities out two years. He asked what happened if a proposal was very compelling? He felt placing a moratorium would impact stakeholders. Councilor Newman asked a clarifying question. Mr. Fulcher responded to his question.

Terrell Garrett, Green Way Recycling, Box 4483, Portland, OR 97208 said they had started their process by 2002. They chose to take an incremental approach. He provided a timeline of their process. He said they had a completed application as of January 20, 2006. They were already invested in this process. He said the subsequent Code changes should not effect their application. He said this moratorium took away consideration of application that was already in process. Councilor Park talked about their facility. Mr. Garrett acknowledged his summary of the facility.

Chris Garrett, Green Way Recycling, Box 4483, Portland, OR 97208 said she was here to answer questions.

Dan Obrist, Dan Obrist Recycling, 6431 SE Jenne Rd. Portland OR said he put in an application before November. Solid Waste and Recycling Department acknowledged they had received the application and let him know about the potential moratorium. He had done nothing further until he found out what Council was going to do. Councilor Liberty asked how much material recovery was he planning to do under this application. Mr. Obrist said he would be doing pretty much what he was currently doing. Councilor Newman clarified that he had a facility now. He wondered what his application was submitted for. Mr. Obrist responded to his question. Mike Hoglund, Solid Waste and Recycling Director, responded to the question about tonnage for all of the facilities. Councilor Park suggested Mr. Obrist explain his operation. Mr. Obrist responded to his question. Councilor Park asked where he got his demolition materials. Mr. Obrist said he got the materials primarily from houses and schools.

Dan Flannery, 2536 SE Elliott Gresham OR 97080 expressed concern about the moratorium. They had applied for a sorting license. He explained what the company wanted to do. He talked about the fairness issue. He felt those who had testified felt that 27% were a low number. He felt that those who had applications in now should have the right to move forward. They had invested a lot of time and money.

Councilor Park asked Mr. Bruce Walker, City of Portland Office of Sustainable Planning, to provide additional information. Mr. Walker talked about a clean materials recovery facility. There had been facilities that were not cleaned MRF operations. He said last month they had gotten together with Department of Environmental Quality (DEQ) and Metro to do a more coordinated job. He spoke to the benefits of this coordinated approach. Councilor Park asked him to address site issues with some of these facilities. Mr. Walker said some of the activities were done on open ground. They needed to make sure the operations were done in a proper way.

Deputy Council President Hosticka closed the public hearing.

Councilor Park said in talking with staff, the tonnage would not have that much effect. He was concerned about the proper siting of the facilities. He noted Mr. Walker's point was that the facilities were represented in one way but were not necessarily a clean MRF. He spoke to environmental issues. Councilor Burkholder said volume was not the issue. The reason for the moratorium was to try to have the industry not invest a lot of money at a time when Metro was looking at the whole system. They were trying to align the system and address the future of the solid waste system. He talked about the applications that were currently pending. His personal feeling was that he was open to working with these groups that had applications pending. He noted the risk if the applicants chose to go forward.

Councilor Liberty said it would be useful to hear about when they began the conversation about the moratorium. Councilor Park said he assumed they had closed the door in September 2005. Mr. Hogle said the staff and Chair of Solid Waste Advisory Committee (SWAC) began discussing this issue in October 2005. They had notified the applicants. He said the transfer station's moratorium was in the summer of 2004. Councilor Park asked when we moved the dry waste under the Chief Operating Officer's purview. Mr. Cooper said it was October 2003. Councilor Liberty asked about the four applications that were in some stage of review. Mr. Hogle said PLC 3 had a completed application. Greenway Recycling was talking to staff and they were waiting on a land use compatibility study from the City of Portland. Urban Vision Corp was in the same situation as Greenway Recycling. Councilor Liberty asked if there was an application completed before the first reading of the ordinance. Mr. Hogle said PLC3 had a completed application.

Councilor McLain talked about fairness. They were faced with a situation that was unusual. They had a system in place for over 20 years. They were now seeing a system that had different components. They were faced with policy decisions at a time where they would do the least damage to the system. She would support the "A" version to get through this discussion as soon as possible. She acknowledged the City of Portland and DEQ's request for time out to develop a more coordinated process. Councilor Park asked Mr. Garrahan to address the point of a non-system license outside the region. Mr. Garrahan said the Weyerhaeuser facility was a designated facility under the Metro Code. He explained the non-system license language in the proposed ordinance. He explained further the consideration of the Weyerhaeuser license. Councilor Newman said he would support an amendment to grant a license to four of the five facilities. He acknowledged Councilor Burkholder's comments about Metro's need to look at the whole system.

Motion to amend:	Councilor Newman moved to amend Ordinance No. 06-1098A to allow those who had submitted applications, as of this date, be reviewed.
Seconded:	Councilor Burkholder seconded the motion

Councilor Liberty said when you were applying for something, there was always risk that something would change. He would support consideration of applications that were completed before notice of the moratorium. He spoke to the testimony of the solid waste consultant. Deputy Council President Hosticka explained what the Council was trying to do. He asked Councilor Newman to clarify his idea of the amendment. Councilor Newman asked if the conceptual language provided was understood. Mr. Garrahan said yes he understood the intent of the motion. He said the motion would allow the COO to process all applications that had been submitted without regard to whether they were completed, effective today. Councilor Newman explained his amendment. This was not direction to the COO to approve the applications but allow them to be reviewed. Councilor Burkholder said the staff report did not include Greenway. Were there more application that had come in before today? Mr. Hogle said Mr. Roy Brower had been tracking the applications. Mr. Brower, Solid Waste and Recycling Department, said at the time the staff report was prepared Greenway had not submitted an application. Councilor McLain said there had been talk about a moratorium for long enough time. Do they want to signal to allow more people to invest when they didn't have an approved application? Councilor Liberty asked what was the first application submitted and when? Mr. Brower responded that the three listed in the staff report all came in during last fall.

Vote to amend:	Councilors Burkholder and Newman voted in support. Councilors McLain, Park, Liberty and Deputy Council President Hosticka voted against the motion. The vote was 2 aye/4 nay, the motion failed.
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Motion to amend:	Councilor Liberty moved to amend Ordinance No. 06-1098A to allow those who had submitted completed applications prior to the public notice of the first reading be allowed to be reviewed.
Seconded:	Councilor Burkholder seconded the motion

Vote to amend:	Councilors Park, Burkholder, Newman, Liberty and Deputy Council President Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Councilor McLain voting no.
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Deputy Council President Hosticka declared that this ordinance would be held over until next week for final consideration.

7.2 Ordinance No. 06-1099, Amending Metro Code Section 5.02.075 Regarding Waivers of Fees for Disposal of Solid Waste from the Metro Region.

Motion:	Councilor Liberty moved to adopt Ordinance No. 06-1099.
Seconded:	Councilor Burkholder seconded the motion

Councilor Liberty provided an overview of the ordinance (a copy of his talking points are included in the meeting record). He was proposing that they have an executive order drafted once they had had time for public comments about the program. He urged Council to remove this from the Code and place it in an executive order. He suggested once they heard from the public to then discuss the order in a work session.

Deputy Council President Hosticka opened a public hearing on Ordinance No. 06-1099. He noted email correspondence that had been received and placed in the record.

Kathy Ferguson, Cully Association of Neighbors, 4930 NE 73rd Portland OR 97218 said she received this notification yesterday. She was speaking as a citizen not as the chair. She talked about their efforts in collecting debris tonnage last year. She was concerned that if the COO were in charge of this program, it would eliminate opportunities for the public to comment about changes in the program. She hoped that public hearing would still be allowed. She urged consideration of public input.

Deputy Council President Hosticka closed the public hearing.

Councilor McLain talked about the history of the program as well as the benefits. She would be voting no because she felt this was a Council decision. She didn't understand why staff wanted to move it out of the Code. She thought it would be more appropriate to put this vote off until they had a discussion with the Chief Operating Officer (COO). Councilor Newman said he would be voting yes. Under the old structure there might have been a reason to put this in the Code. Now under the new structure where the COO worked for the Council, the Council was the boss. Second, he wasn't aware that other grant program language was in the Code such as Nature In Neighborhoods. He would be open to making sure they had communication standards when changes were being considered.

Councilor Burkholder asked Councilor Liberty about the staff report and the set of criteria. Was this legislative intent or suggestions? Councilor Liberty said his legislative intent was not expressed completely in the staff report. He clarified his intent. Councilor Burkholder said the series of bullets on the second page of the staff report did not bind the Council. He supported removal from the Code. He felt this was a budget discussion. Councilor Park asked for clarification on the ordinance. Councilor Liberty said this was before the Council now, he felt they ought to move quickly to clarify the program and the new criteria. Councilor McLain talked about the need to have an executive order before them to discuss. Jan O'Dell, Solid Waste and Recycling Department, responded to the "why now" question. They had been running over budget for the last couple of years. They had done their best to manage the criteria but the language in the Code was vague. She would like to have a discussion with the users of the program. She was seeking more tools to help manage this program. Mr. Hogle emphasized where they were in the last work session. They had asked last fiscal year to exceed to budget. They promised to come back with a proposal to keep this program within the budget. He said this was how the criteria in the staff report were developed. He felt they should hear from the public. They wanted to come up with a program that better fit the needs of today. Councilor McLain suggested setting this over until further

Motion:	Councilor McLain moved to table Ordinance No. 06-1099.
Seconded:	Councilor Liberty seconded the motion

Vote to table:	Councilors Park, McLain, Newman, Liberty and Deputy Council President Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Councilor Burkholder voting no.
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7.3 Ordinance No. 06-1109, For the Purpose of Amending Metro Code, Title X, Metro Regional Parks and Greenspaces, to adjust Park Use and Rental Fees.

Motion:	Councilor Burkholder moved to adopt Ordinance No. 06-1109.
Seconded:	Councilor Park seconded the motion

Councilor Burkholder introduced the ordinance and asked about lowered fees. Mr. Cooper responded to Councilor Burkholder’s question. Councilor Park talked about the amount that was being charged and keeping up with the costs of the facilities. He raised the issue of charging for the vehicle as well as the number of people in the vehicle.

Deputy Council President Hosticka opened a public hearing on Ordinance No. 06-1109. No one came forward. Deputy Council President Hosticka closed the public hearing.

Vote:

Councilors Park, Burkholder, McLain, Newman, Liberty and Deputy Council President Hosticka voted in support of the motion. The vote was 6 aye, the motion passed.

8. RESOLUTIONS

8.1 **Resolution No. 06-3655**, For the Purpose of consideration of Regional Travel Options (RTO) program work plans and funding sub-allocations for Fiscal Year 05-06 and 06-07.

Motion:	Councilor Newman moved to adopt Resolution No. 06-3655.
Seconded:	Councilor Park seconded the motion

Councilor Newman introduced the RTO program. Metro was the lead agency to coordinate this program. Pam Peck, Planning Department, provided a power point presentation on the proposed program (a copy of the presentation is included in the record). Councilor Burkholder was the liaison to the program. He said there was a kick off event next Wednesday at Washington Square Mall. He urged approval. Councilor Liberty said this was an important program and it was good that it was being moved in house. He supported the motion. He wanted to hear how this work fed into the Regional Transportation Plan (RTP). Ms. Peck said some of the pieces of this program would help the RTP update. Councilor Burkholder said this was great that we were regionalizing this program. The key piece behind this was, information was power. People needed to know about transportation options. Councilor Park acknowledged Ms. Peck’s efforts. He felt by bringing this in house supported accountability. It ensured that the money was being spent wisely. Ms. Peck further clarified some of the reporting requirements so they could understand all of the items that were being charged. She said the first report will be completed by the end of the fiscal year.

Vote:

Councilors Park, Burkholder, McLain, Newman, Liberty and Deputy Council President Hosticka voted in support of the motion. The vote was 6 aye, the motion passed.

8. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordon, COO, was not present.

9. COUNCILOR COMMUNICATION

Councilor Newman said they were preparing a bond measure for open spaces. He said they would be holding open houses. Information about the open houses were on the website.

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Councilor McLain reminded the Council about the Mayor Forum February 3rd at the Oregon Convention Center. She had also met with neighboring cities and talked about some of the issues that had been raised by the cities.

Councilor Liberty said he had a community meeting this evening at Multnomah Art Center. He noted what issues he would be covering.

10. ADJOURN

There being no further business to come before the Metro Council, Deputy Council President Hosticka adjourned the meeting at 4:50 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JANUARY 26, 2006

Item	Topic	Doc Date	Document Description	Doc. Number
5.1	Minutes	1/19/06	Metro Council Meeting Minutes of January 19, 2006	012606-01
6.1	Revised Ordinance No. 06-1112	1/26/06	Ordinance No. 06-1112, Amending the Provisions of Metro Code Chapter 2,17 to Modify the Expiration Dates of Lobbyist Registrations and to Repeal References to State Government Standards and Practices.	012606c-02
7.2	Email	1/26/06	To: Jan O'Dell, Solid Waste and Recycling Department From: Mike Masat, REACH Community Builders Program Re: Voucher program comments	012606c-03
7.2	Email and response	1/25/06	To: Jan O'Dell, Solid Waste and Recycling Department From: Kathy Fuerstenau, Cully Association of Neighbors Chair Re: Voucher program comments	012606c-04
7.2	Email and response	1/25/06	To: Jan O'Dell, Solid Waste and Recycling Department From: Joe Beeler, Cathedral Park Jazz Festival Re: Voucher program comments	012606c-05
8.1	Power Point Presentation	1/26/06	To: Metro Council From: Pam Peck, Planning Department Re: RTO Program	012606c-06
7.2	Supporting documents	1/26/06	To: Metro Council From: Jan O'Dell, Solid Waste Dept. Re: Voucher expenditures	012606c-07
2.0	Letter	1/26/06	To: Metro Council From: Henry Kane Re: Hwy 217 Toll Road Option	012606c-08
7.2	Talking Points	1/26/06	To: Metro Council From: Councilor Liberty Re: Talking Points for Ordinance No, 06-1099	012606c-09
7.1	"A" version	1/26/06	Ordinance No. 06-1098A , Amending Metro Code Chapter 5.01 and 5.05 and the Regional Solid Waste Management Plan to Impose a Temporary Moratorium Until December 31, 2007, on Certain New Non-Putrescible, Mixed Solid Waste Material Recovery or Reload Facilities, and Certain Non-system Licenses; and Declaring an Emergency.	012606c-10
7.1	Rate Impact and Tip Fee Data	1/26/06	To: Metro Council From: Councilor Park Re: Approximate Rate Impact and Components of Metro Tip Fee	012606c-11

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4.0	CAFR Presentation	1/26/06	To: Metro Council From: Don Cox, FAS Dept Re: CAFR Presentation and remarks	012606c-12
4.0	Metro CAFR	Year ended June 30, 2005	To: Metro Council From: Karla Lenox, FAS Dept. Re: Comprehensive Annual Financial Report Year Ended June 30, 2005	012606c-13
4.0	Grant Thornton's CAFR report	Year ended June 30, 2005	To: Metro Council From: Grant Thornton Re: Schedule of Expenditures of Federal Awards and Reports of Independent Certified Public Accountants	012606c-14

METRO
The Oregon Zoo

***Outsourced Retail Operations –
Some Benefits Realized;
Better Zoo Oversight Needed***

January 2006

A Report by the Office of the Auditor



METRO

PEOPLE PLACES
OPEN SPACES

Alexis Dow, CPA
Metro Auditor



METRO

OFFICE OF THE AUDITOR

January 24, 2006

To the Metro Council and Metro-area citizens:

In response to a Metro Council request and as part of the Metro Auditor's risk assessment, we undertook an audit of the Oregon Zoo's retail contract with Aramark. Just over two years have passed since the five-year contract commenced, providing an opportune time to assess activities under the agreement.

Our work focused on a comparison of performance against expected results, identification of any areas of non-compliance with contract terms, payments to the Zoo by the contractor, and a review of retail related internal controls. We found:

- Opportunities exist to enhance both profitability and community exposure for the Zoo from its retail operations. For example, approximately \$17,500 is available from the Aramark marketing reserve to pay for advertising and marketing services. These monies should be used as intended.
- Actual results have fallen short of benefits projected when the decision to outsource the Zoo retail operations was initially made. However, some benefits accrued, as net income from retail operations improved 16% and 19% for the first two years under the Aramark contract.
- There were no exceptions related to the monthly reporting of financial results or the retail internal controls maintained by Aramark and the Zoo business office; however, we did identify other areas that require follow-up by Zoo management.

The report provides further information and recommendations to optimize the results of activities occurring under the Aramark agreement. The last section of the report presents the written response of Metro Chief Operating Officer Michael Jordan to each recommendation. The Zoo has already made progress in addressing some of the needed improvements.

We appreciate the assistance provided us as we gathered the information necessary to prepare this report and recognize the many people actively committed to improving the efficiency and effectiveness of Metro and its programs.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alexis Dow'. The signature is fluid and cursive, written over a white background.

Alexis Dow, CPA
Metro Auditor

Auditor: The Rasmussen Group, LLC

***Outsourced Retail Operations –
Some Benefits Realized;
Better Zoo Oversight Needed***

January 2006

Report presented to Alexis Dow, Metro Auditor

January 24, 2006

Ms. Alexis Dow, CPA
Metro Auditor
600 NE Grand Avenue
Portland, Oregon 97232

Dear Ms. Dow:

The Rasmussen Group, LLC is pleased to submit this report on the Metro Zoo Retail Contract Project. This report summarizes the results of the contract compliance review, which included a review of payments to the Zoo by the contractor, a comparison of performance against expected results, a review of retail related internal controls, and review of compliance with contract terms. Our results are based on information obtained during interviews with Metro and Aramark personnel and by reading the contract, reviewing supporting documentation, observation, analysis, research and testing.

All findings have been discussed with the appropriate Zoo personnel. Improvements are currently underway as a result of the observations and recommendations.

We appreciate the cooperation we received from Metro and Aramark personnel during this review. The Zoo has made improvements in its retail operations since the inception of the contract and additional improvements are possible.

Thank you for the opportunity to support Metro on this important project.

Sincerely,

The Rasmussen Group, LLC



Karen Rasmussen
Principal

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Executive Summary

Today's environment requires both accountability and positive operating results in both business and government. These objectives are supported in this review of the Oregon Zoo's Retail Services Operations Agreement with Aramark. Just over two years have passed under the five-year term of this contract, providing an opportune time to assess activities under the agreement for potential improvement.

Significant opportunities exist to enhance both profitability and community exposure for the Zoo from its retail operations. New revenues would provide the Zoo with more funding to help make its strong regional and nationwide presence even greater. In a recent industry survey, Oregon Zoo per capita merchandise sales ranked in the bottom quartile. This clearly indicates a strong potential for growth. Zoo personnel should work with Aramark to achieve that potential. Approximately \$17,500 is available from the Aramark marketing reserve to pay for advertising and marketing services and should be used as intended. Also, internet sales have been minimal and could be strengthened by offering more merchandise on line and by better website development.

In planning for the potential outsourcing of retail services for the Zoo, projections were made to assess the probable financial benefit. Actual results have fallen short of those projections. However, net income from retail operations improved 16% and 19% for the first two years under the contract. In addition, the Zoo gained other benefits, such as reduced Metro cost allocation, higher quality merchandise, personnel responsibilities assumed by Aramark, and a more professional retail presence.

We reviewed compliance with contract terms and the monitoring of activities required by those terms to ensure effective operation. We found no exceptions related to the monthly reporting of financial results or the retail internal controls maintained by Aramark and the Zoo business office. However, we did identify other areas that were not in compliance, and we have made recommendations to help ensure these requirements are met. Our key recommendations beyond expanded advertising and internet sales efforts discussed above include:

- Monitoring and documenting contract performance and compliance with terms.
- Requiring Aramark to replace the Zoo's point-of-sale system.
- Improving the tracking and accounting for Aramark's required capital improvements.
- Surveying Zoo visitors on the customer shopping experience annually.
- Requiring Aramark to maintain the specified insurance and indemnity levels.

This report provides further information and recommendations to optimize the results of activities occurring under the Aramark agreement. The Zoo has already made progress to address some of the needed improvements.

Summary of Recommendations

1. **Update Aramark’s detail of capital improvements.** Aramark’s current detail of improvements made for the Zoo is not complete. We recommend requesting a complete list of all improvements made to Zoo premises by Aramark, with copies of supporting invoices provided. Aramark should update and provide this to Zoo management monthly for monitoring.
2. **Consider replacement of the point-of-sale system.** The contract provides for the replacement of the Zoo’s point-of-sale system by Aramark. The Zoo should consider requiring this replacement as specified in the contract. If the Zoo decides not to enforce this term, the contract should be amended to reflect the change.
3. **Expend available marketing funds to increase retail sales.** Aramark provides marketing and advertising funds in a reserve fund as required by contract. We recommend developing a plan to use these funds to increase the exposure, sales and profits of the Zoo’s retail operations.
4. **Educate and monitor the Zoo’s maintenance department.** The Zoo Deputy Director should review the contract requirements with the maintenance department, and monitor activities monthly, to ensure eligible services performed under contract are appropriately identified and billed to Aramark.
5. **Enhance the retail website.** The Zoo should work with Aramark to enhance the website, offering more merchandise and increasing exposure for the Zoo’s retail operations. Sales from this website should be separately reported and monitored monthly by management.
6. **Survey Zoo visitors on their shopping experience.** The Zoo visitor survey does not address the retail shopping experience and Aramark does not perform this survey as required by contract. Coordinate visitor survey activity with Aramark to obtain this visitor feedback and improve retail operations.
7. **Provide required insurance coverage.** The \$100,000 coverage for money, security and employee dishonesty is not separately indicated on the Certificate of Insurance. We recommend that Aramark provide this separate coverage and that the insurer specify the coverage on the Certificate of Insurance.
8. **Monitor contract terms.** The Zoo should implement monitoring practices over contract requirements. This will minimize risks of non-compliance and provide more opportunity to improve operating performance and optimize the benefits sought by the Zoo under the contract.

