

# A G E N D A

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**METRO**

## Agenda

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: February 9, 2006  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

### CALL TO ORDER AND ROLL CALL

#### 1. INTRODUCTIONS

#### 2. CITIZEN COMMUNICATIONS

#### 3. METRO CENTRAL ENHANCEMENT COMMITTEE PRESENTATION - 2006 GRANTS SLATE

Blauer

#### 4. REGIONAL EQUITY ATLAS

- Jim Labbe, Audubon Society of Portland
- Ken Radin, Population Research Center
- Jill Fuglister, Coalition for a Livable Future

#### 5. SYSTEM FOR MANAGING SERVICE CONTRACTS CAN BE IMPROVED

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#### 6. CONSENT AGENDA

6.1 Consideration of Minutes for the February 2, 2006 Metro Council Regular Meeting.

6.2 **Resolution No. 06-3662**, For the Purpose of Confirming the Appointment of Dr. Keith Thomsen to the Regional Solid Waste Advisory Committee (SWAC)

#### 7. ORDINANCES – FIRST READING

7.1 **Ordinance No. 06-1110**, For the Purpose of Amending Title 11 (Planning For New Urban Areas) of the Urban Growth Management Functional Plan to Facilitate the Siting of Certain Public Uses in New Urban Areas.

## **8. ORDINANCES - SECOND READING**

- 8.1 **Ordinance No. 06-1101**, Amending Metro Code Chapter 5.01 to Modify Park 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. Park
- 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. Park
- 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. Park
- 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. Park
- 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. Park
- 8.7 **Ordinance No. 06-1107**, Amending Metro Code Chapter 5.09 Regarding Illegal Disposal of Solid Waste. Park

## **9. RESOLUTIONS**

- 9.1 **Resolution No. 06-3664**, For the Purpose of Amending the 2006-09 Metropolitan Transportation Improvement Program (MTIP) to Include High Priority Project Funding From the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA) and the Oregon Immediate Opportunity Fund. Burkholder
- 9.2 **Resolution No. 06-3666**, Designating Council Projects and Confirming Lead Councilors and Council Liaisons for Nature in Neighborhoods and New Look Communications. Burkholder

## **10. CHIEF OPERATING OFFICER COMMUNICATION**

## **11. COUNCILOR COMMUNICATION**

**ADJOURN**

<b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b> Channel 11 -- Community Access Network <a href="http://www.yourtv.org">www.yourtv.org</a> -- (503) 629-8534 2 p.m. Thursday, Feb. 9 (live)	<b>Washington County</b> Channel 30 -- TVC-TV <a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534 11 p.m. Saturday, Feb. 11 11 p.m. Sunday, Feb. 12 6 a.m. Tuesday, Feb. 14 4 p.m. Wednesday, Feb. 15
<b>Oregon City, Gladstone</b> Channel 28 -- Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275 Call or visit website for program times.	<b>West Linn</b> Channel 30 -- Willamette Falls Television <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275 Call or visit website for program times.
<b>Portland</b> Channel 30 (CityNet 30) -- Portland Community Media <a href="http://www.pcmtv.org">www.pcmtv.org</a> -- (503) 288-1515 8:30 p.m. Sunday, Feb. 12 2 p.m. Monday, Feb. 13	

**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](http://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).

**METRO**  
**Planning Department**

***System for Managing Contracts  
Can Be Improved***

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**January 2006**

A Report by the Office of the Auditor



**METRO**

PEOPLE PLACES  
OPEN SPACES

**Alexis Dow, CPA**  
**Metro Auditor**

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**METRO**

OFFICE OF THE AUDITOR

January 25, 2006

To the Metro Council and Metro-area citizens:

As part of our scheduled work program, we evaluated the Metro Planning Department's system for managing transportation consulting contracts. In fiscal year 2006, the Planning Department budgeted about \$4.9 million on contracted professional services, mostly for transportation consulting.

Our review of the results of a \$1.2 million consulting contract was favorable. Spending on this contract was less than planned and the US Department of Transportation accepted the work products that the consultant/contractor provided to Metro.

We found, however, the Planning Department should adopt a more structured approach to managing contracts to better assure that the department will consistently achieve favorable contracting outcomes, and to help avoid potential problems. For example, we observed that some contract compensation terms were unclear and the review of billed costs appeared extensive but was incomplete.

We recommend that the Planning Department further define contracting roles and develop more complete procedures. This is needed to ensure that its staff carries out all tasks that necessary to properly manage and mitigate contract-related risks. We also recommend clarifying the purpose of contract reviews that are performed by the Office of Metro Attorney and completing actions needed to implement audit recommendations made in 2000.

The following report describes our work and our findings and recommendations in more detail. The last section of the report presents the written response of Metro Chief Operating Officer Michael Jordan to each of the audit recommendations.

We appreciate the assistance provided by the Planning Department and the Office of Metro Attorney during the course of this review.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Alexis Dow', written in a cursive style.

Alexis Dow, CPA  
Metro Auditor

Auditor: Douglas U'Ren, CIA

# Table of Contents

<b>Executive Summary</b>	1
<b>Summary of Recommendations</b>	2
<b>Introduction</b>	5
<b>Contract results generally favorable</b>	6
Final costs lower than planned	6
Some areas can be improved	7
<b>Recommended actions</b>	12
More structured approach needed for contracts	12
Additional follow-up on URS consulting contract	14
<b>Audit methodology and limitations</b>	15
<b>Response to the Report</b>	
Metro Chief Operating Officer Michael Jordan	

## Executive Summary

The purpose of this audit was to evaluate the Metro Planning Department's system for developing and administering consultant contracts. The Department's adopted budget for contracted professional services was about \$3 million in each of the last two fiscal years.

We reviewed a \$1.2 million consulting contract the Planning Department awarded to URS Corporation. URS and other consultants assisted Metro in developing supplemental and final environmental impact statements for the South Corridor Project, which would add 8.3 miles of light rail tracks for public transportation between Clackamas regional center and downtown Portland.

Generally, the outcomes of the URS contract were favorable. URS fulfilled its responsibilities under the contract and the final cost totaled about \$1.0 million, or \$200,000 less than budgeted. We believe that costs were less than planned in part due to two primary factors:

- The contract contained well-written statements of work, which clearly identified the tasks and results the consultant was required to achieve
- Planning Department staff established budgets for each major task and disallowed about \$136,000 of costs that exceeded task budgets

While the contract's overall results were positive, we identified some matters that indicate the need for improvements to the Planning Department's current approach to administering contracts:

- Some of the URS contract's compensation provisions were unclear, which can lead to misunderstandings between the contracting parties and to increased costs for Metro.
- The Planning Department did not perform and document an independent cost analysis before adding \$500,000 in planned work to the contract. Such a cost analysis was required under the terms of a federal grant that provided most of the funding for Metro's contract with URS, and it helps ensure that the cost of additional contracted work is fair and reasonable.
- The Planning Department also did not go far enough to verify that URS actually incurred the costs it billed to Metro.

To avoid these types of issues and risks, Metro should add more structure to its system for managing Planning Department contracts by better defining the roles and responsibilities of staff that are involved in the various aspects of developing and administering contracts. In addition, the Planning Department should verify the contractor's labor and overhead rates as required by the project's funding source.

A summary of our recommendations for improving contracting practices and internal controls is provided in the next section of this report.

## Summary of Recommendations

### 1. Define contract administration roles and responsibilities.

It is important to define the contract administration responsibilities of each staff member involved with contracts. Clear designation of responsibilities and expectations helps ensure that staff will carry out all tasks needed to properly develop and administer contracts and to manage contract risks. Roles and responsibilities for the following areas are suggested:

- Ensuring contracts are clearly written, especially the compensation provisions, and include all terms and conditions required by the grants that funded them.
- Identifying significant contract risks and ensuring that processes are in place to properly manage them.
- Ensuring that contractor invoices comply with contract terms and that services billed were provided.
- Ensuring that contract files contain required records that are well-organized.

### 2. Develop a more complete set of procedures to guide staff on contracts.

The Planning Department should develop additional contracting procedures and ensure that all employees who assist in managing contracts are aware of them. The procedures should address:

#### *Pre-award activities*

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts.
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements.

#### *Contract administration*

- What steps should be taken to review contractor invoices, and who should carry out those steps.
- What actions to take when amending contracts.
- How and when to perform cost analyses when contract scope is changed.
- How contractor performance should be monitored and reported.
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements.
- How adjustments to contractor invoices should be documented, and where this documentation should be retained.



*Contract close-out*

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/Purchasing unit for archiving.
- How to close out contracts.
- How Planning Department managers should ensure that contracting procedures have been followed.

**3. Clearly identify the role of the Metro Attorney in the contracting process.**

Metro should more specifically define the role of the Office of Metro Attorney in the contracting process. Metro's contracting guidelines require Metro Attorney "approval" but leave open what aspects of the contract the attorney has considered, or where records containing the Attorney's comments should be retained. The Metro Attorney and Metro's Contracts Manager should address these issues and include these matters in the Metro Contracting Manual. At a minimum, legal review of contracts should include a determination of whether contracts are clearly written and whether they contain all provisions required by the Metro Code, Oregon statutes, and federal grants, if applicable.