Project Background and Scope

Metro entered into a five year contract beginning August 15, 2003 with Aramark Sports and Entertainment Services, Inc. (Aramark). This contract granted Aramark the exclusive right to operate the Oregon Zoo's retail services. The contract encompassed all retail locations within the Zoo and the Zoo's website.

In order to assess that contract compliance is maintained between Metro and Aramark, the Rasmussen Group, LLC was engaged by the Metro Auditor to review the activities performed under the contract to determine compliance with key contract terms as well as evaluate operational effectiveness. The broad categories of these activities include:

- Commission payments due under the contract
- Analysis of performance results under the contract against expected results
- Evaluation of the Zoo's internal controls for the retail operations
- Monitoring and review of contract terms
- Existence of sound business practices over the retail operations and contracts.

Potential Risks

A primary goal in performing a review such as this is to ensure that the risks that could arise if processes are not monitored are properly identified and managed. The following potential risks were identified for focus in this project:

- **Payments under the contract** – Payments due under the contract may not be accurately calculated and paid. Improper payments could result in lost revenues or unrecorded liabilities.
- **Non-compliance with key contract terms** – Liabilities and obligations may be incurred, but not known. Rights and obligations of the contractor may not be recognized. These factors can result in lost revenues, increased costs, unmet or unrecorded obligations, and loss of reputation.
- **Retail internal controls** – Cash may not be properly collected and deposited. Cash may not be adequately safeguarded and recorded in the system. This could result in loss of assets through error, theft or improper collection practices.
- **Maintaining contract compliance** – Compliance with key contract terms may be met at certain points in time, but not maintained over the term of the contract if not properly monitored. This could result in lost revenues, increased costs, unmet obligations and loss of reputation.
- **Monitoring operating performance** – Operating performance under the contract may not be properly monitored, resulting in increased cost of operations that is not identified and managed. Poorly managed operations could result in dissatisfied customers and deterioration of profits.
- **Information systems** – Data may not be accurately and completely processed in the point-of-sale system. Appropriate controls may not be in place to safeguard the completeness and accuracy of recorded data. This could result in information being incorrectly processed in the system, increasing the likelihood of fraudulent activity.
- **Reputation risk** – Errors occurring in the retail operations, such as fraud, could become publicly known. Lack of sound business practice and operating procedure could result in customer dissatisfaction and lost business. Proactive identification of issues helps reduce the likelihood of reputation risk to Metro by limiting the likelihood of errors and proactively improving the control environment.

Objectives and Procedures

The review included the following key objectives and procedures:

Contract compliance:

- Reviewed contract requirements and evaluated Aramark and Zoo compliance with key contract terms, identifying any areas of non-compliance. These terms are further described in the observations and recommendations section of this report.
- Reviewed the accuracy and timeliness of payments made by Aramark to the Oregon Zoo.
- Assessed the proper inclusion in the payment calculations of commission and attendance guarantees.
- Reviewed contract requirements and evaluated Aramark and Zoo compliance with key contract terms. These terms are further described in the observations and recommendations section of this report.
- Evaluated contract monitoring practices

Operating performance:

- Reviewed the projected financial benefits expected under the contract.
- Compared the projected performance expectations to actual performance.

Retail internal controls:

- Assessed the control environment over retail cash collections and deposits.
- Performed sample testing of the cash collections to revenues reported.
- Assessed the efficiency and effectiveness of cash collection practices.
- Considered the role of the current point-of-sale system in maintaining compliance.

These objectives were accomplished through interviews of key personnel, review of the contract terms and supporting documentation, observation, analysis, research and testing.

Observations and Recommendations

Contract compliance The following key contract terms were reviewed for compliance between Metro and Aramark.

Payments to the Zoo Section 4 of the contract requires Aramark to pay a predetermined percentage of gross receipts, and defines the terms that affect the calculation of the payment. Section 5 of the contract defines the minimum guarantees that Aramark must pay the Zoo. Section 6 of the contract defines the minimum attendance guarantee threshold that the Zoo must maintain to avoid reduction of Aramark's minimum guarantee payments.

We found no errors in our review and recalculation of the payments made to the Zoo by Aramark for the period August 15, 2003 through June 30, 2005. Aramark and Zoo business office personnel have been thorough and accurate in calculating and reviewing these payments.

Improvements Section 7b of the contract requires Aramark to spend a minimum of \$150,000, but not more than \$185,000, to make substantial improvements to the premises over the five year term of the contract. Substantial improvements are defined as improvements that require capital expenditures of \$25,000 or more. As of October 31, 2004, a list provided by the Zoo indicated Aramark had spent \$165,579.43 on capital improvements to the Zoo retail operations. The Zoo provided some invoices to support the list, which included estimates.

Observation and recommendation:

There were estimates included on the list that did not agree to the invoice amounts provided. Although the actual invoices provided appeared to exceed the estimates, it is not possible to determine whether Aramark has complied with this term of the contract until a complete list is provided. We recommend the Zoo request a detailed list from Aramark of all improvements made and copies of invoices to support items listed to ensure this contract term has been met. In the future, Aramark should continue to record this information and provide it to Zoo management on a monthly basis.

Sublet of rights Section 8 of the contract forbids Aramark from subletting any portion of their managed operations under the contract. No assignment has occurred.

Operating covenants Section 9 of the contract specifies the operating covenants of the arrangement. Section 9j of the contract requires Aramark to install and maintain a computer point-of-sale system to process transactions and control inventory throughout the term of the agreement. Maintenance and any upgrade of both point-of-sale hardware and software systems are the responsibility of Aramark.

Observation and recommendation:

Aramark is currently using the Zoo's outdated point-of-sale system that was onsite at the commencement of the contract with Aramark. Aramark has not replaced this system. Aramark supplements this system with their own system to manage inventory and perform certain functions not provided by the Zoo's system. The Zoo's system does not provide the needed functionality currently available. For example, prior period's information is not retained on the system, and daily reports cannot be recreated for previous day's activities.

We discussed with Metro Information Technology division this contract requirement to replace the point-of-sale system, as this division initially suggested that Aramark replace it as a term of the contract. However, they currently state that the intent of the contract was met if Aramark would maintain proper operation of the point-of-sale system and produce needed reports. In other words, if the existing system could provide the needed information without causing errors and inefficiencies, the Zoo would not require Aramark to replace it as specified in the contract. The prior Zoo Deputy Director agreed with this assessment.

This written term of the contract requires Aramark to purchase and install a new point-of-sale system. This appears to be Metro's original intent in including the term in the contract. We recommend that the Zoo consider requiring the replacement of the point-of-sale system as specified in the contract. If the Zoo decides not to enforce this term of the contract, the contract should be amended to reflect the change.

Contractor staff and additional powers

Section 9k of the contract defines Aramark's responsibility for all employees associated with retail sales. Section 9l grants the Zoo significant authority over Aramark's sales policies and practices. No exceptions to contract terms were observed for sections 9k and 9l. Discussion with Zoo management indicated that Aramark has granted the Zoo the authority requested.

Taxes

Section 9n of the contract requires Aramark to pay all sales, business and occupational taxes, including any property taxes the Zoo may be assessed as a result of the contract. Aramark is not required to pay any real property taxes above \$25,000 for any contract year. No exceptions were observed regarding this contract term.

Marketing

Section 9o of the contract requires Aramark to provide a marketing reserve fund in an amount equal to one-half of one percent of annual gross receipts and these monies are to be expended on marketing and advertising. Aramark is required to provide the Zoo with a quarterly statement of the reserve fund balance and a summary of the reserve fund activity. This contract term allows Aramark to exclude gross receipts up to a maximum of 1% if Aramark determines at its sole

discretion to spend more than what is in the marketing reserve fund for marketing and advertising. This calculation is not yet applicable since Aramark has not expended more than the 1/2% of gross receipts required to be reserved.

Aramark provided \$17,580.08 for this reserve fund as required by contract through November 24, 2005, and had expended \$246, leaving an unexpended balance of \$17,334.08 available for marketing and advertising.

Observation and Recommendation:

Aramark has not expended the marketing and advertising funds as provided for in the contract. We recommend discussing a marketing and advertising plan with Aramark to expend the funds available under the contract. These funds will be very useful in increasing the Zoo's retail operation exposure, sales and profits.

Existing inventory Section 10 of the contract requires payment from Aramark to the Zoo for existing inventory. Inventory of \$85,384.46 was purchased by Aramark. We verified that this payment occurred in accordance with the contract.

Maintenance and repairs Aramark is required by Section 11d of the contract to reimburse the Zoo monthly for retail store maintenance and repair performed by Zoo personnel. We were provided with a list of maintenance and repairs billed by the Zoo to Aramark for the period September 2003 through October 2005. We were unable to determine whether the billings included all services provided. This list of services included:

- Phone expense - \$2,705
- Warehouse expense - \$5,360
- Wireless system installation - \$494
- Telephone equipment - \$796
- FedEx - \$134
- Slatwall costs - \$595
- Other miscellaneous expenses - \$2,541

Observation and recommendation:

The activities billed by the maintenance department are not reviewed and monitored by management to ensure all eligible services performed by the maintenance department are billed. We recommend that the Zoo Deputy Director review the contract requirement with the maintenance department, and monitor their activities monthly to ensure eligible services performed are appropriately identified and billed.

Website Section 13 requires Aramark to develop, host and operate the Zoo's online store. Aramark has developed a site that they host. A link is provided from the Zoo website to the Aramark retail site.

Observation and recommendation:

The Zoo retail website is provided as a link from the Zoo's website to the Aramark website where the merchandise is sold. The website carries a limited amount of merchandise compared to merchandise available at the store. Retail sales related to this website totaled \$905.68 from the inception of the contract in August 2003 through December 15, 2005. There is significant opportunity to increase Zoo retail sales through the website. Additionally, there is a significant opportunity to promote the store through the website to encourage increased sales on site. More goods could be offered on the website. We recommend working with Aramark to enhance the website by offering more merchandise on the website, and to increase exposure of the Zoo's retail operations. This on-line store should carry a much broader volume of merchandise, and be updated regularly. Sales from this website should be separately reported and monitored monthly by management.

Annual meeting Section 16 of the contract requires Aramark to report their success in meeting targeted gross receipts, capital improvements to the premises, and staffing issues. The contract requires an annual meeting between Aramark and the Zoo to be held in January of each year to discuss Aramark's operations on Zoo premises, including, but not limited to, the nature and type of merchandise being marketed. At least 90 days in advance of this annual meeting, the contract requires Aramark to develop a survey of the Zoo visitor shopping experience that will be administered by the Zoo. The results of the survey are to be discussed at the annual meeting. Based on our discussions with management and review of meeting documentation, these meetings are taking place and the discussion topics noted are discussed as required by the contract.

Observation and recommendation:

The current Zoo visitor survey circulated by the Zoo does not address the retail shopping experience, nor does Aramark perform such a survey as required by the contract. The Zoo should coordinate visitor survey activity with Aramark to ensure that visitor feedback is available to improve retail operations.

Financial statements Section 17 requires Aramark to provide the Zoo with Aramark's most recent statement of gross receipts for the Zoo retail operations, certified by Aramark's Chief Financial Officer. Aramark provided the certified financial statement for the fiscal year ended in 2004 as required by contract. The 2005 certified financial statement is not yet due.

Indemnity and insurance Section 19 of the contract requires Aramark to indemnify Metro at Aramark's expense for certain levels of insurance to be confirmed by a certificate of insurance. These requirements include \$2 million in general liability insurance per occurrence for bodily injury, property damage and automobile injury, and \$100,000 for money, security and employee dishonesty coverage.

Observation and recommendation:

The certificate of insurance issued by Willis of Pennsylvania, Inc. to Aramark on September 3, 2004 indicated general liability coverage of \$1 million, instead of the \$2 million required by contract for the coverage described above. A new certificate of insurance was issued September 29, 2005 in response to this review with the required coverage of \$2 million. The \$100,000 coverage for money, security and employee dishonesty is not separately indicated on either certificate of insurance. We recommend that the contractor provide this separate coverage and have the insurer specify the coverage on the certificate of insurance.

Contract monitoring by Zoo management

Ongoing monitoring of contract compliance and operating performance by management is very important to adequately manage and minimize risks to Metro and the Zoo. There are several terms in the contract between Metro and Aramark that should be reviewed quarterly or annually to ensure optimal contract performance is maintained. Additionally, the operating performance should be formally reviewed on a regular basis to ensure the Zoo's goals and objectives are being met. This process will increase awareness of performance and encourage redirection when needed to optimize the potential value of the agreement.

Observation and recommendation:

As disclosed in this report, there were several areas where compliance had not been monitored. We recommend implementing a program of contract monitoring over the Aramark contract process. A monitoring tool should be developed that specifies the frequency of review for each contract requirement needing monitoring. This will minimize risk of non-compliance and can significantly improve operating performance, thereby optimizing the benefits sought by the Zoo under the negotiated contract.

Operating performance

The budget impact of entering into the contract with Aramark was projected and presented as a key factor in deciding to outsource the Zoo retail operations. This budget impact, which was documented in a staff report dated April 17, 2003, included the following projections:

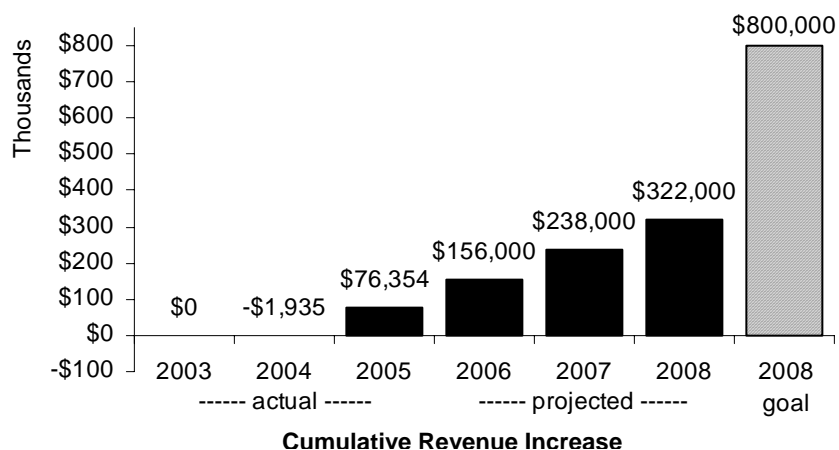
- **Additional revenues** of \$800,000 over the five years of the contract.
- **Direct cost reductions** for in-house service delivery of approximately \$1.2 million annually. These cost reductions include inventory, wages, benefits and PERS. Indirect cost savings included eliminating purchasing and accounting transactions, along with other related overhead charges.
- **An increase in per capita sales** of at least 50 cents compared to sales within two years of start-up.

The comparisons between the original projections outlined above, and the actual results through the year ended 6/30/05 are described below for each of the categories. The contract commenced August 15, 2003.

Additional revenues Actual revenues from retail operations and the actual and projected increases based on actual revenues from the first two years under the contract are as follows:

Original revenue increase projection	\$800,000
Revised revenue increase projection	
<u>Year Ended</u>	<u>Revenue Increase</u>
6/30/03	(N/A)
6/30/04	(\$1,935)
6/30/05	\$78,289
6/30/06 (projected)	\$80,000
6/30/07 (projected)	\$82,000
6/30/08 (projected)	\$84,000
Total revenue increase estimate ¹	<u>\$322,000</u>
Expected shortfall in revenue increase projection	<u>\$478,000</u>

Comparison of projected revenue increase vs. original goal



Observation and recommendation:

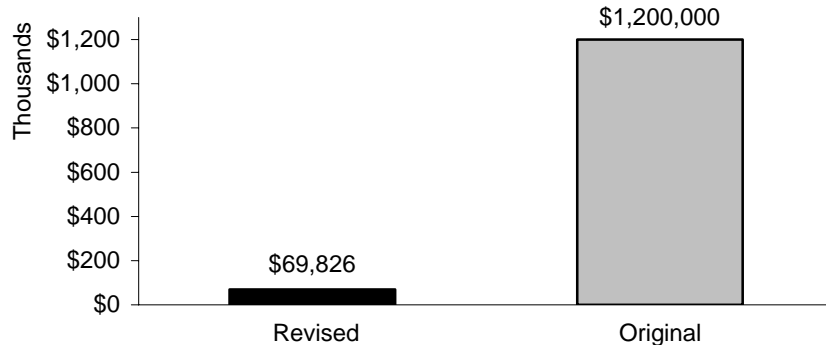
The projected increase in revenues over the life of the five year contract is \$322,000¹ compared to the original projected additional revenues of \$800,000. It does not appear that the original goal will be achieved. However, expending marketing reserve fund monies for increased advertising and marketing and expanding efforts to improve internet sales can help increase revenues during the remaining term of the contract.

¹ The revised projection is based on actual increases for the first two years, and estimates for the remaining three years based on current performance adjusted for inflation.

Direct cost reductions The original estimate of direct cost savings is \$1.2 million annually. The actual operating costs of retail operations and average annual savings since inception of the Aramark contract are displayed in the following chart and graph. The first year of operation under the Aramark contract was the fiscal year ended 6/30/04.

Revised estimate of annual cost savings	
Direct operating costs	
Pre-contract	
Year ended 6/30/03	\$1,149,176
Contract period	
Year ended 6/30/04	\$1,085,985
Year ended 6/30/05	\$1,145,514
Annual average direct operating costs	<u>\$1,115,750</u>
Average annual savings – direct operating costs	\$33,426
Average annual savings – overhead cost allocation	<u>\$36,400</u>
Revised estimate of operating cost savings ²	<u><u>\$69,826</u></u>
Original estimate of annual cost savings	<u><u>\$1,200,000</u></u>

Estimated annual operating cost savings



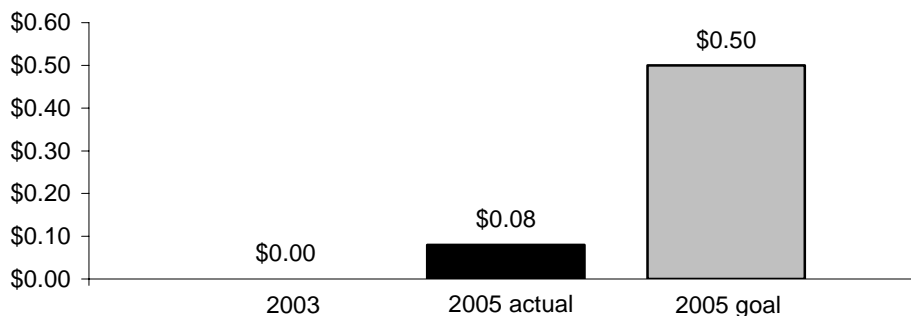
Observation:

The revised estimated annual cost savings of approximately \$69,800 since inception of the Aramark contract are \$1,130,200 short of the originally anticipated savings of \$1.2 million. Since annual operating costs have been less than \$1.2 million for all years reviewed, both pre- and post-contract, the \$1.2 million in annual savings would not be possible.

² The total reduction includes both direct costs and the reduction in charges from Metro’s Central Services cost allocation for personnel-related charges.

Per capita sales Per capita retail sales have increased to \$1.31 for the year ended 6/30/05 from \$1.23 for the year ended 6/30/03. This represents an actual per capita increase of \$.08 as compared to the \$.50 per capita increase projected within two years of start-up.

Comparison of actual vs. projected per capita sales increase

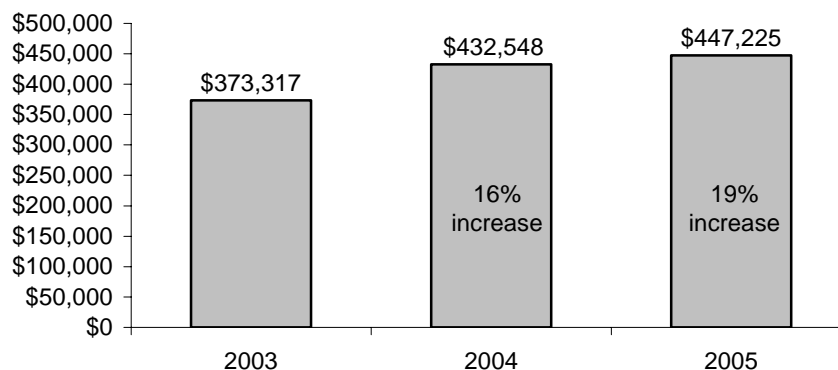


Observation:

The actual per capita retail sales of \$1.31 for the year ended 6/30/05 fall short of the projected \$1.73 within two years of start-up by \$.42.