**4. Consider reviewing the consultant's labor and overhead rates.**

The Planning Department should request audit reports of URS's overhead rates for fiscal years 2001 through 2004, if audits were done, and ensure that the 146.5% rate that URS charged during those years approximated its actual, audited overhead rates. Metro Planning should also determine, on a sample basis, whether URS staff assigned to the South Corridor project were actually paid the amounts that Metro was billed for their time.

**5. Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices.**

As of November 2005, Metro had not implemented three of eight recommendations from the December 2000 report entitled, *Contracting: A Framework for Enhancing Contract Management*.

- Establish a management reporting system to provide contract oversight information to Metro's top managers.
- Establish minimum qualifications for contracting personnel, formally evaluate contracting personnel performance and designate a Contract Coordinator in each department to assure contracts are properly planned and monitored.
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in determining appropriate contract type; establishing scope of work requirements and performance standards; monitoring and evaluating contractor performance; evaluating contractor proposed prices and billings; and conducting risk assessments.

We believe that if Metro carries out this last recommendation, the Planning Department would not need to develop as extensive a set of contracting procedures for itself, and the recommended system for identifying and meeting staff's training needs could perhaps be developed or augmented by the Metro Purchasing/Contracts section.

## Introduction

**Background** The Metro Planning Department's work focuses on implementing the regional planning vision contained within the 2040 Growth Concept and defined within the Regional Framework Plan, the Urban Growth Management Functional Plan, and the Regional Transportation Plan.

Metro is the designated Metropolitan Planning Organization for the Portland area. In this role, it develops the Regional Transportation Plan and works with other local and state agencies to decide how federal transportation funds should be spent.

In FY 2005, the Planning Department's budget was \$15.9 million, with about \$3 million budgeted for contracted professional services. The Department's contracted professional services budget for FY 2006 is \$4.9 million.

A major part of the Planning Department's funding for transportation planning projects derives from grants awarded by the US federal government, either directly or on a "pass-through" basis from other agencies, such as the Oregon Department of Transportation (ODOT) and Tri-Met. An important consequence of receiving this federal funding is that Metro and its Planning Department must comply with a number of specific federal requirements. For example, Metro must provide disadvantaged business enterprises (DBEs) with "maximum opportunity" to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds.

**Audit objectives** The purpose of this audit work was to assess Metro's system for administering transportation planning consultant contracts. Our objectives were to identify best practices for contract management, gain a general understanding of the federal requirements Metro must comply with when administering contracts that are funded by grants awarded by the Federal Transit Administration (FTA) and other agencies, and evaluate the adequacy of Metro's system for administering contracts in the context of best practices and the federal grant contracting requirements.

To accomplish these objectives, we studied a contract with URS Corporation. This contract was chosen due to its relatively large dollar value and because it had been active for several years but was almost over. This provided an opportunity to readily see how it was managed and make constructive audit recommendations affecting the contract before it closed.

## Contract results generally favorable

### **Final costs lower than planned**

Final costs paid to URS Corporation under the contract we audited were about \$1.0 million, which was about \$200,000 less than planned. We believe this favorable result was driven by three major factors:

- the consultant contract contained clear statements about the work to be done and the expected deliverables;
- Planning Department staff established budgets for each major task performed by the consultant and monitored task costs; and
- the Planning Department's efforts to identify and hire the most qualified contractors for the South Corridor project generally followed best practices.

### *Work statements provide basis for controlling costs and evaluating performance*

Contracts should communicate to contractors what is required of them in clear, measurable statements of expected services. Doing so lowers the risk of misunderstandings between the contracting parties and can lower costs by reducing the amount of uncertainty that the contractor faces.

The URS Corporation contract clearly described the services and deliverables Metro expected to receive. The major expected outputs were various technical reports and completed chapters of environmental impact statements. In addition, the contract provided detailed guidance on the information these reports should contain and how they should be formatted.

### *Metro staff established and monitored budgets for major tasks*

Another key action that Planning Department staff took to control costs was establishing budgets for each major task to be carried out by the consultant. Staff subsequently monitored billed costs and made sure most tasks did not exceed their budgets. Task budgets could only be modified by approval of the Programs Manager who coordinated the South Corridor project for the Planning Department.

Of the 22 tasks defined under the contract, 17 cost less or equal to their budget. Five cost more than budgeted, but only three tasks were over budget by more than \$3,000 and 15%.

The consultant billed Metro a total of \$1,139,000. This was about \$117,000 less than planned. In addition, Metro disallowed about \$136,000 of billed costs. The lion's share of disallowed costs represented amounts billed that exceeded task budgets. The employee who managed this consulting contract left Metro in early 2005, and the current Planning Department management team was unable to locate records explaining why the former employee decided to allow some task budgets to be exceeded.

*Consultant selection process generally followed best practices*

Contractors should be selected based on three factors: competition; established criteria for assessing their strengths and weaknesses; and past performance. These criteria are based on best practices and are discussed in the December 2000 Metro Auditor's Office report on Metro's contracting practices.

The Planning Department created a competitive environment for the South Corridor work. By developing an RFP that clearly described the work to be performed and by encouraging consultant interest in the RFP, the Department received at least two proposals for each of the four major phases of South Corridor work. It received two proposals bids for one of the phases of work, three bids for two phases, and four bids for the fourth phase.

The Planning Department also established a clear set of criteria for assessing the strengths and weaknesses of each proposal, and the teams that evaluated proposals for each phase of the project applied the criteria when ranking each proposal.

While the selection process was based on competition and on established criteria for assessing the strengths and weaknesses of the consultants, we were unable to determine if past performance was considered. Planning staff told us that it was, but the contract records we reviewed did not yield definitive information about the extent to which past performance was considered in the consultant selection process.

**Some areas can be improved**

As previously discussed, total costs for the consultant contract were less than planned. In addition, the major product developed by the consultant and Metro, the Final Environmental Impact Statement (FEIS) for the I-205/Portland Light Rail Transit Project was issued by the US Department of Transportation in November 2004. While these are favorable outcomes, some matters were identified which indicate weaknesses exist in the Planning Department's approach to managing contracts.

- The Planning Department performed a price analysis before awarding the URS contract, but it did not perform a required cost analysis before increasing the contract by \$500,000.
- Some contract provisions were unclear.
- The Planning Department's process for reviewing consultant's labor time was extensive but incomplete.
- Verification of labor and overhead rates needs to be more complete.
- Some required contract records may not have been developed or retained.

*Price analysis performed but required cost analysis omitted*

Performing price or cost analyses for significant procurement actions is both a best practice and a requirement of the federal grants that finance much of Metro's transportation planning program. This should occur both when awarding and amending contracts. Price and cost analyses help ensure that Metro acquires services at reasonable and fair prices. If they are not done, the risk is that contract costs will be higher than necessary and funds will be wasted. In addition, not doing the price/cost analyses as required can cause Metro to be in violation of federal grant requirements.

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### Price Analysis

Price analysis involves evaluating the cost of a proposal by comparing it with benchmarks of reasonableness. These benchmarks include prices of competitors who responded to a request for proposals or other solicitation; past prices paid for similar services; and market survey data.

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### Cost Analysis

Cost analysis is the systematic examination of the individual items that form the total cost of a contractor's proposal or cost estimate to help ensure that the contractor's pricing is reasonable. These items consist of direct and indirect costs allocable to the work the consultant/contractor is hired to perform. Cost analysis is normally performed whenever real price competition does not exist, such as when the scope of work needs to be changed after the contract has been awarded.

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We found that Planning Department staff performed price comparisons before selecting the consultants that helped it with South Corridor project, including URS, and we were told that this price analysis was provided to the teams that selected the consultants. However, we found no evidence that Metro staff performed an independent cost analysis when the contract was increased by \$500,000 to reflect an expansion of the consultant's work, which was to develop a final environmental impact statement (FEIS) for the South Corridor project. Staff reviewed the consultant's proposed costs for the additional work but there is no documentation that staff independently developed its own cost estimates for the work and compared that result to the consultant's cost proposal.

*Some contract provisions unclear*

Good business practice requires that contracts clearly identify how the contractor will be compensated. Clear compensation provisions protect both parties to the contract by reducing the risk of misunderstandings that can be costly and time-consuming to resolve. In addition, clear compensation provisions help Metro avoid unexpected costs and fees that can occur when contract language is vague.

The contract stipulated that the consultant would be reimbursed for its actual labor and overhead costs, plus a fee that was based on those costs. We are not aware of any compensation-related disputes occurring between Metro and the URS.

However, some of the contract's compensation provisions were vague or indefinite, putting both parties at risk of having misunderstandings over payment terms.