Net Income from Retail Operations Net income from retail operations after excise tax has increased from \$373,317 for the year ended 6/30/03, to \$432,548 and \$447,225 for the years ended 6/30/04 and 6/30/05, respectively. This represents a 16% and 19% increase for each of those years respectively since contract inception. No net income projections were made prior to entering the agreement. This information is provided for comparative purposes.

Net income increase



Sales growth The 2004 State of the Industry Zoo and Aquarium report provides an annual survey of operational data conducted by the Zoo and Aquarium Association. This survey disclosed average per capita sales from merchandise of \$1.94 for Zoos and Aquariums. The Oregon Zoo, with reported 2004 per capita merchandise sales of \$1.20, ranked in the bottom quartile as the 7th lowest of the 31 respondents. This clearly indicates a strong potential for growth in retail sales.

Response to the Report

Metro Chief Operating Officer Michael Jordan

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 1

Update Aramark's detail of capital improvements. Aramark's current detail of improvements made for the Zoo is not complete. We recommend requesting a complete list of all improvements made to Zoo premises by Aramark, with copies of supporting invoices provided. Aramark should update and provide this to Zoo management monthly for monitoring.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

A master list detailing improvements, complete with copies of invoices, was requested of and supplied by Aramark.

A review of the information occurred to confirm the capital improvement expenditures.

Monthly auditing of the capital improvement expenses and review of invoices will occur.

Who will take action?

Carmen Hannold, Deputy Director, made the initial request and will audit the information monthly.

Terri Pelham, Retail Manager, will provide an updated detailed summary monthly and report on meeting project goals.

When will action be accomplished?

On January 4, 2006, Deputy Director reviewed a master list and copies of invoices for capital improvements which occurred from contract inception through October 2005. In excess of \$180,000 has been expended for improving the main retail shop and other retail points of sale.

Monthly, a review of the capital improvement expenses and proposed expenses will occur.

Annually, the master list will be revisited and evaluated against project goals.

Follow-up necessary to correct or prevent reoccurrence.

A monthly contract compliance checklist has been developed and with proper use will ensure accountability.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 2

Consider replacement of the point-of-sale system. The contract provides for the replacement of the Zoo's point-of-sale system by Aramark. The Zoo should consider requiring this replacement as specified in the contract. If the Zoo decides not to enforce this term, the contract should be amended to reflect the change.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

A thorough review as occurred regarding this recommendation. At the start of the contract, the intent of Point of Sale reference was to evaluate the back of the house reporting functions in regards to Retail Sales. Although the current POS is now eight years old, it daily provides the Zoo with the gross receipts, detailed sales department and cashier information. This has aided the Zoo in auditing receipts as we are able to compare Zoo master retail revenues against reported Aramark retail revenues. There are limitations to referencing old data on this system. However, it has not been necessary to access the past information because of the report structure in place, nor has it been a hindrance to Retail operations.

A greater need, replace the unreliable Retail DataWorks server, was identified along the way. A new computer system was purchased by Aramark to capture inventory information.

Aramark has indicated that if the Zoo proceeds with replacing the existing POS, conversations will occur for a joint purchase venture.

Contract will be amended to reflect new language regarding replacing the Point of Sale systems.

Who will take action?

Carmen Hannold, Deputy Director, will take the steps to amend the contract.

Patty Mueggler, Finance Manager, will be designated as the project lead, at which time the Point of Sale replacement project is warranted.

When will action be accomplished?

By June 2006, it is anticipated an amendment will be complete.

Follow-up necessary to correct or prevent reoccurrence.

By June 30, 2006, follow up with Metro contract department to ensure amendment completion.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 3

Expend available marketing funds to increase retail sales. Aramark provides marketing and advertising funds in a reserve fund as required by contract. We recommend developing a plan to use these funds to increase the exposure, sales and profits of the Zoo's retail operations.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

One half of one percent of Retail sales is placed in a fund for mutually agreed upon marketing opportunities. In order to establish a sufficient fund for advertising or printing, the monies have been allowed to accumulate.

Aramark presented a marketing plan at the first annual meeting. Many of the proposed opportunities focused attention at the new cart locations and new exhibits on Zoo grounds. At the upcoming annual meeting, Aramark will present an aggressive marketing and advertising plan aimed at increasing sales and profitability.

Monthly, to take advantage of the seasonality of the Zoo, marketing strategies and opportunities will be explored and pursued as appropriate. Strategies include ad placement, utilizing newsletters, sales, coupons, discounts and events to increase traffic.

Who will take action?

Carmen Hannold, Deputy Director and Terri Pelham, Retail Manager will agree to a plan. The Zoo's marketing manager, designers and select vendors to be solicited and involved as needed.

When will action be accomplished?

This past quarter, we tapped into the marketing resources for the first time and we were pleased with the increased customer traffic and sales in the gift shop.

In February 2006, the new plan in its entirety will be unveiled at the annual meeting and beginning March 2006, strategies will begin to be implemented.

Additionally, the Retail Manager and Deputy Director will address opportunities to increase sales and profits monthly.

Follow-up necessary to correct or prevent reoccurrence.

Marketing fund review and strategies have been included on the recently developed contract compliance checklist and will be addressed at every monthly meeting.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 4

Educate and monitor the Zoo's maintenance department. The Zoo Deputy Director should review the contract requirements with the maintenance department, and monitor activities monthly, to ensure eligible services performed under contract are appropriately identified and billed to Aramark.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Obtain a summary detailing expenses for the contract period.

A review of the information occurred to confirm the maintenance expenses.

A meeting with the involved parties, to review billable expenses, maintenance requests, and reporting expectations will occur.

Protocol will be established for informing Carmen Hannold, Deputy Director and Patty Mueggler, Finance Manager of any expense to be included in the monthly billing.

Monthly auditing of the maintenance and review of invoices will occur.

Who will take action?

Finance Manager provided the year to date expense summary and conducted an assessment of prior expenditures with involved maintenance workers and support staff. All expenses to date had been accounted for.

Finance Manager will provide a monthly summary of maintenance expenses.

Deputy Director will formalize the protocol surrounding maintenance expenses in agreement with the contract, convene a meeting, instruct workers on reporting information and distribute written policy.

Deputy Director and Terri Pelham, Retail Manager will review the summary information at the monthly meeting.

When will action be accomplished?

In February 2006, a meeting will be convened to review maintenance requests and billable expenses.

Monthly, the maintenance expense summary will be generated and reviewed. At the annual meeting, the year summary will be shared.

Follow-up necessary to correct or prevent reoccurrence.

A monthly contract compliance checklist has been developed and with proper use will ensure accountability.

Included on the maintenance summary are the approved, billable expenses to avoid over billing and ensure expected expenses are accounted for properly.

Annually review protocol with the maintenance department.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 5

Enhance the retail website. The Zoo should work with Aramark to enhance the website, offering more merchandise and increasing exposure for the Zoo's retail operations. Sales from this website should be separately reported and monitored monthly by management.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Survey other Zoo's for website content.

Enhance Oregon Zoo's Retail website to generate sales and include website in marketing and advertising plan.

Survey customers for web store interest and merchandize options.

Who will take action?

Terri Pelham, Retail Manager contacted other zoos and found a disappointing trend in zoo store sites. Most zoos found the sales not to be reflective of the effort to maintain the site. Additional surveys will be conducted.

The Retail Manager has begun to rework the existing items and displays on the website. In conjunction with Corporate Aramark, they will launch a new improved zoo store site and update the information regularly. Web savvy interns will be utilized to off-set the costs of maintaining and updating the website in addition to producing surveys and tabulating data.

Aramark will identify and report internet sales monthly and track the information for trending and seasonal sales.

Carmen Hannold, Deputy Director will review the sales information provided by Aramark.

When will action be accomplished?

In April 2006, the new improved web store will be launched. Adding products and improving the site will be ongoing.

Monthly, the Deputy Director will review the sales summary.

At the annual meeting a summary will be provided for the internet sales in addition to a recap of popular merchandise, marketing strategies that were successful and proposed activities for the coming year.

Follow-up necessary to correct or prevent reoccurrence.

Internet sales and strategies are included on the newly developed contract compliance checklist that will be utilized at the monthly manager meeting.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 6

Survey Zoo visitors on their shopping experience. The Zoo visitor survey does not address the retail shopping experience and Aramark does not perform this survey as required by contract. Coordinate visitor survey activity with Aramark to obtain this visitor feedback and improve retail operations.

Agree

Yes X

No _____ (specify reasons for disagreement)

What action will be taken (if any)?

Make available zoo customer comment cards at Retail Point of Sales.

Include Zoo store experience questions on quarterly visitor survey.

Aramark will conduct at least one formal visitor survey annually to capture visitor experience benchmark information.

Add customer surveys as reporting topic at team meetings.

Survey internet site users for shopping experience.

Who will take action?

Terri Pelham, Retail Manager obtained and placed comment cards at sites.

Carmen Hannold, Deputy Director will coordinate quarterly survey gathering and questions.

The Retail Manager, in coordination with the Deputy Director, will coordinate the formal visitor surveys. This information will be shared at the annual meeting.

Retail representative shares recent survey information at monthly team meetings

Retail Manager will coordinate the internet site surveys.

When will action be accomplished?

The placement of comment cards and reporting the findings at team meetings has already occurred and will continue.

Visitor surveys are conducted quarterly. Formal results will be reported annually.

Follow-up necessary to correct or prevent reoccurrence.

Marketing fund review and strategies have been included on the recently developed contract compliance checklist and will be addressed at every monthly meeting.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 7

Provide required insurance coverage. The \$100,000 coverage for money, security and employee dishonesty is not separately indicated on the Certificate of Insurance. We recommend that Aramark provide this separate coverage and that the insurer specify the coverage on the Certificate of Insurance.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Contact insurance provider for valid Certificate of Insurance.
Aramark secured a separate certificate as recommended.

Who will take action?

Terri Pelham, Retail Manager was instrumental in obtaining the specific valid Certificate of Insurance identifying the additional employee theft coverage.

When will action be accomplished?

Accomplished on January 13, 2006.

Follow-up necessary to correct or prevent reoccurrence.

At contract year end in October, and as noted on the monthly contract compliance checklist, obtain valid, up- to- date certificates.

Audit: Outsourced Zoo Retail Operations: Some Benefits Realized; Better Contract Management Needed

Date: January 2006

AUDIT RESPONSE

Recommendation 8

Monitor contract terms. The Zoo should implement monitoring practices over contract requirements. This will minimize risks of non-compliance and provide more opportunity to improve operating performance and optimize the benefits sought by the Zoo under the contract.

Agree

Yes

No (specify reasons for disagreement)

What action will be taken (if any)?

Locate financial reports, review for format, and audit monthly.

Formalize meetings with Carmen Hannold, Deputy Director and Terri Pelham, Retail Manager. Currently, they meet as needed. This will continue, however, they will meet formally to review financials, internet sales trends, expenses reported, marketing strategies, completion of projects and other management issues.

Develop contract compliance checklist to capture specific audit timelines, ensure review, verify current information and cover standard issues.

Conduct monthly and annual meetings.

Who will take action?

Deputy Director will schedule the meetings with Retail Manager. Other significant staff will be involved as appropriate.

When will action be accomplished?

The monthly meetings have been calendared for the coming year.

The checklist has been developed and will be revised as regular items need to be addressed.

Follow-up necessary to correct or prevent reoccurrence.

Diligence in utilizing the contract compliance checklist as designed will aid in contract compliance.



Metro Auditor Report Evaluation Form

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Name of Audit Report: Outsourced Retail Operations – Some Benefits Realized;
Better Zoo Oversight Needed, January 2006

Please rate the following elements of this report by checking the appropriate box.

	Too Little	Just Right	Too Much
Background Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Length of Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of Writing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential Impact	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Suggestions for our report format: _____

Suggestions for future studies: _____

Other comments, ideas, thoughts: _____

Name (optional): _____

Thanks for taking the time to help us.

Fax: 503.797.1831
Mail: Metro Auditor, 600 NE Grand Avenue, Portland, OR 97232-2736
Call: Alexis Dow, CPA, Metro Auditor, 503.797.1891
Email: dowa@metro.dst.or.us

Suggestion Hotline: 503.230.0600, MetroAuditor@metro.dst.or.us

Metro

People places • open spaces

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy and good transportation choices for people and businesses in our region. Voters have asked Metro to help with the challenges that cross those lines and affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to protecting open space, caring for parks, planning for the best use of land, managing garbage disposal and increasing recycling. Metro oversees world-class facilities such as the Oregon Zoo, which contributes to conservation and education, and the Oregon Convention Center, which benefits the region's economy.

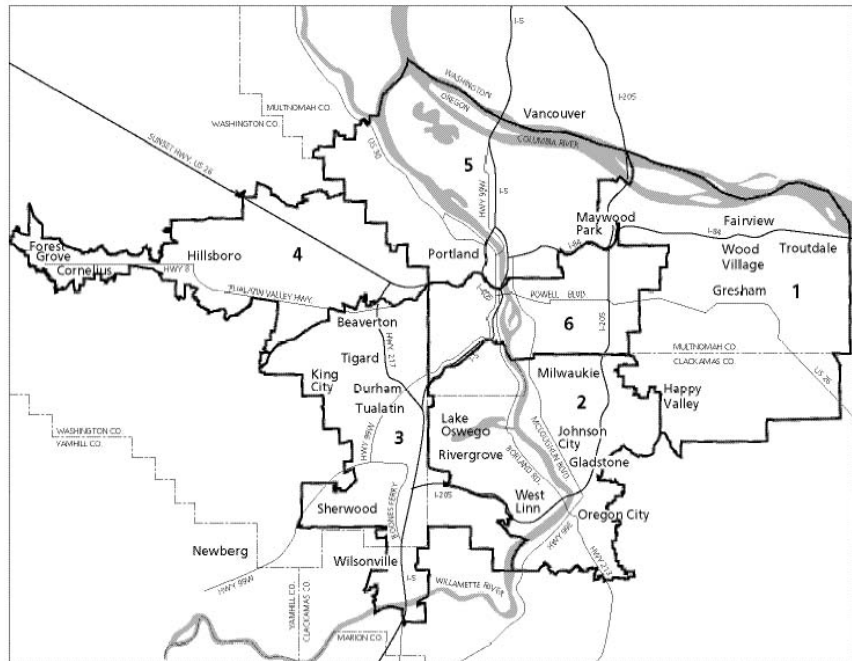
Your Metro representatives

Metro Council President – David Bragdon

Metro Councilors – Rod Park, District 1; Brian Newman, District 2; Carl Hosticka, deputy council president, District 3; Susan McLain, District 4; Rex Burkholder, District 5; Robert Liberty, District 6.

Auditor – Alexis Dow, CPA

Web site: www.metro-region.org



Council districts

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.01 TO) ORDINANCE NO. 06-1101
MODIFY FINANCIAL ASSURANCE)
REQUIREMENTS FOR SOLID WASTE FACILITY) Introduced by Michael Jordan,
LICENSE APPLICATIONS) Chief Operating Officer, with the
) concurrence of David Bragdon,
) Council President

WHEREAS, Metro Code Section 5.01.060(c)(4) requires applicants for solid waste facility licenses and franchises to provide proof of financial assurance for the cost of closure of their proposed facilities; and

WHEREAS, the Metro Code was amended in October, 2003, to provide the Chief Operating Officer with authority to approve and issue solid waste facility licenses, whereas such licenses had previously been approved by the Council; and

WHEREAS, some clarification of financial assurance requirements for solid waste facility license applicants is necessary to guide the Chief Operating Officer and prospective solid waste facility operators; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Section 5.01.010 is amended to add the following definition as a new subsection (e), and to renumber the remaining subsections as appropriate:

(e) “Closure” means the restoration of a Solid Waste Facility or a Disposal Site to its condition prior to the commencement of licensed or franchised Solid Waste activities at the site. Closure includes, but is not limited to, the removal of all accumulations of Solid Waste and Recyclable Materials from the site.

Metro Code Section 5.01.060 is amended as follows:

5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (3) A duplicate copy of any ~~e~~losure-Closure plan required to be submitted to DEQ, or if DEQ does not require a ~~e~~losure-Closure plan, a ~~e~~losure-Closure document describing ~~e~~losure-Closure protocol for the Solid Waste Facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of ~~e~~Closure, or if DEQ does not require such documents or does not intend to issue a permit to such facility, the applicant must demonstrate financial assurance or submit, ~~proof of a~~ proposal for providing financial assurance, prior to the commencement of Metro-regulated activities, for the costs of ~~e~~Closure of the facility. The proposal shall include an estimate of the cost to implement the Closure plan required in Section 5.01.060(c)(3). If an application is approved, the license or franchise shall require that financial assurance is in place prior to beginning any activities authorized by the license or franchise. However, regarding applications for licenses, if DEQ does not issue a permit or require such financial assurance documents, then the Chief Operating Officer may waive this requirement if the applicant provides written documentation demonstrating that the cost to implement the Closure plan required in Section 5.01.060(c)(3) will be less than \$10,000.
- (5) 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 Licensee or 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 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;
- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and
- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application, and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

(e) Notwithstanding any other provision in this Section, the Chief Operating Officer shall not accept for filing any application for authority to operate a Transfer Station during the period commencing August 19, 2004 and continuing until December 31, 2005.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1101 AMENDING METRO CODE CHAPTER 5.01 TO MODIFY FINANCIAL ASSURANCE REQUIREMENTS FOR SOLID WASTE FACILITY LICENSE APPLICATIONS

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

Presently, Metro Code Section 5.01.060(c)(4) requires an applicant for a solid waste facility license to provide proof of financial assurance for facility closure as part of the license application. However, typical forms of financial assurance may be impossible to secure for a facility that has not yet been granted operating authority and are not even necessary in many other cases. The proposed ordinance would amend the Code to require only a proposal for financial assurance at the time of application. Actual financial assurance would not be required until after a license is approved but prior to the commencement of regulated activities.

Additionally, the proposed ordinance authorizes the Chief Operating Officer (COO) to waive financial assurance for facilities that are unlikely to have closure costs in excess of \$10,000. Financial assurance is important for facilities of a type that can quickly accumulate large amounts of problematic wastes such as roofing waste that could potentially be abandoned, and for certain new start-up facilities. But not all facilities pose such a risk. Prior to October 2003, when all facility licenses were approved by the Council, the Council typically exercised its discretion to waive the financial assurance requirement for facilities judged to have a relatively low risk of substantial closure costs. Such facilities have included solid waste reloads, yard debris reloading and composting facilities, and material recovery facilities that process only non-putrescible waste and have a well established history of successful operation. Frequent facility inspections conducted by Metro staff assure that enforcement actions can be taken before excessive stockpiles are accumulated by such facilities.

In October 2003, the Code was amended to give the COO authority to approve or deny applications for solid waste facility licenses for the processing of non-putrescible waste. However, the amendment did not provide the COO any discretion to waive the financial assurance requirement for facilities that are unlikely to accumulate large quantities of problematic wastes. As a result, the COO must require financial assurance even for operations for which the Council would typically have waived the requirement. The proposed Code amendment clarifies the circumstances under which the COO may require, or waive, financial assurance.

The proposed ordinance also adds to the Code a definition of "closure" in order to lend greater clarity to the financial assurance requirements. The definition defines closure in relation to solid waste activities authorized by Metro and requires that the site be returned to its condition prior to the commencement of such activities. Under the new definition, closure would require the removal of all accumulations of solid waste and recyclable materials from the site, but would not automatically require correction or remediation of non-solid waste-related conditions on the site, such as environmental contamination caused by other activities on the site.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01

3. Anticipated Effects

The anticipated effect of the proposed ordinance is that financial assurance will not have to be secured by an applicant prior to the approval of the proposed license, financial assurance requirements will be more clear to applicants, and the COO will have the authority to waive financial assurance when the expected costs of closure are less than \$10,000.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1101.

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.01 TO) ORDINANCE NO. 06-1102
PROHIBIT THE DISPOSAL OF SOURCE-)
SEPARATED RECYCLABLE MATERIALS) Introduced by Michael Jordan,
) Chief Operating Officer, with the
) concurrence of David Bragdon,
) Council President

WHEREAS, Metro Code Chapter 5.01 governs the regulation of solid waste disposal sites and solid waste facilities within Metro; and

WHEREAS, Section 5.01.030 of the Metro Code describes prohibited activities, but does not contain a specific prohibition on the disposal of source-separated recyclable materials; and

WHEREAS, Oregon Revised Statute (ORS) 459A.080(3) and Oregon Administrative Rules (OAR) 340-090-0090(2) prohibit the disposal of source-separated recyclable materials; and

WHEREAS, it is appropriate that the Code prohibit solid waste facilities from disposing of source-separated recyclable materials, regardless of whether such facilities are licensed or franchised by Metro; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.01.030 is amended as follows:

5.01.030 Prohibited Activities

Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a Solid Waste Facility or Disposal Site within Metro without an appropriate License or Franchise from Metro.

(b) For any person or Solid Waste Facility to either (1) mix source separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of Source-Separated Recyclable Materials by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.

(bc) For a recipient of a License or Franchise to receive, process or dispose of any Solid Waste not authorized under the recipient's License or Franchise.

(ed) For any person to deliver or transport any Solid Waste to or to dispose of any Solid Waste at any place other than a Solid Waste Facility or Disposal Site that is operated by a holder of a License or Franchise or is exempt under Section 5.01.040 of this chapter.