- Planning Department staff told us that the consultant's billed costs could not exceed budgets established for each major task, but the contract did not clearly contain this stipulation. We found that Planning Department staff did disallow a significant amount of costs billed by the consultant that exceeded task budgets, but five task budgets were exceeded and paid for by Metro. Only three tasks were over budget by \$3,000 and 15%.
- The URS contract did not adequately define what types of costs that URS could bill Metro for. Contracts that are the cost-reimbursement type, such as the URS contract, should clearly identify what kinds of costs Metro will pay for and what costs it will not allow. Also, contracts funded by federal grants must follow the principles set forth in federal regulations in determining allowable costs. The URS contract contained a provision that incorporated

some federal requirements by reference, but this provision did not specifically define allowable and non-allowed costs, or cite a particular federal law, regulation or other guidance that did adequately define allowable costs. This put Metro at risk for paying for inappropriate or excessive consultant costs, or for costs that the federal government could disallow if a federal audit were to be conducted.

*Review of consultant's time extensive but incomplete*

Before invoices are paid, Metro staff should verify that contractors have delivered the services they have listed on their invoices. When handling cost reimbursement contracts, such as the URS contract, staff should also verify that the number of consultant labor hours billed by the contractors and subcontractors is accurate. The verification process can be performed in a number of ways, but in the final analysis it is important to match at least a sample of consultant hours billed to Metro with hours recorded in the consultant's own accounting records. One approach is to match invoiced hours to the original time sheets signed by the consultant's employees and supervisor. Another potential step is to match labor hours and costs to other records from the consultant's accounting system.

The Planning Department staff reviewed each URS invoice closely. As a result, Metro paid URS about \$136,000 less than URS billed to Metro. The primary reason for the disallowed charges was costs exceeding task budgets, but invoices were also reduced for other reasons, such as undocumented direct expenses and labor hours charged by persons who were not listed on established rate tables.

Although staff reviewed the consultant's billings, their efforts were not fully adequate to assure that URS accurately billed the labor hours of its employees and that of its subconsultants. Staff verified that invoiced labor hours matched supporting schedules provided by URS and they compared the cost of each major project task to the corresponding task budget. However, they did not compare consultant-billed hours to the number of hours shown on the consultant's actual timesheets or other internal records of the consultant. Most of the work URS did for Metro took place at this consultant's offices, so it was especially important to have a procedure to verify – at least on a sample basis – that URS employees actually spent the number of hours on the project that URS billed to Metro.

The underlying risk is that a consultant could bill Metro for consultant hours that the employee did not actually spend on the Metro project, or the consultant could bill Metro for hours that it did not actually pay its employees for. If the consultant's labor hours are overstated, the related overhead charges would also be overstated since overhead charges are calculated as a percentage of direct labor costs. Such potential overstatements do not need to have been deliberately caused; they could occur if internal control weaknesses exist.

*Verification of labor and overhead needs to be more complete*

When reviewing invoices submitted by contractors/consultants, Metro staff should verify that labor and overhead rates have been charged in accordance with the contract. In addition, for cost-reimbursable contracts Metro should have a process in place for ensuring that billed rates accurately reflect the consultant's actual

allowable costs. This verification requires Metro to audit the consultant's rates, or to review the results of an audit performed by an independent and qualified party, such as a certified public accountant.

Metro paid the consultant about \$260,000 for labor costs and about \$367,000 for overhead expenses. Thus, labor and overhead rates were a significant factor in determining the \$1 million cost of this contract.

Planning Department managers told us that Department staff carefully compared rates charged by the consultant to rates listed in rate tables that had been pre-approved as reasonable by the Programs Manager. There was no procedure requiring these rates to be checked or specifying how rate checks should be documented. We reviewed six invoices submitted by URS Corporation, and all rates tested matched those that Metro agreed to pay the consultant and its subcontractors.

However, we found that the Planning Department did not have adequate processes to ensure that the consultant's labor and overhead rates reflected its actual costs and that only allowable costs were included in the overhead rate:

- No work was done to ensure that labor rates charged by the consultant to Metro matched the rates the consultant actually paid its employees.
- The consultant's overhead rate throughout the duration of the contract was 146.5% of labor charges. The consultant gave Metro a report by a certified public accountant indicating that its actual overhead rate for the "combined California operations", using Federal Acquisition Regulations as criteria, was about 156.6% for the consultant's fiscal year ending on October 31, 2000. Although the 146.5% overhead rate charged was less than this audited rate, the contract did not begin until November 2001, and Metro did not obtain the results of any overhead rate audits performed during the years the consultant contract was actually in force. The rates could have varied from year to year and by locations. In addition, it is unclear whether the consultant's staff who worked on the project for Metro was part of the California operations.

When Metro enters into cost reimbursement-type contracts without verifying the accuracy of billed labor and overhead rates, Metro risks being overcharged by the following means:

- Labor and overhead rates charged by contractor may exceed its actual costs.
- Contractors could direct charge for services that Metro is already paying for through overhead rates.



*Some required records not developed or retained*

Metro developed and retained most key records of the URS contract, such as the Request For Proposals (RFP), proposals received, and copies of the contract, amendments, insurance certificates and related schedules. However, some required contract records may not have been developed and retained.

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**Federal rules<sup>1</sup>** require written records evidencing:

- The rationale for the method of procurement
- The rationale for selection of contract type
- Reasons for contractor selection or rejection
- The basis for the contract price

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**Sound business practice** suggests retaining:

- Requests for Proposals (RFPs)
  - Contractor proposals/responses to RFPs
  - Contract agreements, schedules and amendments
  - Notice of contract award
  - Certificates of insurance
- 

Areas requiring additional documentation include:

- **Reasons for proposal evaluators' ratings.** With respect to the contractor selection process, staff was able to provide us with rating sheets that were filled out by persons who sat on the teams that selected the consultants for the South Corridor project. However, we noted that Metro did not fully comply with the FTA requirement that, "evaluators must provide a written narrative of the reasons for their ratings." With respect to the Environmental Analysis phase of the South Corridor project, only one evaluator out of the six provided Metro with a written narrative.
- **Ranking of contract proposers.** Staff was unable to produce a document showing that URS was the highest-ranking respondent for the parts of the South Corridor consultant work it was awarded. A Planning Department Program Manager said the selection team calculated the consultant rankings on a "white board" but may not have retained a written summary of the final rankings. The Federal Transit Agency, which funded most of the URS contract through grants, may be concerned about the absence of a record proving that URS was the highest ranked respondent to the RFP if it audits Metro's records.
- **Rationale for procurement method or contract type.** We found no written records documenting Metro's rationale for the procurement method or the contract type. The Planning Department did retain documentation showing how the initial contract price was established.

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<sup>1</sup> FTA Circular 4220 1E

## Recommended actions

### More structured approach needed for managing contracts

The Planning Department operates in a complicated contracting environment. Much of its work must comply with complex and sometimes unclear requirements of federal grants as well as Metro's own policies. While the Department achieved reasonably favorable outcomes for the consultant contract we reviewed, its system for managing consultant contracts does not have sufficient structure to ensure it can consistently and adequately manage significant contracting risks and requirements. The Department appears to have excellent staff and managers who are conscientious of the need to carefully and wisely spend public dollars.

The reliability of the Department's contracting processes would benefit by taking two major steps:

- Defining the roles and responsibilities of each employee who is involved in Planning contracts
- Developing a more complete set of procedures to help guide staff on how risks can be identified and how they should be managed.

Currently, contracting roles are not defined and written procedures are minimal. We also found that the role of the Metro Attorney's Office in reviewing and approving contracts has not been adequately defined.

### *Define contract administration roles and responsibilities*

The roles and responsibilities of each person involved in Planning Department contracts have not yet been defined. Responsibilities and expectations need to be identified and documented to help ensure that department staff carry out all tasks necessary to properly administer contracts. We recommend that the Planning Department define the minimum contract administration responsibilities of each staff member involved with contracts.

### Typical responsibilities for contract management

- Ensuring contracts are clearly written and comply with the requirements of the grants that funded them.
- Ensuring that significant risks of each contract have been identified and procedures are in place to manage them.
- Ensuring that contractor labor rates, labor hours, overhead rates and fees have been accurately billed and contractor overhead rates reflect the contractor's actual costs and allowable costs.
- Ensuring contract files contain all required documents and are well organized.

### Develop a more complete set of procedures to guide staff on contracts

Although Metro has contracting guidelines, which are accessible to employees on its internal web site, these guidelines provide general information and do not describe in detail how each department should administer their contracts. The Planning Department has its own administrative procedures, but for contracts they focus on the number of quotes that are required at various contract amounts and do not address other important issues, such as how staff should structure contracts so they comply with federal grants and contain terms and amounts and do not address

other important issues, such as how staff should structure contracts so they comply with federal grants and contain terms and conditions that protect Metro. Besides helping staff understand how to carry out their defined roles and responsibilities, written procedures would provide the Planning Department with other potential benefits. For example, they can be effective tools for training new employees and ensuring consistent performance. They can also include steps that can provide assurance that all required contract administration actions are actually performed.

For these reasons, we recommend that the Planning Department develop additional contracting procedures and make sure that all employees who interface with procurement issues are aware of them.

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#### **Typical contracting procedures needed to guide staff**

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##### *Pre-award activities*

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements

##### *Contract administration*

- What steps should be taken to review contractor invoices, and who should carry out those steps
- What actions to take when amending contracts
- How and when to perform cost analyses when contract scope is changed
- How contractor performance should be monitored and reported
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements
- How adjustments to contractor invoices should be documented, and where this documentation should be retained

##### *Contract close-out*

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/ Purchasing unit for archiving
  - How to close out contracts
  - How Planning Department managers should ensure that contracting procedures have been followed
- 

#### *Clearly identify the role of the Metro Attorney in the contracting process*

During the course of our work, we found that Metro has not adequately defined and communicated the role of the Office of Metro Attorney in the contracting process. Metro's contracting guidelines state that the Office of Metro Attorney:

- Provides legal advice
- Approves contracts over \$25,000
- Reviews contract amendments

These contracting guidelines do not identify the purpose, objectives and potential limitations of contract approvals performed by the Office of Metro Attorney. The contracting guidelines and other sources of Metro contracting procedure also do not define what Metro Attorney "approval" of contracts means, how Attorney approvals and their intended scope should be documented and who they should be

communicated to, or where documents related to attorney contract reviews should be retained. We recommend that the Office of Metro Attorney and Metro's Contract Manager discuss and resolve these issues, and communicate the Attorney Office's defined roles to contracting personnel in other departments. We suggest that, at a minimum, legal review and approval of contracts include determinations of whether contract compensation provisions are clearly written and whether the contracts comply with the requirements of the Metro Code, Oregon state law, and federal grants, if applicable.

*Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices*

This report focused on improving contracting practices in Metro's Planning Department. Many of the issues in this report were addressed in the December 2000 Metro Auditor report entitled, "Contracting: A Framework for Enhancing Contract Management" which contained eight recommendations for improving Metro-wide contracting practices. Five of those recommendations have been fully implemented, and the three outstanding recommendations are:

- Establish a management reporting system to provide contract oversight information to top management.
- Enhance quality control by:
  - Designating a Contract Coordinator in each department to assure contracts are properly planned and monitored
  - Establishing minimum qualifications for contracting personnel
  - Formally evaluating contracting personnel performance
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in:
  - Determining appropriate contract type
  - Establishing scope of work requirements and performance standards
  - Monitoring and evaluating contractor performance
  - Evaluating contractor proposed prices and billings
  - Conducting risk assessments

If Metro carried out these remaining recommendations, Metro's departments, including the Planning Department, might not need to develop their own contracting procedures that are as extensive as the ones we suggest in recommendation #2.

**Additional follow-up on URS consulting contract**

*Consider reviewing the consultant's labor and overhead rates*

Metro's Planning Department compensated the URS Corporation using a cost reimbursement type of contract and has not yet conducted an adequate review of the labor and overhead rates to ensure they accurately reflect URS's actual costs and are allowable under the terms of the federal grants that funded the South Corridor project. We recommend that Metro's Planning Department request audit reports of URS's overhead rates for fiscal years 2001 through 2004, and ensure that the 146.5% rate URS charged during those years approximated its actual, audited overhead rates. Metro's Planning Department should also determine, on a sample basis, whether URS staff assigned to the South Corridor project were actually paid the amounts that Metro was billed for their time.

## Audit methodology and limitations

### **Audit methodology**

We carried out the following procedures to complete this audit:

- We identified procurement best practices by searching the Internet and reading past audit reports performed by the Metro Auditor and other government audit departments. One key source of information was an audit report produced by the Metro Auditor's Office in December 2000 entitled, "Contracting: A Framework for Enhancing Contract Management."
- We identified federal requirements applicable to Metro's transportation planning contracts by reviewing the FTA's "Master Agreement," which provides a compilation of all the general requirements imposed for all FTA grants. A new version of the Master Agreement is issued at the beginning of each federal fiscal year (October 1) and applies to all FTA grants awarded to Metro during that year. In addition, we read the "certifications and assurances" document provided by Metro's Chief Operating Officer (COO) to the FTA each year. In signing the "certifications and assurances" document, Metro's Chief Operating Officer represents that Metro will comply with all federal statutes, regulations, executive orders, and other requirements applicable to FTA grants received in the upcoming fiscal year. We also reviewed FTA Circular 4220.1E, which is cited in section 1F of the certifications and assurances document. This Circular contains a number of specific requirements that Metro must comply with when administering contracts that are funded by FTA grants.
- We interviewed staff in Metro's Planning Department. We asked staff about policies, procedures and practices they follow in carrying out their administration of transportation planning contracts. We also sought advice about several audit issues from the Office of Metro Attorney.
- We selected a single contract to audit to ensure that we understand how Metro staff actually handles transportation planning contracts. The contract we reviewed, contract #923312 with URS Corporation, began in November 2001 and ended in June 2005. This contract started at an amount of \$756,000 and totaled \$1,256,000 after \$500,000 in additional work was added to it in March 2004. Through early June 2005, Metro had paid URS about \$1.03 million under this contract. URS was one of four consultants that helped Metro staff develop supplemental and final environmental impact statements for the South Corridor project. This project would add 8.3 miles of light rail tracks to the region's transit system and provides a link from the Clackamas regional center to Portland State University in downtown Portland.

Our audit was conducted in accordance with generally accepted government auditing standards. These standards require that we review internal controls and report significant deficiencies that are relevant to audit objectives. Significant internal control deficiencies found during the course of the audit are described in the report.

**Audit  
limitations**

We evaluated the Planning Department's compliance with some, but not all, requirements connected with the federal grant that funded the URS Corporation contract. We selected the requirements most relevant to the scope of the audit. For example, we evaluated its compliance with a provision in FTA Circular 4220.1E that mandates performing a price or cost analysis in connection with every procurement action. However, we did not evaluate whether Metro's written standards of conduct meet federal requirements or if Metro is adequately enforcing the standards.

We relied on records that were available from Metro managers and staff. We did not contact any contractors, nor did we audit the overhead rate charged in connection with the contract we audited as part of this review.

Some Metro transportation consultant contracts must be managed in compliance with certain intergovernmental agreements (IGAs). Metro's compliance with those IGAs was outside the scope of this audit. Some of Metro's transportation contracts are subject to provisions in both federal grants and IGAs.

## **Response to the Report**

Metro Chief Operating Officer Michael Jordan

---

**Audit:** System for Managing Contracts Can Be Improved

**Date:** January 2006

## AUDIT RESPONSE

### Recommendation 1

Define contract administration roles and responsibilities to:

- Ensure contracts are clearly written, especially the compensation provisions, and include all terms and conditions required by the grants that funded them.
- Identify significant contract risks and ensure that processes are in place to properly manage them.
- Ensure that contractor invoices comply with contract terms and that services billed were provided.
- Ensure that contract files contain required records that are well-organized.

### Agree

Yes   X  

No        (specify reasons for disagreement)

### What action will be taken (if any)?

Metro had recently organized a Business Design Team to review our contracting procedures throughout the entire agency and this group has published its final recommendations on 9/7/05. These recommendations include developing a centralized contracting department that will bring uniformity in contracting practices, provide greater accountability for contracting matters and decisions, and will lead to a more focused set of responsibilities that will result in greater expertise in our staff. At this time, however, key individuals needed to further develop and implement these recommendations have yet to be identified or hired. Recruitment and selection of the new Contracts Manager is anticipated to begin in January 2006.

Steps have already been undertaken to define contracting roles for all personnel involved in contracts; these roles have been published on Metro's intranet, but may undergo further revisions once Metro establishes a centralized contracting department.

### Who will take action?

Central Services

### When will action be accomplished?

Upon hiring the new Contracts Administrator, Metro will be able to continue moving forward with this recommendation. It is estimated that a new Contracts Administrator will be hired by April 2006.

### Follow-up necessary to correct or prevent reoccurrence.



**Audit: System for Managing Contracts Can Be Improved**

**Date: January 2006**

## AUDIT RESPONSE

### Recommendation 2

Develop a more complete set of procedures to guide staff on contracts.

#### *Pre-award activities*

- How to select the optimum contract type and document this decision
- How to determine what requirements/provisions to include in contracts.
- What actions to take to identify and manage contract risks
- How to perform a price analysis
- How to document the contractor selection process to comply with Metro, state and federal requirements.

#### *Contract administration*

- What steps should be taken to review contractor invoices, and who should carry out those steps.
- What actions to take when amending contracts.
- How and when to perform cost analyses when contract scope is changed.
- How contractor performance should be monitored and reported.
- For cost-reimbursement contracts, how Planning Department staff should ensure that costs and rates charged to Metro accurately reflect contractors' actual costs and comply with federal requirements.
- How adjustments to contractor invoices should be documented, and where this documentation should be retained.