(~~de~~) For a holder of a License or Franchise to fail to comply with the administrative procedures or fail to meet the performance standards adopted pursuant to Section 5.01.132 of this chapter.

(~~ef~~) For any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.

Section 2. Metro Code Section 5.01.040 is amended as follows:

5.01.040 Exemptions

(a) In furtherance of the purposes set forth in this chapter, except as provided in Sections 5.01.040(b) through (d), below, the Metro Council declares the provisions of this chapter shall not apply to:

- (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal Sites, Transfer Stations, or Solid Waste Facilities owned or operated by Metro.
- (3) Facilities that (A) exclusively receive Non-Putrescible Source-Separated Recyclable Materials, and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.
- (4) Facilities that exclusively receive, process, transfer or dispose of Inert Wastes.
- (5) The following operations, which do not constitute Yard Debris Facilities:
 - (A) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
 - (B) Residences, parks, community gardens and homeowner associations.
 - (C) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
 - (D) Operations or facilities that chip or grind wood wastes, unless:
 - (i) such chipped or ground wood wastes are processed for composting; or
 - (ii) such operations or facilities are otherwise regulated under Metro Code Section 5.01.045.
- (6) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process Solid Waste if Metro finds an emergency situation exists.
- (7) Any Reload facility that:

- (A) Accepts Solid Waste collected under the authority of a single franchise granted by a local government unit, or from multiple franchises so long as the area encompassed by the franchises is geographically contiguous; and
 - (B) Is owned or controlled by the same person granted franchise authority ascribed in subsection (A); and
 - (C) Delivers any Putrescible Waste accepted at the facility to a Transfer Station owned, operated, Licensed or Franchised by Metro; and
 - (D) Delivers all other Solid Waste accepted at the facility except Inert Wastes to a Metro Designated Facility authorized to accept said Solid Waste, or to another facility or Disposal Site under authority of a Metro Non-System License issued pursuant to Chapter 5.05.
- (8) Persons who own or operate a mobile facility that processes Petroleum Contaminated Soil at the site of origin and retains any treated Petroleum Contaminated Soil on the site of origin.

(b) Notwithstanding Section 5.01.040(a), all persons shall comply with Sections 5.01.030(a), (b), (d) and (f).

(bc) Notwithstanding Section 5.01.040(a)(2) of this chapter, Metro shall comply with Section 5.01.150 of this chapter.

(ed) Notwithstanding Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter, the provisions of ~~Section 5.01.030(b) and~~ Section 5.01.135 of this chapter shall apply to operations and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(8) of this chapter.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1102 AMENDING METRO CODE CHAPTER 5.01 TO PROHIBIT THE DISPOSAL OF SOURCE-SEPARATED RECYCLABLE MATERIALS

January 3, 2006

Prepared by: Bill Metzler

BACKGROUND

Description of the Ordinance

The proposed ordinance would amend Chapter 5.01 of the Metro Code to prohibit the disposal of source-separated recyclable materials. This prohibition would provide consistency between Metro Code and state laws that prohibit the disposal of source-separated recyclable materials. Oregon Revised Statute (ORS) 450A.080(3) provides: "A person may not mix source separated recyclable material with solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal." While Oregon Administrative Rule (OAR) 340-090-0090(2) states: "In addition to the provisions set forth in ORS 459A.080, no person shall dispose of source separated recyclable material which has been collected or received from the generator by any method other than reuse or recycling except for used oil and wood waste which may be collected and burned for energy recovery."

This issue has arisen as the result of Metro identifying problems with some solid waste facilities that have accepted source-separated recyclables and mixed them with solid waste that is destined for disposal. The proposed ordinance would make it clear that if a solid waste facility were to mix source-separated recyclable material with other solid waste that is intended for disposal, it would be a violation of the Metro Code. As a result, Metro's enforcement action would be more efficient and likely to result in less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.01

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to prohibit the disposal of source-separated recyclable material.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact, but could result in the more efficient and less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1102.

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.02)	ORDINANCE NO. 06-1103
TO REQUIRE ALL PERSONS TRANSPORTING)	
SOLID WASTE TO DISPOSAL SITES OR SOLID)	Introduced by Michael Jordan,
WASTE FACILITIES TO BE RESPONSIBLE)	Chief Operating Officer, with the
FOR PAYMENT OF REGIONAL SYSTEM FEES)	concurrence of David Bragdon,
AND TO CLARIFY HOW CERTAIN LOADS)	Council President
SHOULD BE REPORTED FOR PAYMENT OF)	
REGIONAL SYSTEM FEES)	

WHEREAS, Metro Code Section 5.02.045 provides that solid waste system facility operators shall collect and pay Regional System Fees for the disposal of solid waste generated, collected, or disposed of within Metro boundaries; and

WHEREAS, Metro has identified solid waste haulers delivering waste to out-of-region disposal sites and telling the operators of those facilities that the waste originated outside the region, and thereby fraudulently escaping payment of Metro Regional System Fees and Excise Taxes; and

WHEREAS, the effective enforcement of the payment of Metro fees requires that solid waste haulers or other persons transporting solid waste generated, originating, or collected from inside the Metro region to Designated Facilities be held responsible for payment of fees when such obligation has not been satisfied by payment of those fees to Designated Facility operators; and

WHEREAS, loads from the same vehicle or container that consist of waste generated outside the Metro boundary mixed with waste generated from inside the Metro boundary shall be reported as generated from inside the Metro boundary and assessed Metro System Fees on the entire load, unless the licensee can provide documentation regarding the amounts in the vehicle or container or unless Metro has agreed in writing to another method of reporting; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. The following definition of “Designated Facility” shall be added to Metro Code Section 5.02.015, the other definitions in that section shall be renumbered accordingly, and all other references to such definitions in this Code shall be revised accordingly:

“Designated Facility” shall have the meaning assigned thereto in Metro Code Section 5.05.010.

Section 2. Metro Code Section 5.02.045 shall be amended as follows:

5.02.045 Regional System Fees

(a) The Regional System Fee shall be \$14.54 per ton of solid waste, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated, or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that

the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(ac) Regional System Fee: Solid waste system facility Designated Facility operators shall collect and pay to Metro ~~a the~~ Regional System Fee ~~of \$14.54 per ton~~ for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(d) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

~~(be) Metro Facility Fee: Metro shall collect a Metro Facility Fee of \$1.10 per ton for all solid waste delivered to Metro Central Station or Metro South Station~~

(ee) System fees described in ~~paragraph this Section 5.02.045(a)~~ shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 3. Metro Code Section 5.02.055 shall be amended as follows:

5.02.055 Remittance to Metro of Fees and Other Charges by Franchisees and Other designated Facilities

(a) Fees and charges owed to Metro by any person pursuant to this Chapter shall constitute a debt owed to Metro and such debt shall be extinguished only by payment of such fees and charges to Metro as provided in this section. Franchisees and other operators of Designated Facilities designated to receive waste under Metro Code Section 5.05.030 shall remit fees and charges other than excise taxes to Metro as specified in this section. In addition, waste haulers and other persons liable for the payment of user fees as provided in Metro Code Section 5.02.045(b) shall remit fees and charges other than excise taxes to Metro as specified in this section.

(b) Fees shall accrue on a monthly basis and shall be remitted to Metro by the 15th day of the month for waste disposed of in the preceding month. Fees and other charges will be delinquent if not received by Metro on or before the due date, either by personal delivery to the Metro Department of Administrative Services during business hours or, if delivered by mail, by receipt in Metro's mail room on or before 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.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1103 AMENDING METRO CODE CHAPTER 5.02 TO REQUIRE ALL PERSONS TRANSPORTING SOLID WASTE TO DISPOSAL SITES OR SOLID WASTE FACILITIES TO BE RESPONSIBLE FOR PAYMENT OF REGIONAL SYSTEM FEES, AND TO CLARIFY HOW CERTAIN LOADS SHOULD BE REPORTED FOR PAYMENT OF REGIONAL SYSTEM FEES

January 3, 2006

Prepared by: Bill Metzler

BACKGROUND

Description of the Ordinance

Presently, Metro Code Section 5.02.045 provides that solid waste system facility operators shall collect and pay Regional System Fees for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries. The purpose of this Ordinance is to ensure that all persons transporting solid waste to disposal sites or solid waste facilities be responsible for payment of applicable Metro System Fees.

This issue has arisen as the result of Metro identifying solid waste haulers delivering waste generated within the boundary of Metro to out-of-region disposal sites with which Metro has Designated Facility Agreements and telling the operators of those facilities that the waste originated outside of the region. Such haulers thereby fraudulently escape paying Metro Regional System Fees and Excise Taxes.

Unlike the current provisions for collecting System Fees in Chapter 5.02, the Code provision for the collection of Excise taxes in Chapter 7.01 makes it clear that users of solid waste system facilities are responsible for paying the Metro Excise tax. In order to collect the foregone fees and taxes in the solid waste fraud or flow control cases described above, Metro has pursued them as violations of Chapter 7.01 (failure to pay Excise taxes) and collected the foregone Regional System Fees by imposing a monetary penalty large enough to compensate Metro for its losses and deter further such abuses.

The proposed amendments to Chapter 5.02 of the Code will make it clear that a waste hauler or other person transporting solid waste that was generated, originated or collected from inside the Metro region can be held responsible for payment of Metro System Fees for the disposal of that waste- in the same way that Chapter 7.01 of the Metro Code does for Excise taxes. Metro could then pursue enforcement against haulers that fraudulently claimed that their waste did not originate within the region for both payment of Regional System Fees and Excise taxes. The proposed changes also stipulate that loads consisting of a mixture of waste generated from both in-region and out-of-region locations must be claimed as in-region in their entirety for purposes of paying the Regional System Fee. This would make such enforcement proceedings significantly more "straight-forward" and easy to explain to a hearings officer, could make it easier to work out negotiated settlements of such violations, and could also make it easier to pursue criminal theft charges against such actions that were sufficiently egregious and repetitive to warrant such an action.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapters 5.01 and 5.02.

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to ensure that users of solid waste system facilities are responsible for payment of a Regional System Fee.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact, but could well result in the more efficient and less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 05-1103.

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.05 TO) ORDINANCE NO. 06-1104
PROHIBIT FALSE STATEMENTS REGARDING)
THE ORIGIN OF WASTE FROM WITHIN THE) Introduced by Michael Jordan,
METRO REGION) Chief Operating Officer, with the
) concurrence of David Bragdon,
) Council President

WHEREAS, the collection of Metro solid waste fees and taxes at certain designated solid waste disposal facilities is dependent upon self-reporting by customers regarding the point of generation of the solid waste they deliver for disposal; and

WHEREAS, some disposal facility customers have been found to falsely state their waste is generated from outside the Metro region in order to escape the payment of appropriate Metro fees and taxes; and

WHEREAS, effective enforcement of the payment of Metro fees and taxes requires that customers be prohibited from making such false statements; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 5.05.025 is amended as follows:

5.05.025 Prohibited Activities

(a) Except as otherwise provided in this chapter it shall be unlawful for any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within ~~Metro~~the District, any solid waste facility or disposal site without an appropriate license from Metro.

(b) It shall be unlawful for any solid waste generator, hauler, contractor, or other person to state falsely, or to direct another person to state falsely, to the operator of a System facility that solid waste delivered to the facility for disposal was generated outside the District when, in fact, such solid waste was generated within the District. A solid waste generator, hauler, or contractor shall be deemed to have directed another person to make false statements regarding the origin of solid waste under this section if the solid waste generator, hauler, or contractor knew or should have known that the person that transported the solid waste to the System facility would state falsely to the operator of a System facility that the solid waste delivered to the facility for disposal or other processing was generated outside the District when, in fact, such solid waste was generated within the District.

2. Metro Code Section 5.05.070 is amended as follows:

5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

(a) Any waste hauler or person who violates or fails to comply with any provision of this chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or required

use order shall be subject to the fines and penalties set forth in this section, which fines and penalties shall be assessed by the Chief Operating Officer.

- (1) A fine in the amount of not to exceed \$500 for each violation; and
- (2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this chapter as a result of such violation or failure to comply have been paid in full.

(b) In addition to the foregoing fines and penalties:

- (1) Any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; ~~and~~

- (2) Any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within Metro to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility shall be required to pay to Metro a fine in an amount equal to the ~~\$500 non-system license issuance fee~~, application fee that would have otherwise been required to authorize the waste disposed, plus an amount equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste generated within Metro transported, recycled, disposed of or otherwise processed to or at any non-system facility; ~~and~~ and

- (3) Any waste hauler or person who violates Metro Code section 5.05.025(b) by falsely stating the origin of waste transported to a System facility shall be required to pay to Metro a fine in an amount equal to the regional system fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported to such System facility, plus the excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the District transported to such System facility.

(c) If in the judgment of the Chief Operating Officer such action is warranted, Metro shall commence an appropriate action in a state court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or required use order.

(d) A required use order may be enforced by authorized gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a required

use order and is attempting to deliver waste to a facility not specified in the order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this section.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

BM:bjl
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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1104 AMENDING METRO CODE CHAPTER 5.05 TO PROHIBIT FALSE STATEMENTS REGARDING THE ORIGIN OF WASTE FROM WITHIN THE METRO REGION

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

Presently, Chapter 5.05 of the Metro Code relies on the collection of Metro solid waste fees and taxes at certain designated solid waste disposal facilities through self-reporting by customers regarding the point of generation of the solid waste delivered for disposal.

Through Metro solid waste investigations it has been discovered that some disposal facility customers have been found to falsely state that their waste is generated outside the Metro region in order to avoid the payment of appropriate Metro fees and taxes.

The purpose of this Ordinance is to enable Metro to effectively enforce the payment of fees and taxes owed to Metro, by prohibiting customers from making false statements about the origin of solid waste generated in the Metro region. This would make enforcement proceedings significantly more straightforward and easy to explain to a hearings officer, could make it easier to work out negotiated settlements of such violations, and could also make it easier to pursue criminal charges against such violations that were significantly egregious and repetitive to warrant such an action. The proposed changes also include an adjustment to the fines and penalties section in order to make recovery of non-system license ("NSL") fees consistent with the current NSL fee schedule.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.05.

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to prohibit false statements regarding the origin of solid waste generated within the Metro region.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact, but could result in the more efficient and less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1104.

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.05 TO)
INCREASE THE MAXIMUM DURATION OF) ORDINANCE NO. 06-1105
NEWLY ISSUED FULL-TERM NON-SYSTEM)
LICENSES UP TO THREE YEARS TO CLARIFY)
THE TIMEFRAME FOR ACTING ON) Introduced by Michael Jordan,
APPLICATIONS FOR LICENSE RENEWALS AND) Chief Operating Officer, with the
TO CLARIFY HOW CERTAIN LOADS SHOULD BE) concurrence of David Bragdon,
REPORTED FOR PAYMENT OF METRO FEES) Council President
AND TAXES)

WHEREAS, the Metro Code presently stipulates that the maximum term for non-system licenses (NSL) shall be two years; and

WHEREAS, a term of two years from the approval date usually puts the commencement and expiration dates of NSLs out of sync with calendar years and fiscal years; and

WHEREAS, effective administration requires the terms of non-system licenses to correspond with facility caps and Metro contractual obligations, which are either on a calendar year or a fiscal year basis; and

WHEREAS, the decision timeframe for replacement applications for existing non-system licenses is not specified in Metro Code Section 5.05.035(c); and

WHEREAS, an application to replace an existing non-system license could be filed well in advance of its actual expiration date by a licensee; and

WHEREAS, the COO or Council should not be compelled to make a decision on an application for a replacement non-system license when it is submitted significantly in advance of the expiration date of the existing non-system license; and

WHEREAS, the 60-day timeframe for the COO to make a decision on a replacement non-system license for non-putrescible solid waste should be no earlier than 60 days prior to the expiration date of the existing license; and

WHEREAS, the 120-day timeframe for Council to make a decision on a replacement non-system license for putrescible solid waste should be no earlier than 120-days prior to the expiration date of the existing license; and

WHEREAS, loads from the same vehicle or container that consist of waste generated outside the Metro boundary mixed with waste generated from inside the Metro boundary shall be reported as generated from inside the Metro boundary and assessed Metro fees and taxes on the entire load, unless the licensee can provide documentation regarding the amounts in the vehicle or container or unless Metro has agreed in writing to another method of reporting; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Section 5.05.035 is amended as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).
- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determination Whether to Issue Non-System License. ~~Within 60 days after receipt of a completed application for a non-system license for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. After receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue the non-system license. If the Chief Operating Officer recommends that the non-system license be granted, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license. Within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required in connection therewith, the Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination. In making such determination, t~~The Chief

Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to ~~such determination~~ determine whether or not to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

(d) Timetables To Determine Whether to Issue a Non-System License.

(1) Non-system licenses for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste.

(A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

(B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the

expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.

(2) Non-system licenses for Putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for Putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license.

(A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

(B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.

(3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license as deemed necessary or appropriate under the circumstances.

(~~e~~) Issuance of Non-System License; Contents. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;

(5) The expiration date of the non-system license, which date shall be not more than: ~~120 days from the date of issuance for limited duration non-system licenses, and two years from the date of issuance for all other non-system licenses; and~~

(A) 120 days from the date of issuance for a limited-duration non-system license;

(B) Three years from the date of issuance for a new full-term license; and

(C) Two years from the date of issuance of a renewed full-term non-system license.

(6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.035(c).

(ef) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

(1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;

(2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and

(3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the load in its entirety shall be reported to Metro by the non-system licensee as having been generated within the Metro boundary and the Regional System Fee and Excise Tax shall be paid on the entire load unless the licensee provides Metro with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

(fg) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements

set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1105 AMENDING METRO CODE CHAPTER 5.05 TO INCREASE THE MAXIMUM DURATION OF NEWLY ISSUED FULL-TERM NON-SYSTEM LICENSES UP TO THREE YEARS, TO CLARIFY THE TIMEFRAME FOR ACTING ON APPLICATIONS FOR LICENSE RENEWALS, AND TO CLARIFY HOW CERTAIN LOADS SHOULD BE REPORTED FOR PAYMENT OF METRO FEES AND TAXES

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

Presently, Chapter 5.05 of the Metro Code stipulates a maximum term for non-system licenses (NSL) of two years from the approval date. Since there is no reason for the submission or approval of NSL applications to occur at any particular time of year, when an NSL is issued for a full two-year term, its commencement and expiration dates are nearly always out of sync with calendar years and fiscal years. This has made effective administration of NSLs difficult as such licenses generally include conditions relating to facility caps and Metro contractual obligations that are either on a calendar year or a fiscal year basis. For example, NSLs authorizing delivery of putrescible waste to non-Waste Management landfills impact Metro's obligations under its disposal contract and should all be on a calendar-year basis in order to better monitor and control the flow of such waste. The purpose of this ordinance is to enable staff to extend the term of an NSL when it is first issued as far beyond two years as necessary to set its expiration date to correspond to the end of the next fiscal year or calendar year, as appropriate to the license conditions. The maximum term for a new NSL would be three years. Thereafter, the maximum term for a renewal would be two years.

In addition, the COO and Metro Council decision timeframe provisions of Section 5.05.035 (c) are amended to make two clarifying changes. First, the new language makes it clear that a new non-system license application will be processed within either 60-days (for a COO decision on non-putrescible wastes) or 120 days (for a Council decision on putrescible wastes). Second, the new language provides that renewal of non-system license applications for non-putrescible waste must be submitted at least 60 days before the existing license expires, renewal of putrescible waste license applications must be submitted at least 120 days before the existing license expires, and that the COO (for non-putrescible waste licenses) or Council (for putrescible waste licenses) is not obligated to make a determination earlier than the expiration date of the existing license

The proposed changes also stipulate when solid waste generated from inside the Metro region is mixed in the same container with waste generated outside the Metro region, the entire load must be reported to Metro by the license holder as having been generated inside the Metro boundary. The Regional System Fee and Excise Tax must be paid on the entire load unless the licensee can provide documentation about the amount of solid waste in the container that was generated inside the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.05

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to allow all NSLs to have terms that correspond to either a fiscal year or a calendar year.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1105.

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BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.05 TO) ORDINANCE NO. 06-1106
CLARIFY THE NON-SYSTEM LICENSE)
EXEMPTION FOR THE DESTRUCTION OF) Introduced by Michael Jordan, Chief
CERTAIN WASTES IN ORDER TO ASSURE) Operating Officer, with the concurrence
PUBLIC SAFETY AND THE PUBLIC GOOD) of David Bragdon, Council President

WHEREAS, Metro Code Section 5.05.027(b) presently provides a non-system license exemption for the transport of certain types of solid waste such as: “contraband, postage stamps, expired pharmaceuticals and certain records”; and

WHEREAS the purpose of the exemption is to protect the public interest by ensuring the timely and efficient destruction (most commonly by incineration at the Covanta Waste-to-Energy facility located in Brooks, Oregon) of certain sensitive documents and materials to avoid an unduly burdensome requirement on public agencies that destroy small amounts of those materials on an infrequent basis; and

WHEREAS, Metro has received requests from private businesses wanting to take advantage of the existing exemption to avoid the non-system license requirements of Chapter 5.05; and

WHEREAS, the exemption was not intended to be so expansive as to apply to larger waste streams that are destroyed for the protection of a business’ proprietary information or to protect the privacy of its customers; and

WHEREAS, the Chief Operating Officer recommends approval of this Ordinance; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Section 5.05.027 is amended as follows:

5.05.027 Exemptions

(a) A license is not required of any waste hauler or other person to transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of solid waste generated within Metro, a designated facility of the system that is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility.