#### *Contract close-out*

- How to decide which records need to be included in the department's contract files and which ones should be provided to Metro's Contracts/ Purchasing unit for archiving.
- How to close out contracts.
- How Planning Department managers should ensure that contracting procedures have been followed.

### Agree

Yes   X  

No        (specify reasons for disagreement)

### What action will be taken (if any)?

Staff has paid strict attention to all federal regulations concerning contracting procedures. We have taken steps to identify the appropriate contract type, developed sufficient cost analysis to ensure Metro was receiving the fair price, and clearly communicated, in measurable terms, what the scope of work was. Staff has also demonstrated they are reviewing invoices against the terms in the contract and have consistently disallowed costs that were not eligible for reimbursement.

We concur that there should be more attention paid to documentation of some procedures. To improve upon our written procedures, individuals and/or small task groups will research and document best practices for all aspects of contracts. To ensure uniformity throughout the agency, this recommendation will be assigned the centralized contracting department once it is operational.

**Who** will take action?

The new, centralized contracts department once it is in force. In the meantime, Planning will research best practices as the need arises and develop checklists to ensure contracts currently being managed by Planning are in accordance with the governing federal requirements, and will document the steps that are taken.

**When** will action be accomplished?

Planning will start immediately on items that pertain to them, but will defer the final product to new centralized contracts dept and Contract Manager once they are established.

**Follow-up** necessary to correct or prevent reoccurrence.

**Audit:**     **System for Managing Contracts Can Be Improved**

**Date:**     **January 2006**

## **AUDIT RESPONSE**

### **Recommendation 3**

Clearly identify the role of the Metro Attorney in the contracting process. At a minimum, legal review of contracts should include a determination of whether contracts are clearly written and whether they contain all provisions required by the Metro Code, Oregon statutes, and federal grants, if applicable.

### **Agree**

Yes   X  

No        (specify reasons for disagreement)

### **What** action will be taken (if any)?

The role of the Metro Attorney in reviewing contracts is a continuing topic of discussion. To reduce that role, Purchasing and Contracts worked with the Attorney to develop pre-approved formats and language that do not require Attorney review unless a change in the pre-approved standard terms is required. Training was done for all Metro staff over a year ago, in how to access both procedures and forms on the Metro Intranet. Procedures and forms are in continual revision as changes occur due to state and Metro legislation and standard practice, such as the Bureau of Labor and Industry updates that took effect January 1, 2006.

The method to ensure appropriate Metro Attorney involvement in the processes that do not have standard formats is the next step. To that end, we have the State of Oregon's administrative procedures on attorney contract review as a model upon which to build the appropriate Metro process.

In addition, Metro's Business Design Team had also recognized the need to have this role better defined in their findings and recommendations on Metro's contracting process, and this will be addressed once the centralized contracts department is established.

### **Who** will take action?

Contracts Manager once hired.

### **When** will action be accomplished?

After recruitment and selection of a full-time Contracts Manager is completed by the Chief Financial Officer, which is anticipated to happen by April 2006.

### **Follow-up** necessary to correct or prevent reoccurrence.

**Audit:**     **System for Managing Contracts Can Be Improved**

**Date:**     **January 2006**

## **AUDIT RESPONSE**

### **Recommendation 4**

Consider reviewing the consultant's labor and overhead rates.

### **Agree**

Yes   X  

No        (specify reasons for disagreement)

URS's overhead rates were developed by an outside auditing firm and were reviewed by Metro at the start of the contract. However, we did not receive subsequent audited rates, so we will request a copy of their audited overhead rates for the rest of the years the contract was in effect. We have also given consideration to requesting URS timesheets, but because this contract has ended, we feel it is not constructive at this point to do so.

Reasonable costs and time commitments were established up-front and incorporated into the individual task budgets, allowing staff to efficiently assess whether effort charged was excessive or not. Planning staff diligently reviewed invoices submitted for payment to the approved rates and list of personnel authorized to work on each task in the contract, and project managers reviewed the hours billed for reasonableness as well. This attention to details resulted in staff disallowing \$136,000 of costs invoiced to Metro. In addition, the careful management of the overall projected resulted in final costs being \$200,000 less than planned.

### **What** action will be taken (if any)?

Overhead rates for the years the contract was in effect will be requested from URS.

For future contracts, Planning staff will continue to be diligent about checking rates and will document this process better.

### **Who** will take action?

Efforts will be coordinated by Karen Anderson.

### **When** will action be accomplished?

Immediately.

### **Follow-up** necessary to correct or prevent reoccurrence.

**Audit:** System for Managing Contracts Can Be Improved

**Date:** January 2006

## AUDIT RESPONSE

### Recommendation 5

Implement remaining recommendations from Metro Auditor December 2000 report on contracting practices (*Contracting: A Framework for Enhancing Contract Management*).

- Establish a management reporting system to provide contract oversight information to Metro's top managers.
- Establish minimum qualifications for contracting personnel, formally evaluate contracting personnel performance and designate a Contract Coordinator in each department to assure contracts are properly planned and monitored.
- Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in determining appropriate contract type; establishing scope of work requirements and performance standards; monitoring and evaluating contractor performance; evaluating contractor proposed prices and billings; and conducting risk assessments.

### Agree

Yes   X  

No        (specify reasons for disagreement)

### What action will be taken (if any)?

Actions have been taken to implement these remaining recommendations from the 2000 audit. The Purchasing and Contracts department has developed and sends out monthly reports to department heads for all contracts over \$10,000 processed during the previous month. However, additional efforts on this and the other recommendations are still in progress. Department contract coordinators were established and began to meet on a regular basis but they were later canceled when the Business Design Team found the concept was not meeting the expected need. We recognize this need still exists and will defer to the new Contracts Manager for developing and implementing a new plan to address these recommendations.

### Who will take action?

Contracts Manager.

### When will action be accomplished?

After recruitment and selection of a full-time Contracts Manager is completed by the Chief Financial Officer, which is anticipated to happen by April 2006.

**Follow-up** necessary to correct or prevent reoccurrence.



METRO

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# 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.

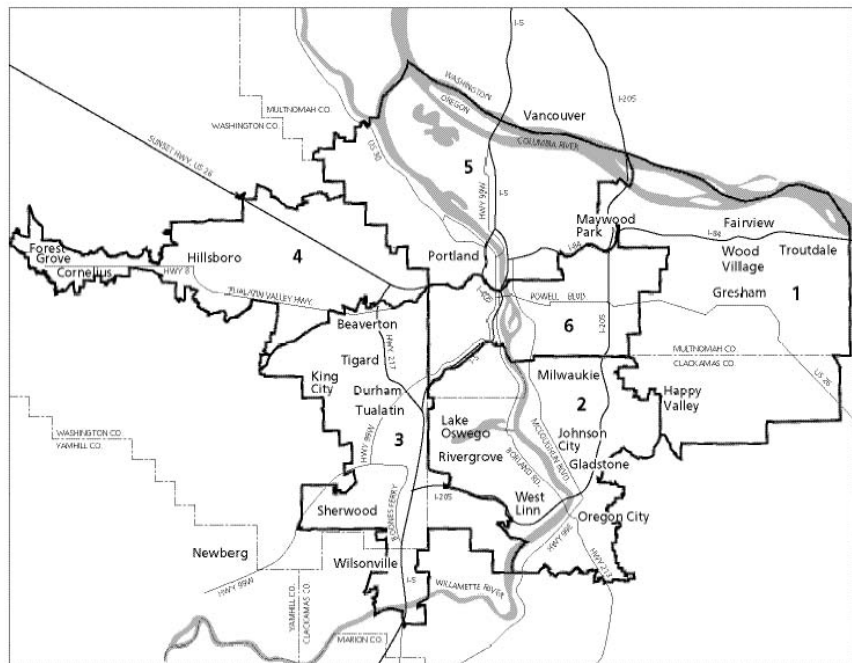
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Metro Councilors – Rod Park, District 1; Brian Newman, District 2; Carl Hosticka, deputy council president, District 3; Susan McLain, District 4; Rex Burkholder, District 5; Robert Liberty, District 6.