(b) A license is not required for a government agency to transport solid wastes to the Covanta Waste-to-Energy facility located in Brooks, Oregon, a solid waste facility or disposal site for the primary purpose of destroying such wastes in order to assure public safety or for the public good. Solid wastes exempted under this subsection include, including but are not limited to, contraband, postage stamps, expired pharmaceuticals and lottery tickets.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary
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Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1106 AMENDING METRO CODE CHAPTER 5.05 TO CLARIFY THE NON-SYSTEM LICENSE EXEMPTION FOR THE DESTRUCTION OF CERTAIN WASTES IN ORDER TO ASSURE PUBLIC SAFETY AND THE PUBLIC GOOD

January 3, 2006

Prepared by: Bill Metzler

BACKGROUND

Description of the Ordinance

Section 5.05.027(b) of the Metro Code provides that a non-system license “is not required to transport solid wastes to a solid waste facility or disposal site for the primary purpose of destroying such wastes, including but not limited to contraband, postage stamps, expired pharmaceuticals, and certain records.”

This non-system license exemption was added to the Metro Code in 2001 after it was discovered that the Covanta Waste-to-Energy Facility located in Brooks, Oregon was accepting small amounts of the items listed in the exemption from government agencies in the Metro region. These items were delivered infrequently and most often in amounts measured in pounds rather than tons. Metro determined that the incineration of such items was in the public interest and that it would be unduly burdensome to expect all such agencies to obtain non-system licenses to destroy such small amounts of material so infrequently.

The intent of the exemption was to facilitate the destruction (incineration) of a few very specialized waste streams that were small volumes, infrequently generated by government entities, and clearly in the public interest to expedite such destruction. Metro has received requests from businesses wanting to take advantage of the exemption as it is currently worded, and thereby escape the non-system license requirements of Chapter 5.05, in order to destroy documents for the protection of a business' proprietary information or to protect the privacy of its customers. Staff does not believe that this exemption was intended to be so expansive as to cover such larger waste streams.

The purpose of this Ordinance is to clarify the intent of the Code provisions for this very specific and limited exemption.

ANALYSIS / INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.05.

3. Anticipated Effects

The anticipated effect of the proposed ordinance is to clarify the intent of the Chapter 5.05 Code provisions for this very specific and limited non-system license exemption.

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact, but could result in the more efficient and less costly prosecution of enforcement actions and the recovery of additional Regional System Fees and Excise Taxes.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1106.

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.09) ORDINANCE NO. 06-1107
REGARDING ILLEGAL DISPOSAL OF SOLID)
WASTE) Introduced by Michael Jordan,
) Chief Operating Officer with the
) concurrence of Council President
) David Bragdon

WHEREAS, Metro Code Chapter 5.09 has not been updated since it was originally adopted by the Council in 1994; and

WHEREAS, the chapter presently requires updating in light of experience gained since Metro began enforcing the provisions of Chapter 5.09 and upon recommendation of the Metro Hearings Officer; therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Chapter 5.09 is amended as follows:

5.09.005 Title

This chapter may be cited as the "Metro Illegal ~~Dumping-Disposal~~ Ordinance."

5.09.010 Purpose

The purposes of this chapter are:

(a) To carry out Metro's responsibility to ~~control~~manage the flow of solid waste in the Portland metropolitan area;

(b) To assist and coordinate with local governments in controlling illegal ~~dumping-disposal~~ throughout the ~~Portland metropolitan area~~Metro region; ~~and~~

(c) To carry out the provisions related to illegal dumping in the Regional Solid Waste Management Plan; ~~and~~

(d) To prevent fraudulent and unauthorized deliveries of hazardous waste to Metro transfer stations and household hazardous waste facilities.

5.09.020 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Authorized official" means a person authorized to issue citations under Section 5.09.070.

(b) "Conditionally exempt generator (CEG)" means a Conditionally Exempt Small Quantity Generator as defined in 40 CFR 261.5 (2005).

(bc) "Department" means the Metro Solid Waste and Recycling Department.

~~(e) "Person" means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity.~~

(d) "Hearings officer" means a person designated by Metro to hear and decide cases under this chapter.

(e) "Household hazardous waste" means any discarded, useless or unwanted chemical, material substance or product that is or may be hazardous or toxic to the public or the environment and is generated by households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

(f) "Person" means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity. For any person other than an individual, the acts of such person's employees, contractors, and authorized agents shall be considered the acts of the person.

(g) "Solid waste" means all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, debris, waste paper and cardboard, commercial, industrial, demolition and construction waste, discarded or abandoned home and industrial appliances or parts thereof, and discarded or abandoned vehicles or parts thereof.

(h) "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, and includes such material even if it is recoverable or recyclable.

5.09.030 Jurisdiction

This chapter shall apply to all territory within the boundaries of Metro, as well as any additional area as may be established through an intergovernmental agreement.

5.09.040 Prohibitions

(a) No person shall transport or carry, or direct another person to transport or carry, any solid waste, including rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right-of-way within Metro, unless such solid waste or recyclable material is:

- (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer;
~~or~~ and
- (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste or recyclable material from being deposited upon any private or public property, road, right-of-way or driveway within Metro.

(b) No person shall throw or place any solid waste, or direct another person to throw or place any solid waste, ~~other than in receptacles provided therefor~~, upon the private land or waters of another

person, ~~or into a solid waste receptacle of another person~~ without the permission of the owner, ~~or upon public lands or waters, or upon any public place other than at a Metro-designated solid waste facility authorized to accept such waste by Oregon law and the Metro Code, any solid waste, including rubbish, trash, garbage, debris, vehicles, or other refuse or recyclable material.~~

(c) No person who has generated or otherwise has possession or control of solid waste shall direct or permit another person to dispose of such solid waste if the person who has generated or otherwise has possession or control of such solid waste, knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of such solid waste in compliance with all applicable local, state, and federal laws and regulations. No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this section for illegal disposal of such waste.

(d) No person shall deliver to a Metro Transfer Station any hazardous waste other than hazardous waste delivered to a Metro household hazardous waste facility that is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(e) No person shall deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(f) No person shall make a false statement to Metro certifying that hazardous waste they have delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

5.09.050 Penalties and Minimum Security and Maximum Civil Penalties and Costs

(a) Any person, firm, or corporation violating Section 5.09.040(a) any provision of this chapter shall be subject to: a civil fine of not more than \$500 for each infraction.

(b) Any person violating Section 5.09.040(b) shall be subject to:

- (1) A civil fine of not more than \$15,000 for each infraction; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
 - (A) administrative costs of investigation, adjudication, and collection; and
 - (B) cleanup, management, and disposal costs incurred.

(c) The Metro Council may by order establish and modify schedules of minimum security for violations under this chapter. Until modified, minimum security shall be as follows:

(1) Seventy five dollars (\$75) for a first offense of Section 5.09.040(a), and \$250 for a subsequent offense.

(2) One hundred fifty dollars (\$150) for a first offense of Section 5.09.040(b), and \$500 for a subsequent offense.

(3) Notwithstanding subsections (1) and (2) of this section, the minimum security for any corporation or other business entity violating Section 5.09.040(b) by illegally

~~depositing solid waste estimated to be in excess of 10 cubic yards, shall be \$1,000.~~

~~(4) Notwithstanding subsections (1), (2), and (3) of this section, Metro may accept less than full security, but in no case less than \$25 from a person who requests a hearing by appearing in person, upon a showing by such person that he or she is financially unable to post the full security required by this section.~~

~~(db) Forfeiture of security or p~~Payment of a civil fine ~~on imposed by~~ a citation issued under this chapter does not relieve a violator of responsibility to remedy the violation.

~~(ec)~~ Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code Section 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance.

5.09.060 Persons Authorized to Issue Citations

The following persons are authorized to issue citations under this chapter:

(a) The Director of the Metro ~~solid waste department~~Solid Waste and Recycling Department or the Director's designee; ~~or and~~

(b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro.

5.09.070 Procedure for Service of Citation

(a) An authorized official shall serve a citation on a ~~person cited~~cited person as follows in at least one of the following ways:

- (1) Personally;
- (2) By delivery to a ~~member of the person's family~~ over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;
- (3) If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or
- (4) By certified or registered mail, return receipt requested. Service by certified mail shall not be valid unless the return receipt is signed by the person to whom the citation is issued. If the cited person is an individual then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.

(b) An authorized official may not arrest any person for violation of this chapter, ~~but may detain any individual~~ An authorized official may detain any person reasonably believed to have committed ~~the infraction, or any employee, agent or representative of a firm, corporation or organization reasonably believed to have committed the infraction~~ a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state.

5.09.080 Issuance of Warnings

(a) A person authorized to issue a citation under this chapter may issue a warning of an alleged infraction under this chapter.

(b) If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the infraction in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.

~~(c) A warning notice shall include:~~

- ~~(1) A brief description of the nature of the infraction;~~
- ~~(2) The legal provision or provisions alleged to be violated;~~
- ~~(3) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed;~~
- ~~(4) The name of the person, department, or office to contact regarding the infraction;~~
- ~~(5) The name of the person issuing the warning;~~
- ~~(6) The date the warning was issued;~~
- ~~(7) A statement that failure to correct the alleged violation may result in issuance of a citation to appear before a hearings officer; and~~
- ~~(8) The maximum penalty that may be assessed if a citation is issued for the infraction and a finding of guilty is entered.~~

5.09.090 Citation Form and Content

(a) A citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all infractions enforceable under this chapter.

~~(b) The citation shall consist of the following four parts and any additional parts inserted for administrative use:~~

- ~~(1) The complaint;~~
- ~~(2) The abstract of record;~~

~~(3) The department, police or sheriff's records; and~~

~~(4) The summons.~~

(eb) Each part citation shall contain the following information ~~or blanks for entry of information:~~

(1) Identification of Metro, as the public body in whose name the action is brought;

(2) Hearings officer file number;

(3) Name of the ~~person cited~~cited person;

(4) The Metro ~~ordinance or~~ Code section violated;

(5) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed by the ~~complainant~~authorized official issuing the citation or a complainant;

(6) A short and plain statement of the infraction of which the person is charged;

(7) The place at which the infraction is alleged to have occurred;

(8) The date on which the citation was issued;

(9) The name of the ~~complainant~~authorized official issuing the citation;

(10) The ~~time by which a person cited must post security, and the place where security must be posted~~amount of the civil fine imposed for the infraction;

~~(11) An explanation that the civil fine assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;~~

~~(12) The time by which the cited person must respond to the citation by either (a) requesting a hearing, (b) admitting responsibility and paying the civil fine imposed, or (c) paying the civil fine and submitting a written explanation of why the cited person should not be found in violation of the Metro Code or of any mitigating circumstances related to the violation, and requesting that a hearings officer reduce and refund all or part of the civil fine on that basis; The security fixed for the infraction; and~~

~~(13) The place where the cited person must direct his or her response;~~

~~(14) A notice statement informing the cited person that failure to respond to the citation, or to appear at a requested hearing, could result in the entry of a default order against the cited person, including the imposition of a civil fine of up to \$500 per violation plus additional costs incurred to investigate and adjudicate the violation, to cleanup, manage, and dispose of solid waste that is the subject of the violation, and to collect all civil penalties. The notice shall further inform the cited person that the failure to pay civil penalties imposed by order of a hearings~~

officer could result in entry of a judgment against the cited person for the unpaid civil penalties, the county clerk recording the person's name and the amount of the penalties in the county clerk lien record, and Metro seeking other legal or equitable relief as provided by law;

(15) A certification by the authorized official issuing the citation, under penalty of ORS 153.990, that the authorized official issuing the citation has reasonable grounds to believe, and does believe, that the cited person committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn citation; and

(16) The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the complaint citation and the required certification of service may be made upon receipt of the "return receipt." and after the filing of the complaint. Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).

~~(d) The complaint shall contain a certification by the complainant, under penalty of ORS 153.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn complaint.~~

~~(e) The reverse side of the complaint shall contain the hearings officer record.~~

~~(f) The summons shall notify the person cited that the complaint will be filed with the hearings officer.~~

~~(g) The reverse side of the summons shall contain substantially the following information:~~

READ CAREFULLY

~~You have been cited for violating the Metro Code, as stated on the front of this summons. You MUST do ONE of the following:~~

~~(1) Request a hearing in person. Appear at Metro Regional Center, Accounting Division, 600 N.E. Grand Avenue, Portland, Or on or before the time when this summons requires you to appear, post security in the amount indicated on the other side of this summons, and request a hearing. You will be notified by mail of your hearing date and time; OR~~

~~(2) Request a hearing by mail. Mail a check or money order in the amount of the security indicated on the other side of this summons to the Metro Accounting Division in the numbered envelope provided, and request a hearing. You will be notified by mail of your hearing date and time.~~

~~SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.~~

~~(3) Submit an explanation by mail. If you do not want a hearing, but wish to explain your side, send your explanation with the summons and security. The hearings officer will then consider your explanation and may forfeit your security or part of it on the basis of your explanation and what the Metro official tells or shows~~

~~the hearings officer. YOUR EXPLANATION AND SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE THIS SUMMONS REQUIRES YOU TO APPEAR. Please include the summons number (upper righthand corner on the other side) on any correspondence related to this citation; OR~~

~~(4) Admit responsibility by mail. Sign the statement of responsibility below and send this summons to the Metro accounting division, together with check or money order in the amount of security indicated on the other side of this summons. THIS SUMMONS AND THE SECURITY MUST REACH THE METRO ACCOUNTING DIVISION BEFORE THE CLOSE OF BUSINESS ON THE DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.~~

~~FORFEITURE OF SECURITY OR PAYMENT OF A FINE FOR THIS CITATION DOES NOT RELIEVE A VIOLATOR OF THE RESPONSIBILITY TO REMEDY THE VIOLATION. FAILURE TO REMEDY A VIOLATION PRIOR TO THE APPEARANCE DATE STATED IN THIS CITATION MAY GIVE RISE TO ISSUANCE OF ADDITIONAL CITATIONS.~~

~~APPEARANCE, STATEMENT OF RESPONSIBILITY, AND WAIVER~~

~~I, the undersigned, do hereby enter my appearance on the complaint of the infraction charged on the other side of this summons. I have been informed of my right to a hearing, and that my signature to this statement of responsibility will have the same force and effect as an order of the hearings officer. I HEREBY STATE THAT I AM RESPONSIBLE FOR COMMITTING THE VIOLATION AS CHARGED, WAIVE MY RIGHT TO A HEARING BY THE HEARINGS OFFICER, AND AGREE TO PAY THE PENALTY PRESCRIBED FOR MY VIOLATION. I understand that my agreement to pay A fine or forfeit security does not relieve me of my responsibility to remedy the violation charged.~~

~~(Cited Person's Name)~~

~~(Cited Person's Address)~~

~~Mail Your Remittance to: Metro
Accounting Division
600 N.E. Grand Avenue
Portland, OR 97232-2736~~

NOTICE

~~IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE FOUR FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR A HEARING AT THE TIME SET BY THE HEARINGS OFFICER, THE HEARINGS OFFICER IS EMPOWERED TO DECLARE YOU IN DEFAULT ON THE COMPLAINT. IN THE EVENT OF A DEFAULT, OR FAILURE TO PAY A FINE PURSUANT TO ORDER OF THE HEARINGS OFFICER UPON ENTRY OF A FINDING OF A VIOLATION, METRO MAY SEEK A JUDGMENT AGAINST YOU FOR THE UNPAID FINE OR SECURITY, RECORD A LIEN IN THE COUNTY LIEN RECORD, AND OBTAIN OTHER LEGAL OR EQUITABLE RELIEF AS PROVIDED BY LAW.~~

(hc) An error in transcribing information into ~~the blanks provided in the a~~ citation form, when determined by the hearings officer to be non-prejudicial to the defense of the ~~cited~~ person ~~cited~~, may be corrected at the time of hearing or prior to time of hearing with notice to the ~~cited~~ person ~~cited~~. Except as provided in this subsection, a ~~complaint citation~~ that does not conform to the requirements of this section shall be set aside by the hearings officer upon motion of the ~~person~~ ~~cited~~ ~~person~~ before ~~entry of a plea any other proceedings at the hearing~~. Minor variations in the form of citation, ~~including but not limited to a change in the place or manner of posting security,~~ shall not be a basis for setting aside a ~~complaint citation~~.

(id) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion.

5.09.100 ~~Metro~~ Representation at Hearing

(a) ~~Metro shall not be represented before the hearings officer by legal counsel except in preparation of the case.~~ A ~~cited~~ person ~~cited with an infraction~~ may be represented by a retained attorney provided that written notice of such representation is received by ~~the~~ Metro ~~legal counsel~~ ~~Attorney~~ five working days in advance ~~of the hearing~~. ~~Metro may have legal counsel represent it when a person cited is represented by counsel.~~ The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

(b) ~~When a person-cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case and may be present at the hearing for the purpose of consulting with and advising Metro staff.~~

5.09.110 Appearance by ~~Person-Cited~~ Person

(a) The ~~person-cited~~ ~~cited~~ person shall either appear as specified in the ~~summons citation~~ on or before the close of business on the date indicated in the ~~summons citation~~, or prior to such time deliver to the address noted in the ~~summons citation~~; ~~a check or money order in the amount of security set forth in the summons; and~~

(1) A request for hearing; ~~or~~

(2) A statement of explanation in mitigation of the offense charged and a check, cash or money order in the amount of the civil fine set forth in the citation; or

(3) The executed appearance, waiver of hearing and statement of responsibility appearing ~~in the summons~~ in the citation and a check, cash or money order in the amount of the civil fine set forth in the summons ~~citation~~.

(b) A written statement of explanation submitted by a cited person shall constitute a waiver of hearing and consent to judgment by the hearings officer ~~and forfeiture of all or any part of the security as determined by the hearings officer~~.

(c) If the ~~person cited~~ cited person requests a hearing ~~and posts appropriate security~~, the hearings officer shall fix a date and time for a hearing. Unless notice is waived, the hearings officer shall mail to the ~~person cited~~ cited person a notice of the date and time of the hearing at least five working days prior to the hearing. The notice shall:

(1) Be in the form of a "Notice to Appear" and contain a warning that if the ~~person cited~~ cited person fails to appear, a finding of responsibility will be entered against that person; and

(2) Be sent to the ~~person cited~~ cited person at the person's last known address by regular mail.

5.09.120 Prehearing Discovery

The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to infraction cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a ~~person cited~~ cited person under this chapter.

5.09.130 Procedures Before Hearings Officer

(a) An allegation of violation of ~~Code Section 5.09.040~~ any provision of this chapter shall, if not admitted by the ~~person cited~~ cited person or settled by the department prior to hearing, be resolved by a hearings officer.

(b) The hearings officer, ~~and any assistant hearings officers~~, shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the ~~solid waste department~~ Solid Waste and Recycling Department, Office of the Metro Attorney, or ~~office~~ Office of the auditor Auditor.

(c) Metro shall have the burden of proving the alleged infraction by a preponderance of the evidence.

(d) The hearings officer shall apply the following rules of evidence:

(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible;

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the hearings officer. Erroneous rulings on evidence shall not

preclude action by the hearings officer, unless shown on the record to have substantially prejudiced the rights of a party;

- (3) The hearings officer shall give effect to the rules of privilege recognized by law;
- (4) All evidence offered but not objected to shall be received, subject to the hearings officer's authority to exclude irrelevant or unduly repetitious evidence and to weigh all evidence received; and
- (5) Evidence objected to may be admitted at the discretion of the hearings officer. Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.

(e) A name of a person found on solid waste, ~~rubbish, trash, garbage, debris, or other refuse, or recyclable material~~, in such a way that it denotes ownership of the items, constitutes rebuttable evidence that the person has violated ~~the refuse hauling or dumping regulations~~ Metro Code section 5.09.040(b) or section 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the ~~person cited~~ cited person, and shall so notify the ~~person cited~~ cited person following presentation of Metro's case.

(f) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication.

(g) The hearings officer shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the ~~person cited~~ cited person, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, ~~and~~ or in accordance with the Oregon Rules of Civil Procedure to the extent that the matter is not otherwise addressed by this section:

- (1) If the ~~person cited~~ cited person desires that witnesses be ordered to appear by subpoena, the ~~person cited~~ cited person shall so request in writing at any time at least five days prior to the scheduled hearing. A \$15 deposit for each witness shall accompany each request. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.
- (2) Subject to the same five-day limitation, Metro may also request that certain witnesses be ordered to appear by subpoena.
- (3) The hearings officer, for good cause, may waive the five-day limitation.
- (4) Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.
- (5) If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.

(h) The ~~person cited~~ cited person shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.

(i) The ~~person cited~~cited person may not be required to be a witness in the hearing of any infraction under this chapter.

(j) Proof of a culpable mental state is not an element of an infraction under this chapter.

(k) After due consideration of the evidence and arguments, the hearings officer shall determine whether the infraction alleged in the ~~complaint citation~~ has been proven and enter an order as follows:

(1) If the hearings officer determines that the infraction has not been proven, ~~a~~ final order dismissing the ~~complaint citation~~ shall be entered.

(2) If the hearings officer determines that the infraction has been proven, ~~or if an answer admitting the infraction has been received, the hearings officer shall enter an appropriate final order shall be entered, that sets forth both findings of fact and conclusions of law, the amount of the -including penalty civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.~~

~~(3) The final order issued by the hearings officer shall set forth both findings of fact and conclusions of law and shall contain the amount of the fine and costs imposed and instructions regarding payment.~~

~~(4) A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, using one of the methods of service described in section 5.09.070 delivered to the parties, or to their attorneys of record, personally or by mail.~~

(l) A tape recording shall be made of the hearing unless waived by both parties. The tape shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later.

5.09.140 Failure to Appear by ~~Person Cited~~Cited Person

If a cited person ~~cited and notified of a hearing as provided in this chapter~~ fails to appear at or prior to the time specified on the ~~summons~~citation, ~~the person cited shall forfeit to Metro the amount of security specified in the citation. In the alternative, Metro may forward the citation to the hearings officer for disposition. or If a cited person notified of who has requested a hearing before the a hearings officer fails to appear at the scheduled hearing, then the hearings officer shall review any evidence submitted, and, if Metro has established the infraction by a preponderance of the evidence, shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the process to appeal the decision including, if appropriate, imposition of a fine and/or award of expenses to Metro. If no security, or less than total security, has been posted, the amount of security not posted, or the amount of the fine and expenses specified in the hearings officer's order minus the amount of security posted, whichever is greater, shall be a debt owing to Metro that can be collected by Metro in the same manner as any other debt. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in section 5.09.070.~~

5.09.150 Review of Hearings Officer Decisions

(a) To be considered, any motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.

(b) A ~~person cited~~cited person may appeal a final ~~adverse ruling~~order by Writ of Review as provided in ORS 34.010 through 34.100.

5.09.160 Collection of ~~Fines and Costs~~Civil Penalties

(a) Fines and costs are payable upon receipt of the written settlement or final order imposing fines and costs. Fines and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.

(b) The Chief Operating Officer may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

(c) In addition to other remedies available in law or equity, when an order assessing a ~~civil penalties~~penalty under this chapter becomes final by operation of law or on appeal, and the amount of ~~the penalties~~is is not paid within 10 days after the order becomes final, the order may be ~~recorded in the County Clerk Lien Record in any county of this state~~recorded and enforced as provided in ORS 268.360(5).

5.09.170 Administrative Policies and Procedures

The Chief Operating Officer or the Chief Operating Officer's designee may establish policies and procedures to carry out this chapter.

5.09.180 Severability

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the chapter shall be deemed separate and distinct, and the remainder of this chapter shall continue in full force and effect.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1107 AMENDING METRO CODE CHAPTER 5.09 REGARDING ILLEGAL DISPOSAL OF SOLID WASTE

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

The proposed ordinance constitutes a fairly extensive procedural update of the entire Illegal Dumping chapter of the Metro Code. Since the proposed changes include prohibitions on other improper disposal activities in addition to illegal dumping, the title of Code Chapter 5.09 is proposed to be changed from "Illegal Dumping" to "Illegal Disposal of Solid Waste."

Expanded Illegal Dumping Prohibition

The prohibition on illegally dumping solid waste or directing another person to do so has been expanded to include a prohibition on having an employee, contractor, or other person illegally dump solid waste on one's behalf. This prohibition has been added at the recommendation of the regional hearings officer. The reason for the change is that a substantial number of hearings concern cases in which the person in control of a business or residence has been cited for illegal dumping in situations where the dumping has occurred as a result of their negligence, rather than their direct actions. For businesses, this most often occurs when an employee or other person is instructed to dispose of the business' solid waste, but is not instructed where to take it or provided with a method of payment for legal disposal or asked any questions about where or how it was disposed. In the case of households this most often occurs when a relative or acquaintance of the resident offers or is asked to remove an accumulation of solid waste in return for a favor. In many of these cases, the person that has generated the solid waste has not provided explicit instructions to dump the waste illegally but there is an implicit understanding and expectation that this is what will be done. In most of these cases, the person in control of the business or household will not reveal the name of the person who actually carried out the illegal dumping. Often, the resident does not subscribe to garbage collection service.

The proposed change is also intended to make households and businesses responsible when their solid waste is illegally dumped by cut-rate unauthorized haulers that canvass neighborhoods or advertise in local papers. The new provision includes an exception that specifies that no person whose solid waste is collected by a hauler franchised or otherwise authorized by a local government to collect solid waste will be held in violation.

False Claims of Household Hazardous Waste

The proposed amendment also includes a new prohibition on delivering hazardous waste to Metro facilities and falsely claiming such waste as generated by a residential household in order to avoid the payment of disposal fees. It is presently a fairly common occurrence for individuals driving commercial-style vans, with the name of their businesses on the side, to deliver large numbers of five-gallon buckets of paint, solvents, or other hazardous wastes to Metro's household hazardous waste ("HHW") facilities, and claim that such waste was generated by households. Most of these commercial generators fall into the Conditionally Exempt Generator ("CEG") category. About 480 CEGs utilized the Metro HHW facilities during the last year with the average charge being approximately \$200 per load.

The proposed changes also include prohibitions on delivery of any hazardous waste to a Metro transfer station unless it is household hazardous waste or conditionally exempt generator waste that is delivered to a Metro household hazardous waste facility or Metro household hazardous waste collection event.

Civil Penalties and Costs

The proposed amendment reduces the maximum fine from \$1,000 to \$500 in order to make the Code consistent with ORS 268.990, which sets the maximum amount of penalties for violation of any ordinance, rule, or regulation adopted by Metro at \$500. Minimum fines for illegal dumping and uncovered loads have been eliminated in order to provide more flexibility for the Chief Operating Officer to establish an appropriate schedule of fines for a wide variety of violations and circumstances.

Service of Citations

Citations issued to businesses are sometimes sent by mail. Citations issued to individuals are sometimes personally delivered to a person at the residence other than the person actually named in the citation. The proposed changes include more specific instructions regarding company representatives that copies of a citation must be mailed to when a business is cited. It also adds the restriction that a citation may not be left with a member of a household that is less than 14 years of age. These proposed changes are intended to make certain that when citations are served in a manner that is consistent from case to case and provides greater assurance that they will reach the persons cited.

Issuance of Warnings and Citations

Presently, the exact form and wording of written warnings and citations are specified in the Code. The proposed amendment expands upon the requirements for information that must be included in citations but eliminates the requirement that citations be in a form rigidly enshrined in Code. This will allow changes and refinements to be made in the citation forms when they are periodically re-printed. It will also allow warnings and citations to be issued in an expanded letter format should the circumstances of a particular case make such a format more appropriate than a pre-printed form citation.

Miscellaneous Procedural Clarifications

- Adds definitions of “Solid waste” and “Waste” and expands definition of “Person,”
- Clarifies when an attorney may be involved in a hearing, and
- Clarifies certain procedures for hearings.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.09

3. Anticipated Effects

The anticipated effects are that:

- There will be a more solid basis in Code to hold businesses and households responsible for the illegal dumping of solid waste that they generate,
- Metro will be able to civilly prosecute and deter those who deliver commercially generated hazardous waste to Metro's household hazardous waste facilities, falsely certifying it as household hazardous waste, and
- The maximum fines stipulated in Code will be brought into conformance with state law,
- Methods for serving citations will be more uniform and effective, and
- There will be added flexibility to make changes to the pre-printed form citation

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1107.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY 2005-) ORDINANCE NO. 06-1111
06 BUDGET AND APPROPRIATIONS SCHEDULE)
TO SUPPORT THE NEW LOOK WORK) Introduced by David Bragdon,
PROGRAM, TRANSFERRING \$53,000 FROM) Council President
CONTINGENCY TO PERSONAL SERVICES IN)
THE PLANNING DEPARTMENT OF THE)
GENERAL FUND; ADDING ONE FULL-TIME)
SENIOR REGIONAL PLANNER; CONVERTING A)
LIMITED DURATION POSITION TO REGULAR)
STATUS; AND DECLARING AN EMERGENCY)

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2005-06 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326 allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; and

WHEREAS, the need for the increase of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2005-06 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of supporting the New Look work program, transferring \$53,000 from contingency to personal services in the Planning Department of the General Fund, adding one full-time Senior Regional Planner and converting one limited duration Associate Regional Planner to regular status.
2. Eliminates the directions provided under amendment Planning #7 to the Proposed Budget, approved by the Council May 5, 2005, and allows funding to be redirected to the New Look work program.
3. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

**Exhibit A
Ordinance No. 06-1111**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
Planning Department							
<u>Personal Services</u>							
<i>SALWGE</i>	<i>Salaries & Wages</i>						
5010	Reg Employees-Full Time-Exempt						
	Administrative Assistant	2.00	70,500	-	0	2.00	70,500
	Assistant Management Analyst	1.00	49,549	-	0	1.00	49,549
	Assistant Regional Planner	3.00	144,631	-	0	3.00	144,631
	Assistant Transportation Planner	4.00	175,400	-	0	4.00	175,400
	Associate Management Analyst	1.00	57,281	-	0	1.00	57,281
	Associate Public Affairs Specialist	1.00	44,922	-	0	1.00	44,922
	Associate Regional Planner	5.00	271,449	-	0	5.00	271,449
	Associate Trans. Planner	6.00	316,302	-	0	6.00	316,302
	Director I	1.00	115,046	-	0	1.00	115,046
	Manager I	4.00	298,365	-	0	4.00	298,365
	Manager II	8.00	684,719	-	0	8.00	684,719
	Principal Regional Planner	5.00	385,830	-	0	5.00	385,830
	Principal Transportation Planner	3.00	232,209	-	0	3.00	232,209
	Program Analyst V	1.00	69,402	-	0	1.00	69,402
	Program Director II	2.00	233,391	-	0	2.00	233,391
	Program Supervisor II	4.00	293,120	-	0	4.00	293,120
	Senior Engineer	1.00	29,557	-	0	1.00	29,557
	Senior Management Analyst	2.00	115,104	-	0	2.00	115,104
	Senior Public Affairs Specialist	1.55	61,817	-	0	1.55	61,817
	Senior Regional Planner	6.00	388,608	1.00	38,100	7.00	426,708
	Senior Transportation Planner	11.00	718,212	-	0	11.00	718,212
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Secretary	3.00	102,792	-	0	3.00	102,792
	Program Assistant 2	1.00	40,800	-	0	1.00	40,800
5020	Reg Emp-Part Time-Exempt						
	Assistant Management Analyst	0.75	35,392	-	0	0.75	35,392
	Assistant Transportation Planner	0.50	22,460	-	0	0.50	22,460
	Associate Regional Planner	1.05	57,223	-	0	1.05	57,223
	Senior Regional Planner	0.90	54,129	-	0	0.90	54,129
	Senior Trans. Planner	0.40	23,165	-	0	0.40	23,165
5030	Temporary Employees		33,092		0		33,092
5080	Overtime		5,000		0		5,000
	Salary Adjustment Pool (non-represented)		78,571		0		78,571
	Step Increases (AFSCME)		81,214		0		81,214
	COLA (represented employees)		81,214		0		81,214
<i>FRINGE</i>	<i>Fringe Benefits</i>						
5100	Fringe Benefits						
	Base Fringe (variable & fixed)		2,099,853		14,900		2,114,753
Total Personal Services		80.15	\$7,470,319	1.00	\$53,000	81.15	\$7,523,319
Total Materials & Services			\$11,025,427		\$0		\$11,025,427
Total Capital Outlay			\$32,000		\$0		\$32,000
TOTAL REQUIREMENTS		80.15	\$18,527,746	1.00	\$53,000	81.15	\$18,580,746

Exhibit A
Ordinance No. 06-1111

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
Expenditures							
Total Interfund Transfers			\$7,623,242		\$0		\$7,623,242
<i><u>Contingency & Unappropriated Balance</u></i>							
<i>CONT</i>	<i>Contingency</i>						
5999	Contingency						
	* General Contingency		3,137,638		(53,000)		3,084,638
	* General Reserve		5,000,000		0		5,000,000
	* Tourism Opportunity & Comp. Account		42,354		0		42,354
	* Current Year PERS Reserve		(201,333)		0		(201,333)
	* Prior Year PERS Reserve		(208,973)		0		(208,973)
<i>UNAPP</i>	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Recovery Rate stabilization reserve		83,034		0		83,034
	* Computer Replacement Reserve (Planning)		90,000		0		90,000
	* Tibbets Flower Account		340		0		340
	* Reserve for Future Debt Service		1,779,055		0		1,779,055
Total Contingency & Unappropriated Balance			\$9,722,115		(\$53,000)		\$9,669,115
TOTAL REQUIREMENTS		393.08	\$112,321,513	1.00	\$0	394.08	\$112,321,513

Exhibit B
Ordinance No. 06-1111
FY 2005-06 SCHEDULE OF APPROPRIATIONS

GENERAL FUND	<u>Current</u>	<u>Revision</u>	<u>Amended</u>
	<u>Appropriation</u>	<u>Revision</u>	<u>Appropriation</u>
Council Office			
Operating Expenses (PS & M&S)	1,594,311	0	1,594,311
Subtotal	<u>1,594,311</u>	<u>0</u>	<u>1,594,311</u>
Finance & Administrative Services			
Operating Expenses (PS & M&S)	6,674,834	0	6,674,834
Capital Outlay	326,000	0	326,000
Subtotal	<u>7,000,834</u>	<u>0</u>	<u>7,000,834</u>
Human Resources			
Operating Expenses (PS & M&S)	1,136,818	0	1,136,818
Subtotal	<u>1,136,818</u>	<u>0</u>	<u>1,136,818</u>
Metro Auditor			
Operating Expenses (PS & M&S)	631,742	0	631,742
Subtotal	<u>631,742</u>	<u>0</u>	<u>631,742</u>
Office of Metro Attorney			
Operating Expenses (PS & M&S)	1,390,347	0	1,390,347
Subtotal	<u>1,390,347</u>	<u>0</u>	<u>1,390,347</u>
Oregon Zoo			
Operating Expenses (PS & M&S)	21,412,240	0	21,412,240
Capital Outlay	462,150	0	462,150
Subtotal	<u>21,874,390</u>	<u>0</u>	<u>21,874,390</u>
Planning			
Operating Expenses (PS & M&S)	18,495,746	53,000	18,548,746
Capital Outlay	32,000	0	32,000
Subtotal	<u>18,527,746</u>	<u>53,000</u>	<u>18,580,746</u>
Public Affairs & Government Relations			
Operating Expenses (PS & M&S)	1,228,768	0	1,228,768
Subtotal	<u>1,228,768</u>	<u>0</u>	<u>1,228,768</u>
Regional Parks & Greenspaces			
Operating Expenses (PS & M&S)	6,314,599	0	6,314,599
Capital Outlay	75,000	0	75,000
Subtotal	<u>6,389,599</u>	<u>0</u>	<u>6,389,599</u>
Non-Departmental			
Operating Expenses (PS & M&S)	34,375,694	0	34,375,694
Debt Service	825,907	0	825,907
Subtotal	<u>35,201,601</u>	<u>0</u>	<u>35,201,601</u>

Exhibit B
Ordinance No. 06-1111
FY 2005-06 SCHEDULE OF APPROPRIATIONS

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
GENERAL FUND			
General Expenses			
Interfund Transfers	7,623,242	0	7,623,242
Contingency	7,769,686	(53,000)	7,716,686
Subtotal	<u>15,392,928</u>	<u>(53,000)</u>	<u>15,339,928</u>
Unappropriated Balance	1,952,429	0	1,952,429
Total Fund Requirements	<u>\$112,321,513</u>	<u>\$0</u>	<u>\$112,321,513</u>

All other Appropriations Remain as Previously Adopted

EXHIBIT C
Ordinance 06-1111
Amendment to FY 2005-06 Proposed Budget (approved 5/5/05)

Adoption of Ordinance 06-1111 would eliminate the directions provided under this amendment and allow funds to be redirected to the New Look work program.

Department	#
Planning	7

AMENDMENT TO FY 2005-06 BUDGET

PRESENTER: Robert Liberty

DRAFTER: Robert Liberty

DATE: April 24, 2005

PROPOSED AMENDMENT: (provide a brief summary of the requested action along with the specific line items affected)

Reserve for Measure 37 and 2040 Growth Concept Dual Implementation Program

This amendment reserves \$100,000 representing about 1.0 FTE for one year, plus \$20,000 for materials and supplies (primarily consulting) to be used to help develop the various planning elements that may be needed to implement Measure 37 and the compact growth goals in the 2040 Vision and regional framework plan. (The existing funding, approved as a Council project in March, is only adequate to support staffing and research commissioned by the Measure 37 Task Force.)

The elements to be researched and developed by the planning staff could include coordinated UGB expansions, targeting of transportation and other infrastructure funds, factual research into cumulative impacts of potential dispersed rural development, and the establishment of a regional transferable development credit and conservation easement system. The nature, scope and cost of the work will be informed by the findings of the Measure 37 Task Force and the continuing decisions of the Metro Council.

<u>Department(s)</u>	<u>Fund(s)</u>	<u>Line items</u>		
		<i>Acct #</i>	<i>Account Title</i>	<i>Amount</i>
Planning (Integrated Land Use/Transportation Concept Planning & Regional Transportation Planning)	General Fund – Planning Department <i>(excise & possibly some TGM funds)</i>	5010	2040 Reevaluation (Big Look) – Personal Services Regional Transportation Planning; 2040 Re-evaluation	\$100,000
		5240	2040 Re-evaluation (Bid Look) – Contracted Professional Services	\$20,000

Note: Funding currently exists within the budget for this action. No additional appropriation authority is necessary.

PROGRAM/STAFFING IMPACTS

Because the activities encompassed by the Big Look, other than the Neighbor Cities program, have not been identified yet, it is not possible to describe the impacts on the planned program for the Planning Department.

EXHIBIT C
Ordinance 06-1111
Amendment to FY 2005-06 Proposed Budget (approved 5/5/05)

Adoption of Ordinance 06-1111 would eliminate the directions provided under this amendment and allow funds to be redirected to the New Look work program.

ARGUMENTS IN FAVOR OF THE PROPOSED AMENDMENT – (not necessary for technical adjustments)

There have been less than five months of experience with the implementation of Measure 37. Forecasts about its potential long-term impacts are necessarily tentative. However, a straight-line continuation of claims filed since December 2 for permission to develop homesites and subdivisions would result in 100,000 acres of potential rural development by 2011. If those trends continue, and the claims are approved, an area larger than the entire UGB could be developed or available for development by 2020. This pattern of development might lead to the collapse of commercial agriculture in the tri-county area before that date, as has happened in Clark County.

OPTIONS FOR FUNDING THIS AMENDMENT – What reductions, credits, changes, or adjustments in other budget/program areas will be necessary to accommodate this amendment?

The \$100,000 for personal services would be earmarked as part of (or withdrawn from) the “Big Look” update of the 2040 Growth Concept. These funds include approximately \$660,000 for “Personal Services” to be used for “2040 Growth Concept Review (Big Look)” in “Integrated Land Use/Transportation Concept Planning.” They also include approximately \$278,000 for “Personal Services” for transportation aspects of the “2040 Re-evaluation” in “Regional Transportation Planning.”

The \$20,000 for materials and services, could be earmarked or withdrawn from the \$100,000 set aside for Contracted Professional Services for “2040 Growth Concept Review (Big Look)” in Integrated Land Use/Transportation Concept Planning” and in part from the additional \$100,000 for “2040 Re-evaluation – Transportation Support” in the Contracted Professional Services account.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1111 AMENDING THE FY 2005-06 BUDGET AND APPROPRIATIONS SCHEDULE TO SUPPORT THE NEW LOOK WORK PROGRAM, TRANSFERRING \$53,000 FROM CONTINGENCY TO PERSONAL SERVICES IN THE PLANNING DEPARTMENT OF THE GENERAL FUND; ADDING ONE FULL-TIME SENIOR REGIONAL PLANNER; CONVERTING A LIMITED DURATION POSITION TO REGULAR STATUS; AND DECLARING AN EMERGENCY.

Date: January 19, 2006

Prepared by: Chris Deffebach

BACKGROUND

The adopted FY 2005-06 Planning Department budget included \$135,000 in materials and services for a New Look Program (then called 2040 Refinement) (Ordinance 05-1074C Adopting the annual budget for fiscal year 2005-06, making appropriations, and levying ad valorem taxes, and declaring an emergency) At the time the budget was prepared, these resources reflected the best estimate for work that would be initiated later in 2005. The major emphasis on the New Look Program to date has been to refine the work program. Council resolved to proceed with the major elements of the New Work Program with approval of project proposals called “Investing in our Community”, “Shape of the Region”, and “Neighbor Cities”, (resolution #05-3628). In September 2005, Metro began the scoping phase of the project for the purpose of refining the project goals and issues that need to be addressed in the work program. Scoping events included a forum of the Mayors/County chairs of the region, contacts with neighbor cities, agricultural, environmental and development interests groups as well as at multiple small interested group events.

The result of these efforts is a work program for the New Look Program and an estimated budget. The work program has been developed to lead to:

- Focused investment strategies for our regional and town centers, corridors and employment areas.
- Tools to finance necessary planning, infrastructure and development needs.
- Regional agreement on a vision and strategies to support agricultural and urban economies and to protect natural and cultural resources.
- A more predictable urban growth boundary amendment process that reinforces regional and community goals.