Auditor – Alexis Dow, CPA

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE	)	RESOLUTION NO. 06-3662
APPOINTMENT OF DR. KEITH THOMSEN TO	)	
THE REGIONAL SOLID WASTE ADVISORY	)	Introduced by David Bragdon,
COMMITTEE (SWAC)	)	Council President

WHEREAS, Metro Code Chapter 2.19.130 established the Regional Solid Waste Advisory Committee (SWAC) to evaluate policy recommendations to the Metro Council regarding regional solid waste management and planning; and

WHEREAS, Metro Code Chapter 2.19.030 states that all members and alternate members of all Metro Advisory Committees shall be appointed by the Council President subject to confirmation by the Council; and

WHEREAS, Metro Code Chapter 2.19.130 authorizes representatives and alternates for the SWAC; and

WHEREAS, vacancies have occurred in the SWAC membership; and

WHEREAS, the Council President has appointed Dr. Keith Thomsen as a member representing the County of Washington, in the place and stead, of Mark Altenhofen, subject to confirmation by the Metro Council; now therefore,

BE IT RESOLVED, that the Metro Council confirms the appointment of Dr. Thomsen to Metro's SWAC.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

---

David Bragdon, Council President

---

Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 06-3662 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF DR. KEITH THOMSEN TO THE REGIONAL SOLID WASTE ADVISORY COMMITTEE (SWAC)**

---

Date: February 9, 2006

Prepared by: Susan Moore

## **BACKGROUND**

The 25-member Regional Solid Waste Advisory Committee (SWAC), representing recyclers, the hauling industry, disposal sites, citizen-ratepayers and local governments, evaluates policy options and presents recommendations to the Metro Council regarding regional solid waste management and planning.

Mark Altenhofen, the current Washington County representative on SWAC, recently left the agency. Dr. Keith Thomsen is assuming his position as the Manager of Solid Waste & Recycling Program. Washington County Department of Health & Human Services has recommended Dr. Thomsen as the new representative to Metro's Solid Waste Advisory Committee. (Please see attached Resume marked as Attachment 1.)

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition.

### **2. Legal Antecedents**

ORS 192.610 "Governing Public Meetings", Metro Code Chapter 2.19.030, "Membership of the Advisory Committees" and 2.19.130, "Metro Solid Waste Advisory Committee", are the relevant legal documents related to these appointments.

### **3. Anticipated Effects**

This resolution is intended to appoint Dr. Keith Thomsen as the Washington County representative, for a two-year term of service on the SWAC.

### **4. Budget Impacts**

None.

## **RECOMMENDED ACTION**

The Council President has reviewed the qualifications of Dr. Keith Thomsen and finds him qualified to advise Metro in the matters of solid waste management and planning. Therefore, Council confirmation of this appointment by adoption of Resolution No. 06-3662 is recommended.

**DR. KEITH D. THOMSEN**  
Washington County  
Department of Health & Human Services  
Solid Waste & Recycling Program  
155 N First Ave, Suite 170, MS 4  
Hillsboro, OR 97124  
Phone: (503) 846-3663  
FAX: (503) 846-4928  
e-mail: keith\_thomsen@co.washington.or.us

**EDUCATION**

1997 – 2003 University of California Los Angeles  
Doctor of Environmental Science and Engineering

1988 – 1989 California State University, Fresno  
Masters of Business Administration

1976 – 1982 Oregon State University, Corvallis  
Bachelor of Science - General Engineering

**JOB EXPERIENCE**

2006 – Current Solid Waste Management Program Director, Washington County, OR

1999 – 2005 President, BioContractors, Inc., Cerritos, CA

1998 – 1999 Program Director, SCS Engineers, Long Beach, CA

1995 – 1997 Vice President and Senior Program Director, Earth Tech, Inc., Irvine, CA

1994 – 1995 Vice President, Americlean Environmental Services, Inc., Long Beach, CA

1991 – 1994 Regional Solid Waste Director, Harding Lawson Associates, Santa Ana, CA

1989 – 1991 Senior Environmental Engineer, Metropolitan Service District, Portland, OR

1985 – 1989 Environmental Engineer, Pacific Gas and Electric Company, San Francisco, CA

**PROFESSIONAL REGISTRATIONS**

Registered Professional Civil Engineer, State of Oregon, Registration No. 17922 PE

Registered Professional Civil Engineer, State of Arizona, Certificate No. 30904

Diplomate Environmental Engineer, American Academy of Environmental Engineers

Certified 29 CFR Part 1910.120 Hazardous Waste Worker, Site Supervisor and Annual Refresher

## **PROFESSIONAL AFFILIATIONS**

American Society of Civil Engineers

Solid Waste Association of North America

Southern California Waste Management Forum

## **HONORS AND AWARDS**

Hewlett Foundation Fellowship for Doctoral Study in Environmental Science and Engineering (1998)

International Who's Who of Professionals (1997)

Who's Who in Environmental Engineering (1997 - 2005)

Who's Who in U.S. Business Executives (1989)

National Small Business Administration Graduate Schools of Business MBA Project Competition - 2nd Place National Competition (1989)

Graduate School Dean's Medal Finalist, School of Business Administration (1989)

AGC President's Scholarship for Advanced Study in Civil Engineering (1983)

## **PUBLICATIONS AND PRESENTATIONS**

Effects of Compaction on Methanogenesis in a Landfill Bioreactor, 4<sup>th</sup> International Conference on Anaerobic Digestion of Solid Waste, Copenhagen, Denmark, 31 August - 2 September 2005.

Design, Construction and Start-up of a Farm-Scale Mesophilic Anaerobic Digester, BioCycle West Coast Conference, Los Angeles, CA, March 2003.

Effects of Compaction on the Anaerobic Decomposition of Organic Wastes from the Restaurant Substream of Municipal Solid Waste. Research seminar presentation at the University of California Los Angeles, April 2000.

Research Initiative to Identify and Cultivate Deep-well Anaerobic Microorganisms in Oil Reservoirs. Poster presentation to the U.S. Department of Energy Technical Workshop on Converting Biosolids to Clean Energy By Deep Well Injection and Biodegradation, Marina del Rey, California, August 26 and 27, 1999.

Methanogenesis of Biosolids at Deep Well Injection Sites. Presentation to the US EPA Joint Meeting on Deep Well Injection Technologies, Los Angeles, CA, July 1999.

Evaluating the Assumption of Normality in Waste Composition Samples for Seven Cities in Southern California, Technical Seminar in Civil and Environmental Engineering, University of California Los Angeles, November 1998.

A Fugacity Approach to Modeling Transport of Organic Chemicals in Solid Waste Landfills. Presentation of research findings at the University of California Los Angeles, June 1998.

Designing and Implementing a Community-Based Used Oil Management Program for the City of Los Angeles, CA, Presentation to the Los Angeles Area Chambers of Commerce, August 1995.

Complying with RCRA at rural landfill sites, Presentation to the Waste Management Forum, Los Angeles, CA, April 1995.

Analytical Framework for Investing in Environmental Plant and Equipment within a Solid Waste Utility, Southern California Waste Management Conference, April 22-24, 1994, Anaheim, California.

Regulating Solid Waste as a Utility, Proceedings from the Association of State and Territorial Solid Waste Management Officials Symposium on Solid Waste, July 20-22, 1992, Portland, Oregon.

Greenwaste Management Practices, Proceedings from the Turfgrass Council Sixth Annual Meeting, March 31, 1992, Santa Fe Springs, California.

Analysis of Solid Waste Industry System Rate Models, Eco-Expo Symposium on Solid Waste, June 20-22, 1991, San Jose, California.

Lifecycle Analysis of the Environmental Consequences of Disposable and Reusable Cloth Diapers, Association of Oregon Recyclers, August 26-29, 1990, Bend, Oregon.

Methodology for Analyzing Materials Recovery Processing Capacity Within a Solid Waste System, Metropolitan Service District, February, 1990, Portland, Oregon.

Municipal Solid Waste Composting Facility Design and Construction, Proceedings from the Solid Waste Composting Council First Annual Conference and Symposium, December 5-8, 1990, Washington, D.C.

Green waste Composting, Proceedings from the Community Environmental Council meeting on Composting Organics in the Municipal Waste Stream, August 8-10, 1989, Santa Barbara, California.

Development and Application of the Concept of Lost Opportunity Costs as Basis for Investment in Plant and Equipment in Regulated Industries, White Paper presented to the California Public Utilities Commission, August 16, 1988.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING TITLE 11 )      ORDINANCE NO. 06-1110  
(PLANNING FOR NEW URBAN AREAS) OF )  
THE URBAN GROWTH MANAGEMENT )  
FUNCTIONAL PLAN TO FACILITATE THE )  
SITING OF CERTAIN PUBLIC USES IN NEW )  
URBAN AREAS )      Introduced by Council President Bragdon

WHEREAS, Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan (“UGMFP”) establishes temporary limitations on land divisions in territory newly added to the urban growth boundary (“UGB”) in order to avoid premature commitment of land during the time of comprehensive planning for the new territory; and

WHEREAS, given the slow pace of comprehensive planning for territory added to the UGB, this limitation can unintentionally delay and, thereby, increase the public cost of, acquisition of sites for certain needed public facilities; and

WHEREAS, this potential effect of the limitation on creation of new parcels is not the intent of Title 11, and is inconsistent with Policy 1.14.4 (School and Local Government Plan and Policy Coordination) of Metro’s Regional Framework Plan (“RFP”) ; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan is hereby amended, as shown in Exhibit A, attached and incorporated into this ordinance, to facilitate the siting of certain public uses in new urban territory subject to comprehensive planning under Title 11.
2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, explain how this amendment to Title 11 complies with the RFP and state planning laws.