A copy of the work program is attached as Attachment 1 to this staff report.

The base budget to complete this work in the remainder of FY 2005-06 is estimated at \$367,000 for materials and services and an additional full-time Senior Regional Planner in the Planning Department funded through a transfer from contingency. This is in addition to the \$23,000 in materials and services that have already been applied to the scoping phase of the project. The materials and service needs can be accomplished by reallocating existing resources within the Planning Department budget, subject to Council approval. An additional material and services budget of \$73,600, not currently included in this amendment, would be necessary to complete tasks at a larger scale and scope as has been discussed during the scoping phase. The optional increases to the base budget are discussed at the end of this staff report.

Proposed budget changes for consideration

The budget for the New Look work program can be funded through a reallocation of excise tax already allocated to the planning department in FY 2005-06. This ordinance proposes changes to the budget necessary to authorize these reallocations. This action seeks to:

- 1) Transfer \$53,000 from the General Fund contingency to the Planning Department's personal services to fund the addition of one full-time Senior Regional Planner.
- 2) Eliminate the direction provided under amendment *Planning #7* to the FY 2005-06 Proposed Budget, approved by the Council May 5, 2005, that allocated \$100,000 in FTE to Measure 37 Task Force Support to allow the remainder of this FTE (approximately .7 FTE) to shift to the New Look and reallocate the \$20,000 in materials and services for Measure 37 support to New Look.
- 3) Change an existing limited duration position for an Assistant Regional Planner to a permanent position. The position was funded as an Associate Regional Planner in FY 2005-06 through March 2006 with one-time funding to complete work on the Housing Choices Task Force. Due to the departure of the Associate Regional Planner, on August 5, 2005 and the hiring of the Assistant Regional Planner on December 1, 2005, it was the intent of the Planning Department to retain the position to the end of the fiscal year.

Proposed budget reallocation assumptions

The base budget for the New Look Program assumes that other, existing Planning Department activities are reduced in scope and that the savings are transferred to support the New Look. These assumptions are:

- 1) Economic Development:
 - Delay any additional new economic development activities until late FY 2006-07, allowing resources to shift to New Look.
 - Shift \$11,000 from GMELS support and economic development training to New Look
 - Maintain support for economic development speaker series (\$20,000) and planning commissioner training (\$10,000).
 - Support existing commitments for website publication of economic data (\$18,000) as approved by Council resolution 05-3605 in July 2005
 - Support matching staff support for redeveloping brownfield sites in conjunction with an EPA grant (approved by Council resolution 05-3644)
- 2) Performance Measures:
 - Reduce scope of performance measures to meet basic state requirements, support economic dashboard and publish existing comparison analysis. Don't produce Performance Measures Report for 2006 but still produce underlying data. Metro's Functional Plan requires Metro to publish a Performance Report every other year. The last report was in 2004. This may raise the need to revise Metro's requirements.
 - Shift \$61,000 designated for data collection, report preparation and publication to New Look for FY 2005-06.
- 3) Housing
 - Delay implementation of Housing Choices Task Force recommendations except for a minor update of Title 7 and limited technical assistance. The Housing Choices Task Force will be presenting their recommendations to Council for consideration in March 2005. The preliminary

recommendations, if supported by Council, would have larger budget impacts than is available in FY0506 budget or is assumed to be available in FY 2006-07.

- Shift \$40,000 for development of Pilot Project to New Look in FY 2005-06. Retain \$10,000 this fiscal year for Pilot Project and budget \$40,000 for next fiscal year.
- Shift \$6,000 from Housing report production to New Look. Retain \$5,000 for report production in this fiscal year.

No changes are assumed for Concept Planning or Nature in Neighborhoods. Staff will continue to be available to provide technical assistance to local jurisdictions as they comply with Metro Functional Plan requirements for new urban area planning (title 11) and nature in neighborhoods (title 13).

This base budget includes proceeding with Year 2 of the Get Centered! Program. This would be a downscaled program compared to Year 1 and would include a fewer number of brown bags and tours plus a study tour to Vancouver BC.

In addition to these changes, staff is proposing to submit a request to DLCD for a grant for up to \$250,000 to support the New Look. If approved by DLCD, some of these funds would be available for FY 2005-06 and the remaining for the FY 2006-07 year. If the grant is not approved, staff may need to request additional budget authority or a change in the work scope.

Optional increases to the Base Budget

Existing Planning Department funds are not available to support all of the tasks identified for the New Look through the scoping phase. If Council were interested in supporting these larger efforts, additional excise tax allocations would be needed to the New Look Program. Two decisions for Council consideration that could support the success of the New Look Program in reaching its goals are:

- 1) Add \$50,000 for additional GIS work for FY 2005-06. The base program can produce analysis maps for the typical metro area. Many of the comments in the scoping phase stressed the need for the New Look to take a larger scale view of the region. This package would allocate \$50,000 to collect and integrate data for a larger geographic landscape (Cowlitz to Salem and the Coast Range to the Cascade foothills), assist in standardizing existing land cover and zoning data for the three county area outside our normal analysis coverage, and assist with general mapping and analysis needed to define and map the complete community component of the work program. The additional resources would be used to purchase data and/or a temporary position to integrate the data with Metro's GIS.
- 2) Allocate \$23,600 in FY 2005-06 to initiate an effort to build capacity and foster development through place-making in centers. This would involve soliciting for viable project proposals to spark development projects that would demonstrate mixed-use, transit friendly development. An additional \$57,200 would be required next fiscal year to complete the place-making.

ANALYSIS/INFORMATION

1. **Known Opposition** There is no known opposition.
2. **Legal Antecedents** ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.

3. **Anticipated Effects** This ordinance will implement Council direction for the New Look Project Proposal and allow the work envisioned in that proposal to be started. Approval of the ordinance would increase the FTE allocation for the Planning Department, and increase expectations for additional funding in future years.
4. **Budget Impacts** In the current fiscal year, adoption of this action transfers \$53,000 from the General Fund contingency to the Planning Department's personal services and increases overall FTE for the department by one full time staff. In addition, it converts the status of an Assistant Regional Planner position from limited duration to regular status. These base budget work program elements can be funded with the reallocation of existing funding within the Planning Department budget. To the extent the Council chooses to fund either of the optional work program elements, additional current year transfers from General Fund contingency may be necessary.

The New Look Program will extend into FY 2006-07. Actions taken as part of this amendment should be considered as implied commitment for continuation in FY 2006-07. Personnel actions requested in this ordinance will require additional funding in future years. The position that was originally a limited duration position scheduled to be eliminated in March and is now requested to be continued as part of the New Look work program was funded in the current year with one-time project funding. The continuation of this position in FY2006-07 and the remainder of FY2005-06 as a permanent position, will require additional authorization.. The additional full-time Senior Regional Planner will also require additional funding estimated at \$110,000 in FY 2006-07 (salary, fringe, and overhead). Additional budget requests to continue the work initiated in FY 2005-06 may be raised during the FY 2006-07 budget process. A decision to support additional funding for place-making in centers for FY 2005-06 implies a commitment for continued funding for the effort in FY 2006-07.

RECOMMENDED ACTION

Adoption of Ordinance 06-1111.

Attachment 1
Ordinance 06-1111

“New Look” Work Program
January 2006

Overview: The Metro Council has initiated a “*New Look*” at how to implement the region’s long-range vision in an effort to keep this area a great place to live, work and play. Ten years ago, with broad public support, Metro adopted the Region 2040 growth concept, which focused development in centers, station areas, main streets, corridors and employment areas. Much has been accomplished since then.

Many local jurisdictions have adopted and begun to implement downtown and community plans (e.g., Tigard, Lake Oswego, Oregon City, Gateway, the Pearl District), the citizens of Damascus voted to incorporate as a new city, we have preserved 8,100 acres of Greenspaces, and we have invested in our transportation system. Transportation improvements have supported economic development (217/Kruse Way/I-5 Interchange, Lombard Street railroad overcrossing serving Rivergate), sparked redevelopment in Milwaukie (S.E. McLoughlin Blvd. renovation), improved pedestrian and bicycle connections (Eastside Esplanade), and enhanced transit service (light rail transit to the airport and through north Portland to the Portland Metropolitan Exposition Center).

Many challenges remain however. Since the adoption of the 2040 Growth Concept in 1995, the region’s population has increased by 200,000 residents. We are underperforming in many of our regional centers, town centers, and corridors. The Urban Growth Boundary amendment process is cumbersome and contentious and is not integrated with achievement of a long-term vision for the northern Willamette Valley. Housing is becoming less affordable. Transportation needs far exceed available revenues.

Projections completed earlier this year indicate that an additional one million people will reside in the Portland metro area by the year 2030; several years earlier than expected. These issues have generated a “*call for action*” to take a “*New Look*” at where we’ve been, where we are now, and how we should develop to build on our successes and overcome our challenges.

Key Products The New Look effort is intended to lead to a Regional Agreement on how to update the 2040 Growth Concept, including:

- Focused investment strategies to support plans for regional and town centers, main streets, corridors and employment areas.
- New and revised tools to finance necessary planning, infrastructure, affordable housing and development needs that are integrated with efforts to finance greenspaces, green infrastructure, parks and trails.
- A vision for and strategies to support agricultural and urban economies and to protect natural and cultural resources.
- A more predictable, less contentious urban growth boundary amendment process that reinforces regional and community goals.

Scoping: The New Look effort was launched at a forum of elected officials held in September 2005. Since then, Metro Council members and staff have sought input from business,

Attachment 1 Ordinance 06-1111

environmental, agricultural and community interests including standing Metro committees focused on land use and transportation.

The scoping exercise helped tailor the work program to identify those elements of the existing 2040 Growth Concept that need to be updated to address issues facing communities throughout the region. To date, we have received resounding support to improve our collective understanding of economic, demographic and market forces affecting growth and development patterns in the region, improve the urban growth boundary amendment process, develop longer-term strategies for protecting what we value (e.g., urban and rural reserves, hard edges), and to target our investment decisions to promote livable communities, affordable housing and enhance economic development opportunities. Despite the success in updating local visions and implementing strategic plans, there is still a need to know what have we done well and where could we rezone or target for additional productivity.

Comments emphasized the importance of considering a geographic area larger than the existing urbanized area and to consider a longer time horizon than the required 20 years. Over time, the expectation is that the pressures facing neighboring cities in the three county area plus the adjacent counties to be similar to the growth pressures facing the metropolitan area today.

Metro Council will finalize a work program in January in time to engage the greater Portland metropolitan region's mayors and county chairs at a forum scheduled for early February.

Stakeholder Involvement: We will engage stakeholders and the public in focused ways to facilitate meaningful, cost-effective input.

- Existing committees (Metro Policy Advisory Committee, Joint Policy Advisory Committee on Transportation and their technical counterparts, Metro Committee for Citizen Involvement, Metro Greenspaces Policy Advisory Committee and Water Resources Policy Advisory Committee)
- Forums with elected officials
- Peer review groups established at key points in the process to validate economic forecasts/trends
- Web site, print and televised media to reach the general public
- Public opinion research, focus groups, ad hoc groups of experts
- Business, agricultural, environmental, commercial, housing, transportation, and community interests, the faith communities and others
- Outreach coordinated with other local and statewide efforts (e.g., the state's Big Look, Portland visioning effort, community planning efforts)
- Neighbor cities, Clark County, Vancouver, northern Willamette Valley communities.
- Regional forums to be held at critical points in the process where a broad range of views can be represented.

Coordination: We will pursue opportunities to integrate the "*New Look*" with related efforts.

- The state's "Big Look" review of Oregon's Land Use Program
- The Regional Parks, Trails and Greenspaces vision, as adopted by the Greenspaces Policy Advisory Committee and Metro Council.

**Attachment 1
Ordinance 06-1111**

- Community visioning and concept planning (e.g., Portland, Hillsboro, Tualatin, Forest Grove, Damascus)
- 2035 Regional Transportation Plan (RTP) update (to be adopted in 2008)
- Metropolitan Transportation Improvement Priorities (MTIP) 2008-2011 update
- Efforts to pursue funding for transportation/infrastructure
- 2007 Legislative Session
- Regional Business Plan
- Clark County Growth Management Plan
- Major regional transportation projects, such as the Columbia River Crossing
- Other

Proposed “New Look” Work Scope

Analyze Existing and forecasted conditions (March 2006)

- Develop (and validate with expert review panel) the regional 20-year economic forecast and identify long-term economic and demographic trends that reflect our changing economy and aging, more diverse population.
- Analyze existing development trends to illustrate actual performance in centers, corridors and employment areas compared to Region 2040 expectations.

“Shape of the Region”: Identify values and needs for areas outside the urban growth boundary (July 2006)

- Identify agricultural land priorities and the factors that contribute to successful farming practices and a viable agricultural industry.
- Develop a concept for complete urban communities that is flexible enough to be applied to needs of both existing and new communities.
- Work with neighboring communities to coordinate growth and development plans.
- Identify important natural, cultural and scenic resources that the region wants to preserve or protect and restore.
- Assess how transportation investments affect growth and development patterns.
- Prepare elements of a draft concept level map identifying long-term vision for the northern Willamette Valley including priority areas for development, preservation and protection.
- Seek guidance for the analysis of the alternative uses of land that shapes our region by a steering committee of regional leaders and policy makers.

“Investing in Our Communities”: Identify values and needs for urban areas (July 2006)

- Identify employment and housing land need characteristics to support forecasted economic and demographic trends.
- Confirm the role of centers, corridors and employment areas in meeting the needs of communities and identify factors affecting success (e.g., infrastructure needs, jobs/housing balance, price of housing, fiscal equity, available land supply).
- Identify areas that are “ripe” for redevelopment (development opportunity sites) and begin developing possible implementation strategies for redevelopment.
- Identify new sources of capital to fund investments in centers through the TOD/Centers Program.

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Ordinance 06-1111

- Determine what strategic public investments are needed to spark development in centers, corridors and employment areas.
- Continue educational efforts to support development in centers including tours and brownbags through the Get Centered! Program.
- Coordinate with Regional Transportation Plan update.
- Work with counties and neighboring communities to integrate their visions with developing urban areas.
- Prepare elements of a draft concept level map identifying long-term vision for the northern Willamette Valley including priority areas for development, preservation and protection.

Endorse Draft Regional Vision and Implementation Strategies (December 2006)

- Evaluate conflicting and compatible elements of the long-term draft concept level plan, identify policy choices and seek regional comment.
- Prepare draft concept level map and supporting documents identifying long-term vision for the northern Willamette Valley including priority areas for development, preservation and protection that reflects a strategy to meet the region's economic and demographic trends and that incorporates shared visions for the future in neighboring cities and counties, including Clark County.
- Engage stakeholders in evaluation of issues, opportunities and critical choices associated with growth, development and resource protection.
- Develop regional agreement on draft concept level map and implementation strategies including policy direction for Regional Transportation Plan (RTP), legislative agenda, redevelopment priorities, and tools to support the agricultural industry, natural resource preservation and the regional economy.

Implement Regional Vision and Strategies (2007 - 2008)

- Pursue legislative agenda.
- Prepare 20-year Urban Growth Report (December 2007).
- Pursue measures to increase capacity within existing UGB including local and regional commitments to target investments in centers, corridors and employment areas.
- Integrate "*New Look*" with RTP update.
- Develop focused investment strategies and new tools to finance necessary planning, infrastructure, affordable housing, green infrastructure and development needs and integrate with strategies to support the regional parks, trails and greenspaces system.
- Work with stakeholders to prioritize urban and rural reserve study areas for inclusion in January 2008 Urban Growth Boundary analysis and decision.
- Adopt and implement improved Urban Growth Boundary and urbanization process.
- Solicit participation in demonstration projects from local partners to foster redevelopment in centers, corridors and employment areas.
- Amend Regional Framework Plan and Urban Growth Management Functional Plan and the 2040 Concept Map and other policies as needed.

BEFORE THE METRO COUNCIL

AMENDING THE PROVISIONS OF METRO) ORDINANCE NO. 06-1112
CODE CHAPTER 2.17 TO MODIFY THE)
EXPIRATION DATES OF LOBBYIST) Introduced by Chief Operating Officer
REGISTRATIONS AND TO REPEAL) Michael J. Jordan, with the concurrence of
REFERENCES TO STATE GOVERNMENT) Council President David Bragdon
STANDARDS & PRACTICES COMMISSION)

WHEREAS, in 1999 the Metro Council adopted Metro Code Chapter 2.17, the Code of Ethics for Metro Officials and Requirements for Lobbyists, to ensure that Metro serves the public and informs the public fully concerning its decision making; and

WHEREAS, the provisions of Metro Code Chapter 2.17 specify that the date of expiration of a lobbyist's registration shall be one year following the date on which the lobbyist files or refiles a lobbyist registration; and

WHEREAS, amending the provisions for the dates of expiration of lobbyists' registrations to a date certain and providing for a two-year period of registration would improve and provide for more efficient administration of lobbyists' registrations; now therefore,

THE METRO COUNCIL ORDAINS as follows:

Section 1. Metro Code Section 2.17.110 is amended to read as follows:

2.17.110 Registration of Lobbyists

(a) Within three (3) working days after exceeding the limit of time specified in Code Section 2.17.120(a)(5), each lobbyist shall register by filing with the Metro Council a statement containing the following information:

- (1) The name and address of the lobbyist.
- (2) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.
- (3) The name of any member of the Metro Council who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business. Ownership of stock in a publicly traded corporation in which a member of the Metro Council also owns stock is not a relationship which need be stated.
- (4) The general subject or subjects of the legislative interest of the lobbyist.

(b) The designation of official authorization to lobby shall be signed by an officer of each such corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.

(c) A lobbyist must revise the statements required by subsection (a) of this section if any of the information contained therein changes within 30 days of the change.

(d) (1) Except as provided in subsection (d)(2), a lobbyist registration expires on January 31 of the next odd-numbered year after the date of filing or refiling.

(2) A lobbyist registration filed on or after July 1 of any even-numbered year expires on January 31 of the second odd-numbered year after the date of filing or refiling.

Section 2. Metro Code Section 2.17.130 is amended to read as follows:

2.17.130 Statements of Lobbying Expenses

Any lobbyist who engages in any lobbying activities shall file with the Council by January 31 of each year a statement for the preceding calendar year showing the name of any Metro official who attended a fund raising event for a non-profit tax exempt entity as a guest of the lobbyist, including the date, name of the non-profit entity and amount of that expenditure.

Section 3. Metro Code Section 2.17.140 is amended to read as follows:

2.17.140 Employers of Lobbyists Expense Statements

Any person employing a lobbyist who was registered or who was required to register with the Oregon Government Standards and Practices Commission shall file with the Council by January 31 a statement for the preceding calendar year showing the name of any Metro official who attended a fund raising event for a non-profit tax exempt entity as a guest of the employer of a lobbyist, but not including information previously reported in compliance with Section 2.17.130 and the date, name of the non-profit entity and amount of expenditure.

Section 4. Metro Code Section 2.17.170 is amended to read as follows:

2.17.170 Sanctions for Violations

A person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any information required by this Chapter shall be subject to a civil penalty in an amount not greater than \$500. However, no Metro official shall be subject to any sanction for a violation of this Chapter that resulted from the receipt of any gift, meal, or entertainment from any person who is not currently registered with Metro as a lobbyist or is not designated on a lobbyist's registration as the employer of a lobbyist.

Section 5. Metro Code Section 2.17.180 is repealed.

ADOPTED by the Metro Council this _____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1112, AMENDING THE PROVISIONS OF METRO CODE CHAPTER 2.17 TO MODIFY THE EXPIRATION DATES OF LOBBYIST REGISTRATIONS AND TO REPEAL REFERENCES TO STATE GOVERNMENT STANDARDS & PRACTICES COMMISSION

Date: January 10, 2006

Prepared by: Randy Tucker

BACKGROUND

In Ordinance 99-795B, For the Purpose of Adopting a Code of Ethics for Metro Officials and Requiring Registration of Lobbyists, adopted March 4, 1999, the Metro Council established a Code of Ethics for Metro and requirements, including registration requirements, for lobbyists appearing before Metro. The registration requirements are intended to provide transparent information to the public about the interests who regularly attempt to influence actions by the Metro Council.

Ordinance 99-795B, codified in Chapter 2.17 of the Metro Code, specifies that lobbyist registrations expire one year after the date of filing. In practice this means that registrations expire at random times throughout the year, which results in piecemeal efforts by both lobbyists and Metro staff to ensure registrations are kept current. Administrative efficiency can be achieved by setting a uniform expiration date and sending out renewal notices all at once. Moreover, the benefit of annual registration is unclear; biennial registration seems sufficient to satisfy the public's interest in transparent information.

Accordingly, staff recommends that the duration of lobbyist registrations be extended from one year to two years, and that all registrations expire on January 31 of odd-numbered years, which would align lobbyist registrations with the beginning of a new biennial session of the Council.

Finally, Ordinance 99-795B contemplated the possibility that the Oregon Government Standards and Practices Commission (GSPC) might in the future assume administrative and enforcement authority over the requirements of Metro's Code of Ethics. This now seems highly unlikely, and the provisions of Chapter 2.17 that refer to the GSPC are confusing to lobbyists and the public. Staff recommends deleting these references. Staff also recommends several non-substantive housekeeping edits.

ANALYSIS/INFORMATION

1. **Known Opposition:** none
2. **Legal Antecedents:** Ordinance 99-795B
3. **Anticipated Effects:** Improve clarity of Metro lobbyist registration requirements; improve efficiency of administering these requirements.
4. **Budget Impacts:** None

RECOMMENDED ACTION

Staff recommends approval of Resolution No. 06-1112.

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTERS 5.01)	
AND 5.05 AND THE REGIONAL SOLID WASTE)	
MANAGEMENT PLAN TO IMPOSE A)	ORDINANCE NO. 06-1098 ^{AB}
TEMPORARY MORATORIUM UNTIL)	
DECEMBER 31, 2007, ON CERTAIN NEW NON-)	Introduced by Councilor Rod Park
PUTRESCIBLE, MIXED SOLID WASTE)	
MATERIAL RECOVERY OR RELOAD)	
FACILITIES, AND CERTAIN NON-SYSTEM)	
LICENSES; AND DECLARING AN EMERGENCY)	

WHEREAS, it is in the public interest to ensure that the regional solid waste system operates efficiently; and,

WHEREAS, Metro is undertaking two important solid waste planning projects, an update to updating the Regional Solid Waste Management Plan and a separate re-examination of the region's disposal system; and

WHEREAS, ~~and such~~ the Regional Solid Waste Management Plan update will involve facility regulation issues including the appropriate tonnage allocation among existing transfer stations, whether new waste transfer and material recovery facilities in the region should be authorized and how out of region facilities are affected by the system, including facilities that receive certain waste via non-system license authorizations; and

WHEREAS, the disposal system planning project is intended to determine the best long term direction for the solid waste disposal system; and

WHEREAS, the Metro Council and staff are, through these projects, also studying the most effective means to improve the regional material recovery rate, including consideration of requiring material recovery of certain solid wastes; and

WHEREAS, the Metro Council have also provided direction to have staff propose certain minimum operating and site requirements and performance-based operational standards for material recovery facilities and other facilities that accept and reload or process non-putrescible waste; and

WHEREAS, the Metro Council has imposed a moratorium until December 31, 2007 on applications for and authorizations of new solid waste transfer stations, to provide Metro with time to complete the Regional Solid Waste Management Plan update and the disposal system planning project; and

WHEREAS, a temporary moratorium on new non-putrescible mixed solid waste material recovery or reload facilities that accept solid waste originating, generated, or collected within the Metro region, including a temporary moratorium on any changes of authorizations to allow existing facilities to begin new non-putrescible waste material recovery or reload operations involving solid waste originating, generated, or collected within the Metro region, and a temporary moratorium on certain non-system licenses, will provide the time necessary to resolve solid waste facility issues through the Disposal System Planning project; ~~and~~ WHEREAS, the Metro Council and staff are setting the long term direction for the solid waste system by undergoing extensive disposal system planning; and

~~WHEREAS, the Metro Council and staff are considering the most effective means to improve the regional recovery rate by requiring material recovery of certain solid wastes; and~~

~~WHEREAS, the Metro Council and staff have determined it is necessary to establish minimum operating and site requirements and performance based operational standards for material recovery facilities now therefore,~~

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.01.060 is amended to read as follows:

5.01.060 Applications for Licenses or Franchises

(a) Applications for a Franchise or License or for renewal of an existing Franchise or License shall be filed on forms or in the format provided by the Chief Operating Officer.

(b) In addition to any information required on the forms or in the format provided by the Chief Operating Officer, all applications shall include a description of the Activities proposed to be conducted and a description of Wastes sought to be accepted.

(c) In addition to the information required on the forms or in the format provided by the Chief Operating Officer, applications for a License or Franchise shall include the following information to the Chief Operating Officer:

- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the term of the Franchise or License;
- (2) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (3) A duplicate copy of any closure plan required to be submitted to DEQ, or if DEQ does not require a closure plan, a closure document describing closure protocol for the Solid Waste Facility at any point in its active life;
- (4) A duplicate copy of any documents required to be submitted to DEQ demonstrating financial assurance for the costs of closure, or if DEQ does not require such documents, proof of financial assurance for the costs of closure of the facility;
- (5) 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 Licensee or 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 5.01.180(e) of this chapter if the License or Franchise is revoked or any License or Franchise renewal is refused;
- (6) Proof that the applicant has received proper land use approval; or, if land use approval has not been obtained, a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions,

improvements or changes in the method or type of disposal at new or existing disposal sites. Such recommendation may include, but is not limited to a statement of compatibility of the site, the Solid Waste Disposal Facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the Statewide Planning Goals of the Land Conservation and Development Commission; and

- (7) Identify any other known or anticipated permits required from any other governmental agency. If application for such other permits has been previously made, a copy of such permit application, and any permit that has been granted shall be provided.

(d) An application for a Franchise shall be accompanied by an analysis of the factors described in Section 5.01.070(f) of this chapter.

(e) Notwithstanding any other provision in this Section, the Chief Operating Officer shall not accept for filing any application for authority to operate a Transfer Station during the period commencing August 19, 2004 and continuing until December 31, 2007.

(f) Notwithstanding any other provision in this Section, the Chief Operating Officer shall not accept for filing any application for authority to accept non-putrescible solid waste originating, generated or collected within the Metro region for the purpose of conducting material recovery or reloading during the period commencing with the effective date of this Ordinance January 12, 2006, and continuing until December 31, 2007. Metro Council may lift the temporary moratorium at an earlier date if sufficient progress has been made in setting system policy direction on disposal and material recovery, and toward development of more detailed material recovery facility standards.

SECTION 2. Metro Code Section 5.01.067 is amended to read as follows:

5.01.067 Issuance and Contents of Licenses

(a) Applications for Licenses filed in accordance with Section 5.01.060 shall be subject to approval or denial by the Chief Operating Officer, with such conditions as the Chief Operating Officer may deem appropriate.

(b) The Chief Operating Officer shall make such investigation concerning the application as the Chief Operating Officer deems appropriate, including the right of entry onto the applicant's proposed site.

(c) Prior to determining whether to approve or deny each License application, the Chief Operating Officer shall provide public notice and the opportunity for the public to comment on the License application.

(d) On the basis of the application submitted, the Chief Operating Officer's investigation concerning the application, and public comments, the Chief Operating Officer shall determine whether the proposed License meets the requirements of Section 5.01.060 and whether to approve or deny the application.

(e) Notwithstanding the authority to approve or deny any application for a solid waste license set forth in subsection (d), if the Chief Operating Officer (i) decides to approve an application for a new license for any facility whose operations will have a substantial effect on any adjacent residential neighborhood, or (ii) decides to approve an amendment to an existing solid waste license to allow for a substantial change in the configuration used at a site for processing solid waste or to allow for a substantial change in the type or quantity of solid waste processed at the facility, the Chief Operating Officer shall inform the Council President in writing no fewer than ten (10) days before the Chief Operating Officer approves any such solid waste license application. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. Thereafter, the majority of the Council may determine whether to review and consider the license application within 10 days of receipt of the notice from the Chief Operating Officer. If the Council determines to review and consider the application for the license, execution by the Chief Operating Officer shall be subject to the Council's authorization. If the Council determines not to review and consider the application, the Chief Operating Officer may execute the license. For the purpose of this subsection (e), a "substantial effect" shall include any occurrence that arises from the solid waste operation conditions that are regulated under the license and affects the residents' quiet enjoyment of the property on which they reside.

(f) If the Chief Operating Officer does not act to grant or deny a License application within 120 days after the filing of a complete application, the License shall be deemed granted for the Solid Waste Facility or Activity requested in the application, and the Chief Operating Officer shall issue a License containing the standard terms and conditions included in other comparable licenses issued by Metro.

(g) If the applicant substantially modifies the application during the course of the review, the review period for the decision shall be restarted. The review period can be extended by mutual agreement of the applicant and the Chief Operating Officer. An applicant may withdraw its application at any time prior to the Chief Operating Officer's decision and may submit a new application at any time thereafter.

(h) If a request for a License is denied, no new application for this same or substantially similar License shall be filed by the applicant for at least six months from the date of denial.

(i) Licenses shall specify the Activities authorized to be performed, the types and amounts of Wastes authorized to be accepted at the Solid Waste Facility, and any other limitations or conditions attached by the Chief Operating Officer.

(j) The term of a new or renewed License shall be not more than five years.

(k) Notwithstanding any other provision in this Section, no authority to accept mixed non-putrescible solid waste originating, generated, or collected within the Metro region for the purpose of conducting material recovery or reloading shall be granted during the period commencing with the effective date of this Ordinance and continuing until December 31, 2007; provided, however, that the Chief Operating Officer shall process and determine whether to approve or deny all license applications that were submitted, and that the Chief Operating Officer determined were complete, prior to January 12, 2006. Metro Council may lift the temporary moratorium at an earlier date if sufficient progress has been made in setting system policy direction on disposal and material recovery, and toward development of more detailed material recovery facility standards.

SECTION 3. Metro Code Section 5.05.035 is amended to read as follows:

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances, which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility shall be one hundred dollars (\$100).
- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Determination Whether to Issue Non-System License. Within 60 days after receipt of a completed application for a non-system license for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. After receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith, the Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue the non-system license. If the Chief Operating Officer recommends that the non-system license be granted, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license. Within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required in connection therewith, the Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination. In making such determination, the Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to such determination:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a non-system license as deemed necessary or appropriate under the circumstances.

(d) Issuance of Non-System License; Contents. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than 120 days from the date of issuance for limited-duration non-system licenses, and two years from the date of issuance for all other non-system licenses; and
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to conditions that address the factors in Section 5.05.035(c).

(e) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(f) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

(g) Notwithstanding any other provision in this Section, and unless contrary to any other applicable law, the Chief Operating Officer shall not accept any application for, and neither the Chief

Operating Officer, nor the Metro Council shall issue a non-system license for mixed putrescible solid waste or mixed non-putrescible solid waste that has not first been delivered to a Metro licensed or franchised Processing facility for material recovery during the period commencing with the effective date of this Ordinance and continuing until December 31, 2007; provided, however, that a licensee may request, and the Chief Operating Officer or Metro Council may issue, a replacement license with an effective date beginning the day after an existing license expires if the replacement license is to authorize the licensee to deliver the same type and quantity of solid waste to the same non-system facility as the existing license. Metro Council may lift the temporary moratorium at an earlier date if sufficient progress has been made in setting system policy direction on disposal and material recovery, and toward development of more detailed material recovery facility standards.

SECTION 4. The provisions of “Business Waste Reduction Practices: 4. Regional processing facilities for mixed dry waste,” located on pages 7-17 to 7-18 of the Regional Solid Waste Management Plan, are amended to include the following paragraph:

Notwithstanding any other provision in this Plan, Metro shall not accept or grant any application seeking authority to accept mixed non-putrescible solid waste originating, generated, or collected within the Metro region for the purpose of conducting material recovery or reloading during the period commencing with the effective date of this Ordinance January 12, 2006, and continuing until December 31, 2007; provided, however, that the Chief Operating Officer shall process and determine whether to approve or deny all license applications that were submitted, and that the Chief Operating Officer determined were complete, prior to January 12, 2006.

SECTION 5. The provisions of “Building Industries (Construction and Demolition) Waste Reduction Practices” located on pages 7-19 to 7-22 of the Regional Solid Waste Management Plan, are amended to include the following paragraph:

Notwithstanding any other provision in this Plan, Metro shall not accept or grant any application seeking authority to accept mixed non-putrescible solid waste originating, generated, or collected within the Metro region for the purpose of conducting material recovery or reloading during the period commencing with the effective date of this Ordinance January 12, 2006, and continuing until December 31, 2007; provided, however, that the Chief Operating Officer shall process and determine whether to approve or deny all license applications that were submitted, and that the Chief Operating Officer determined were complete, prior to January 12, 2006.

SECTION 6. The provisions of “Solid Waste Facilities and Services: Transfer and Disposal System” located on pages 7-25 to 7-27 of the Regional Solid Waste Management Plan, are amended to include the following paragraph:

Notwithstanding any other provision in this Plan, Metro shall not accept or grant any application seeking authority to accept mixed non-putrescible solid waste originating, generated, or collected within the Metro region for the purpose of conducting material recovery or reloading during the period commencing with the effective date of this Ordinance January 12, 2006, and continuing until December 31, 2007; provided, however, that the Chief Operating Officer shall process and determine whether to approve or deny all license applications that were submitted, and that the Chief Operating Officer determined were complete, prior to January 12, 2006.

SECTION 7. This Ordinance is necessary for the health, safety, and welfare of the Metro area in order to ensure that the Regional Solid Waste Management Plan may be updated and implemented as efficiently

as possible. An emergency therefore is declared to exist, and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1098 AMENDING METRO CODE CHAPTERS 5.01 AND 5.05 AND THE REGIONAL SOLID WASTE MANAGEMENT PLAN TO IMPOSE A TEMPORARY MORATORIUM UNTIL DECEMBER 31, 2007, ON CERTAIN NEW NON-PUTRESCIBLE, MIXED SOLID WASTE MATERIAL RECOVERY OR RELOAD FACILITIES, AND CERTAIN NON-SYSTEM LICENSES; AND DECLARING AN EMERGENCY

Date: January 12, 2006

Prepared by: Bill Metzler

SUMMARY

This report recommends that Chapters 5.01 and 5.05 of the Metro Code and the Regional Solid Waste Management Plan (RSWMP) be amended to implement a temporary moratorium on new, non-putrescible, mixed solid waste material recovery or reload facilities and new non-system licenses until December 31, 2007, to coincide with the completion of the RSWMP Update. The proposed moratorium will not impact renewals of existing solid waste licenses or franchises.

Updating the Regional Solid Waste Management Plan involves facility planning and regulation issues including: the appropriate tonnage allocation among existing transfer stations; whether additional waste transfer and material recovery facilities in the region should be authorized; and how out-of-region facilities affect the system, including facilities that receive waste via non-system license authorizations.

In September 2005, Metro Council extended a moratorium on new transfer stations through December 31, 2007 (Ordinance No. 05-1093). The moratorium was based on current transfer overcapacity in the region, as well as the need to defer consideration of new facilities until the RSWMP planning process had concluded. It is now recognized that, during this planning period, consideration of new, non-putrescible, mixed solid waste material recovery facilities and reloads, as well as new non-system licenses, should be deferred as well.

The region has adequate processing capacity for non-putrescible mixed dry waste at present, with 9 facilities that processed a total of 303,921 tons in the past year, recovering a total of 94,470 tons of recyclable materials, with an average recovery rate of 27.5%.

The following graph provides a twelve-month summary of the performance of the region's existing material recovery facilities that accept and process mixed dry solid waste. The tonnage summaries and estimated recovery rates are based on tons reported from October 2004 through September 2005.

Tonnage Summaries – Facilities that Conduct Material Recovery

Facility Name	Mixed Dry Waste Accepted (tons) *	Amount Recovered (tons)*	% Recovery Rate* (12-month average)
Aloha Garbage	2,833	822	29%
East County Recycling (ECR)**	83,638	45,929	54.9%
KB Recycling***	--	--	--
Metro Central**	41,383	7,970	19.2%
Metro South**	52,075	7,349	14.1%
Pride Recycling	21,018	5,196	24.7%
Troutdale Transfer Station	18,329	4,611	25.2%
Wastech	20,712	5,478	26.4%
Willamette Resources Inc. (WRI)	63,933	17,115	26.8%
Total	303,921	94,470	

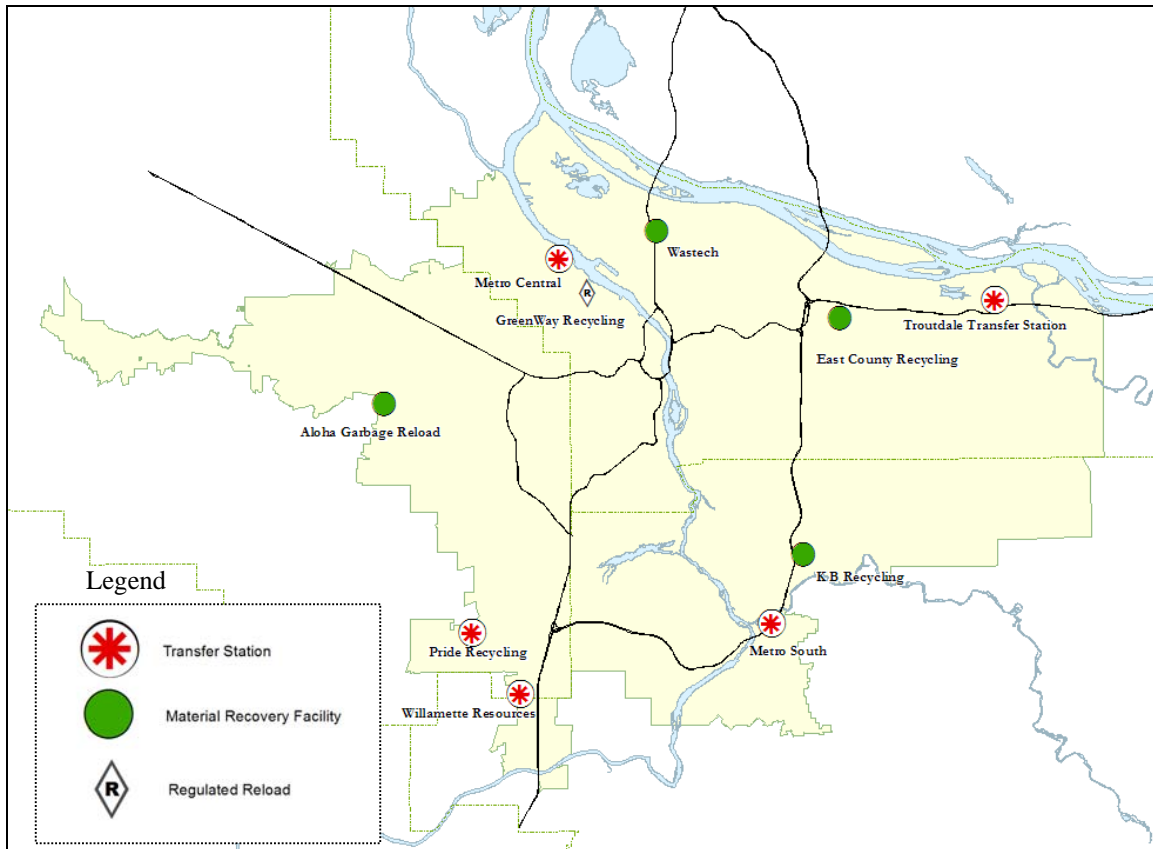
* Tonnages and recovery rates for 10/2004 through 09/2005.

** Facilities that accept dry waste from the general public.

*** KB Recycling is authorized by Metro to operate as a mixed dry waste material recovery facility, but currently accepts primarily source-separated recyclables.

The following map illustrates Metro-authorized solid waste facilities located in the region that currently accept non-putrescible, mixed solid waste for the purpose of conducting material recovery or reloading.

Facilities accepting mixed non-putrescible solid waste for recovery or reloading



Proposed New Material Recovery Facilities or Reloads

The proposed moratorium may impact at least three applicants that are in the process of applying for Metro authorization (a Metro Solid Waste Facility License) to conduct material recovery from non-putrescible mixed solid waste originating, generated, or collected within the Metro region. These are:

- Pacific Land Clearing III (PLC III), located at 4044 N. Suttle Road in Portland. PLC III is an existing Metro licensed roofing recycling and yard debris reload facility. Status: PLC III's license application was considered complete on November 22, 2005, and its application is currently under review.
- Dan Obrist Recycling, located at 4542 SE 174th Ave., in Portland. Dan Obrist Recycling is currently a non-regulated wood waste and inert materials processor. Status: License application not complete.
- Urban Vision Corporation, located at 5339 NE 115th Ave. in Portland. Status: License application not complete.

Staff have not received any new non-putrescible reload applications.

Non-System Licenses

The proposed moratorium will apply to new non-system license applications for putrescible waste and non-putrescible, unprocessed, mixed solid waste. There are no anticipated applications for these types of NSLs.

The proposed moratorium will not apply to NSLs for special waste, clean-up waste, and residual from a material recovery facility.

ANALYSIS/INFORMATION

1. **Known Opposition.** Entities that would seek Metro authority to accept non-putrescible mixed solid waste originating, generated, or collected within the Metro region to conduct material recovery or reloading or obtain a new non-system license may oppose this ordinance.
2. **Legal Antecedents.** The Regional Solid Waste Management Plan and Metro Code Chapter 5.01 and 5.05.
3. **Anticipated Effects.** Ordinance No. 06-1098 will amend Chapters 5.01 and 5.05 of the Metro Code and the Regional Solid Waste Management Plan to implement a temporary moratorium on applications for and authorizations for the purpose of accepting non-putrescible mixed solid waste originating, generated, or collected within the Metro region to conduct material recovery or reloading and certain non-system licenses until December 31, 2007, when the RSWMP update is complete.

Ordinance No. 06-1098 amending Chapters 5.01 and 5.05 of the Metro Code and the Regional Solid Waste Management Plan are necessary for the immediate preservation of public health, safety and welfare by providing for the effective and comprehensive management of the regional solid waste system. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

4. **Budget Impacts.** There are no budget impacts.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1098.

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