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" to Ordinance No. 06-1110  
Amendment to Title 11 (Planning for New Urban Areas)  
of the Urban Growth Management Functional Plan**

**TITLE 11: PLANNING FOR NEW URBAN AREAS**

3.07.1105 Purpose and Intent

It is the purpose of Title 11 to require and guide planning for conversion from rural to urban use of areas brought into the UGB. It is the intent of Title 11 that development of areas brought into the UGB implement the Regional Framework Plan and 2040 Growth Concept.

3.07.1110 Interim Protection of Areas Brought into the Urban Growth Boundary

Until the effective date of amendments to comprehensive plans and implementing land use regulations that comply with section 3.07.1120, **the city or county responsible for planning territory added to the UGB [local government] shall not approve [of]:**

- A. A[ny] land use regulation or zoning map amendment[s] specific to the territory allowing higher residential density than allowed by acknowledged provisions in effect prior to the adoption of the UGB amendment;
- B. A[ny] land use regulation or zoning map amendment[s] specific to the territory allowing commercial or industrial uses not allowed under acknowledged provisions in effect prior to the adoption of the UGB amendment;
- C. [Any] A land division or partition that would result in the creation of [any] a new lot or parcel [which would be] less than 20 acres in [total] size, **except to create lots or parcels for public facilities and services as defined in Metro Code section 3.01.010 or a new public school;**
- D. In an area identified by the Metro Council in the ordinance adding the area to the UGB as a Regionally Significant Industrial Area:
  - 1. A commercial use that is not accessory to industrial uses in the area; and
  - 2. A school, church or other institutional or community service use intended to serve people who do not work or reside in the area.

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 06-1110 FOR THE PURPOSE OF AMENDING TITLE 11 (PLANNING FOR NEW URBAN AREAS) OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN TO FACILITATE THE SITING OF CERTAIN PUBLIC USES IN NEW URBAN AREAS

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Date: January 27, 2006

Prepared by: Dick Benner, Ray Valone

## BACKGROUND

Urban Growth Management Functional Plan, Title 11 section 3.07.1110, Interim Protection of Areas Brought into the Urban Growth Boundary, prohibits local governments with land use jurisdiction over a new urban area from approving land divisions within the area prior to the adoption of comprehensive plan and implementing ordinances that result in new parcels less than 20 acres. The Beaverton School District's recent search for a new school site of 10 acres has not been successful. The District has found land, however, within the new Bethany expansion area that would be appropriate for a new school, but does not need a full 20 acres. Pursuant to discussions among the school district, Washington County staff and Metro staff, Metro Chief Operating Officer Jordan directed staff to draft a revision to Title 11 that would allow the division of land for public schools during the Title 11 interim period in increments less than 20 acres.

Staff drafted an ordinance amendment to resolve the school siting issue (see Attachment 1). Staff also proposes to extend relief from the 20-acre restriction to all public facility and service land use siting issues. This provision anticipates the need to allow local governments to approve land divisions less than 20 acres for uses such as sewer or water pump stations, sub-stations or fire stations. This amendment, therefore, includes language to exempt public facility and services as well as public schools from the 20-acre limit. Public facilities and services, as defined in Metro Code 3.01.010, means 'sanitary sewers, water service, fire protection, parks, open space, recreation, streets and roads and mass transit.'

This amendment would not obviate the need for the affected local governments to complete Title 11 planning for a new area before urbanization could occur. Approval of a land division does not constitute approval of a particular use, school or otherwise. Approval of the use would have to comply with local zoning

## ANALYSIS/INFORMATION

1. **Known Opposition:** None known at this time
2. **Legal Antecedents:** Title 11, Urban Growth Management Functional Plan, section 3.07.1110C.
3. **Anticipated Effects:** Adoption of the ordinance will allow local governments to approve land divisions that create parcels less than 20 acres within new urban areas prior to the adoption of comprehensive plan and implementing ordinances for the siting of public facilities and services and public schools.
4. **Budget Impacts:** None



**RECOMMENDED ACTION**

Adoption of Ordinance No. 06-1110

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 ~~closure~~ Closure plan required to be submitted to DEQ, or if DEQ does not require a ~~closure~~ Closure plan, a ~~closure~~ Closure document describing ~~closure~~ 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 eClosure 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 f~~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

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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~~ application fee that would have otherwise been required to authorize the waste disposed ~~application fee, plus the \$500 non-system license issuance fee,~~ 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~~

- (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**

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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	)	Introduced by Michael Jordan,
THE TIMEFRAME FOR ACTING ON	)	Chief Operating Officer, with the
APPLICATIONS FOR LICENSE RENEWALS AND	)	concurrence of David Bragdon,
TO CLARIFY HOW CERTAIN LOADS SHOULD BE	)	Council President
REPORTED FOR PAYMENT OF METRO FEES	)	
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 Determine 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.

(~~de~~) 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 15<sup>th</sup> day of each month, commencing the 15<sup>th</sup> day of the month following the month in which the non-system license is issued and continuing through the 15<sup>th</sup> 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 15<sup>th</sup> day of each month, commencing the 15<sup>th</sup> day of the month following the month in which the non-system license is issued and continuing through the 15<sup>th</sup> 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 20<sup>th</sup> 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

\_\_\_\_\_  
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  
REGARDING ILLEGAL DISPOSAL OF SOLID  
WASTE

) ORDINANCE NO. 06-1107  
)  
) 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~~ \$5,000 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 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~~

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## 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~~ 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 2006-	)	RESOLUTION NO. 06- 3664
09 METROPOLITAN TRANSPORTATION	)	
IMPROVEMENT PROGRAM TO INCLUDE	)	Introduced by Councilor Rex Burkholder
HIGH PRIORITY PROJECT FUNDING FROM	)	
THE FEDERAL SAFE, ACCOUNTABLE,	)	
FLEXIBLE, EFFICIENT TRANSPORTATION	)	
EQUITY ACT (SAFETEA) AND THE OREGON	)	
IMMEDIATE OPPORTUNITY FUND	)	

WHEREAS, transportation project funding has been authorized for projects in the Metro area through the Safe, Accountable, Flexible, Efficient, Transportation Equity Act, and

WHEREAS, the Metro Council and Joint Policy Advisory Committee on Transportation (JPACT) are authorized to program these project funds into the Metropolitan Transportation Improvement Program (MTIP), and

WHEREAS, inclusion in the MTIP is required for the project sponsor to access the authorized funds, and

WHEREAS, Metro has found the projects listed in Exhibit A recommended for amendment into the MTIP to be exempt from air quality conformity determination and has consulted with appropriate air quality agencies regarding these findings, and

WHEREAS, these projects are consistent with the Regional Transportation Plan; now therefore

BE IT RESOLVED that the Metro Council adopt the recommendation of JPACT to include the programming of transportation project funding as listed in Exhibit A into the 2006-09 Metropolitan Transportation Improvement Program.

ADOPTED by the Metro Council this 9th day of February, 2006

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

**Exhibit A**

Resolution 06-3664

The Portland metropolitan area received several project funding earmarks through the SAFETEA High Priority Projects and funding from the State Immediate Opportunity Fund. Programming of funds to these projects is outlined in tables below.

As the Portland metropolitan area is in maintenance status for CO, an air quality conformity analysis and consultation is required prior to programming of these funds into the Metropolitan Transportation Improvement Program. Also included below is the findings for the air quality consultation process.

The following projects are determined to be exempt from conformity determination by rule per Table 2 of the EPA Guidance.

**SAFETEA High Priority Project earmarks**

	2006	2007	2008	2009
Metro Regional Trail Program				
Planning – Project Development	\$2,000,000			
PE – Final Design		\$1,000,000		
Right-of-Way			\$1,000,000	
Construction				\$1,000,000

Air Quality: Bicycle and pedestrian facilities.

	2006	2007	2008	2009
Domestically Produced Streetcar				
Planning – Project Development	\$1,000,000			
Construction		\$1,000,000	\$1,000,000	\$1,000,000

Mass Transit: Purchase of rail car for minor expansion of the fleet. Project will design and build one additional streetcar to add to the fleet of eight streetcars, more than 600 buses and 60 light rail vehicles serving the Portland central city.

	2006	2007	2008	2009
Union Station				
Construction	\$33,200	\$16,600	\$16,600	\$16,600

Mass Transit: Renovation of transit buildings or structures. Project will fund repairs to Union Station terminal building.

<b>South Metro Area Rapid Transit Bus Purchase and Bus Facility</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Transit Capital</b>	<b>\$82,600</b>	<b>\$41,800</b>	<b>\$41,800</b>	<b>\$41,800</b>

**Mass Transit: Purchase of bus for replacement or minor expansion of the fleet. Renovation of transit buildings or structures. Project will fund purchase of one bus to replace existing aging bus and work on maintenance facility.**



**Oregon Immediate Opportunity Fund Project**

NE Sandy Boulevard @ 223 <sup>rd</sup> Avenue	2006	2007	2008	2009
PE – Final Design	\$90,000			
Right-of-Way	\$76,000			
Construction	\$1,075,000			

Safety: widening narrow pavements (no additional travel lanes). Project will reconstruct and widen pavement at the intersection of NE Sandy Boulevard and 223<sup>rd</sup> Avenue to better facilitate turning movements for trucks.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3664, FOR THE PURPOSE OF AMENDING THE 2006-09 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM TO INCLUDE HIGH PRIORITY PROJECT FUNDING FROM THE FEDERAL SAFE, ACCOUNTABLE, FLEXIBLE, EQUITABLE TRANSPORTATION EQUITY ACT (SAFETEA) AND OREGON IMMEDIATE OPPORTUNITY FUND.

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Date: February 9, 2006

Prepared by: Ted Leybold

### BACKGROUND

To access federal transportation funds and to demonstrate projects will not have an adverse impact to the region's air quality, transportation projects must be included in the Metropolitan Transportation Improvement Program (MTIP). Five projects that have been determined as not having a measurable impact and in conformance with air quality regulations have been provided funding through the federal transportation authorization act (SAFETEA) and the Oregon Immediate Opportunity fund.

The projects and the funding made available are listed in Exhibit A of Resolution 06-3664. This resolution would approve amending the 2006-09 Metropolitan Transportation Improvement Program to include programming of transportation project funds obtained for these projects.

### ANALYSIS/INFORMATION

1. **Known Opposition** None known at this time.
2. **Legal Antecedents** Amends the 2006-09 Metropolitan Transportation Improvement Program adopted by Metro Council Resolution 05-3606.
3. **Anticipated Effects** Adoption of this resolution will make available federal transportation project funding to local jurisdictions for projects listed in Exhibit A of Resolution 06-3664.
4. **Budget Impacts** None.

### RECOMMENDED ACTION

Metro Council approve Resolution No. 06-3664.

BEFORE THE METRO COUNCIL

DESIGNATING COUNCIL PROJECTS AND	)	Resolution No. 06-3666
CONFIRMING LEAD COUNCILORS AND	)	
COUNCIL LIAISONS FOR NATURE IN	)	Introduced by Council President
NEIGHBORHOODS AND NEW LOOK	)	David Bragdon
COMMUNICATIONS		

WHEREAS, the development and/or implementation of certain Metro Council projects have policy implications that require the attention of the Metro Council; and

WHEREAS, some projects with policy implications are of a scope and complexity that, for purposes of efficiency, benefit from the focused attention of a subset of the Council; and

WHEREAS, members of the Council have identified such projects; and

WHEREAS, those projects identified have been defined and put forth in the form of project proposals, included in Exhibit A; and

WHEREAS, the Council President, working with members of the council, has designated specific councilors to play lead and/or liaison roles on projects as specified in Exhibit A:

now therefore

BE IT RESOLVED:

1. The Council confirms the project proposals, including the designation of projects, project definitions, lead councilor assignments, and councilor liaison assignments as specified in Exhibit A for Nature in Neighborhoods Monitoring Program, Nature in Neighborhoods Grants Program, Nature in Neighborhoods Nature Friendly Practices and New Look Communications.

ADOPTED by the Metro Council this 9<sup>th</sup> day of February, 2006.

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David Lincoln Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

**Metro Council Project Proposal**  
October 31, 2005

**Lead Councilor:** Susan McLain

**Council Liaison:** Carl Hosticka

**Project Title:** Nature in Neighborhoods Monitoring Program

**Project Begin Date:** October, 2005

**Estimated Date of Completion:** January, 2007

**Project Description:**

The Metro Council recognizes the importance of a science-based program of monitoring ecosystem health informing the investment in restoration and protection of natural areas as part of the Nature in Neighborhoods initiative. This monitoring is multi-functional, serving the scientific and general publics.

The data to determine our successes in restoration and enhancement of ecosystems will be taken from a collection of existing data gathered by a collaborative, user-driven reporting structure. Metro Council will be the place all groups involved in restoration, enhancement and monitoring activities for various purposes will (virtually) gather in one place (a database with map) to share their contribution to this region's activities in support of ecosystem health. This tool (tentatively named REIN, Regional Environmental Information Network) is envisioned as simple to use and attractive to partners when they seek to place their work in a larger geographic, and societal context.

Through REIN, the Metro Council will be providing a powerful tool for the region, and ongoing reporting that is able to demonstrate the region's achievements and challenges regarding ecosystem health. Many local groups support this effort and will be partners in entering project information and interpreting the data or other results. REIN will help increase local capacity through information sharing, partner identification, reducing duplication of efforts, and increasing the likelihood of obtaining funding for restoration and enhancement projects. It will also help Metro Council and others identify gaps in efforts or monitoring data.

This effort works together with the grants program, as recipients are likely to generate data for the database and be among the first members to share what they are planning to restore or enhance with their newly funded actions. Additionally, REIN will provide a format to display the location of projects using habitat-friendly practices, as encouraged by our efforts with local jurisdictions, developers and design professionals.

**Questions:**

1. What are the most effective measures the Metro Council can use to truthfully reflect regional outcomes in habitat protection and stewardship of natural resources?
2. Which organizations, groups and property owners will self-select to create relevance for the REIN reporting by inspiring action and knowledge by participating in the network?

**Outcomes:**

The Metro Council will be aware of existing, past and future activities in the restoration, enhancement, and monitoring fields based on the participation of local partners in the REIN network. Additionally, the reports generated will inform interested parties of the connection between habitat health and local initiative undertaken thereby allowing conclusions to be drawn about stewardship in the region.

**Connection to Council Goals and Objectives:**

- 2.1 Natural areas are large enough, have the appropriate balance of species and are interconnected with other natural areas so that normal ecological processes are maintained.
- 2.2 Our community is inspired to create a better future for wildlife and the environment.
- 2.3 The region's waste stream is reduced, recovered and returned to productive use, and the remainder has a minimal impact on the environment.
- 4.1 Regional needs are supported by appropriate regional funding mechanisms.
- 4.3 Metro Council provides services that fit its distinct competency or regional scope.

**Resources Required / Budget Implications:**

The project will be supported with existing staff as well as Nature in Neighborhoods 1.0 FTE (1 non-managerial staff) dedicated to establishing and administering monitoring and reporting program with support from the Data Resource Center and others. Public reports are envisioned every two years.

## **Metro Council Project Proposal**

October 31, 2005

**Lead Councilor:** Rod Park

**Council Liaisons:** Susan McLain; Carl Hosticka

**Project Title:** Nature in Neighborhoods Grants Program

**Project Begin Date:** August, 2005

**Estimated Date of Completion:** July, 2006

### **Project Description:**

The Metro Council recognizes the importance of investment in restoration for habitat health, and established a two-year grant program as part of the Nature in Neighborhoods initiative. Grant funding is provided by the Solid Waste Recovery Stabilization Reserve, which consists of excise taxes collected on solid waste disposal.

The grants are open to neighborhood associations, special districts, other government agencies, non-profit groups, business groups and private citizens, and are intended for nature-friendly projects throughout the region, with an emphasis on restoring natural areas as well as areas negatively impacted by illegal dumping.

The Metro Council has entered into this program with the support of the region's solid waste and recycling industries. The Solid Waste Advisory Committee and the Local Governments Recycling Coordinators have been briefed on expectations for the launch year of the grants program.

By working together on the grants program and advancing the industries' important, responsible and environmentally-friendly role in recycling and proper solid waste handling, Metro Council and the solid waste industry can forward the restoration of natural areas and ensure that they are protected in the future.

### **Questions:**

3. What are the policy objectives of the restoration grants program?
4. What communications should Metro Council undertake as part of the grants program? How should councilors and other stakeholders be involved?
5. How will the objectives of the grant program be met and sustained beyond the current grant funding cycles?
6. How can the grants program be used to develop Metro Council's relationship with key constituencies, such as the solid waste industry?

7. What methods should be developed to evaluate the effectiveness of the program?

**Outcomes:**

Metro Council will be aware of the existing need for funding in the restoration field based on the size and scope of the pre-applications submitted. Additionally, the first year of projects will inform how much local action can be secured with existing funding, and will identify gaps in groups and individuals involved in stewardship.

**Connection to Council Goals and Objectives:**

- 2.1 Natural areas are large enough, have the appropriate balance of species and are interconnected with other natural areas so that normal ecological processes are maintained.
- 2.2 Our community is inspired to create a better future for wildlife and the environment.
- 2.3 The region's waste stream is reduced, recovered and returned to productive use, and the remainder has a minimal impact on the environment.
- 4.1 Regional needs are supported by appropriate regional funding mechanisms.
- 4.3 Metro Council provides services that fit its distinct competency or regional scope.

**Resources Required / Budget Implications:**

The project will be supported with existing staff as well as Nature in Neighborhoods 1.0 FTE (1 non-managerial staff) dedicated to establishing and administering the 2-year program and seeking to extend the outcomes and partnerships created by the initial funding. New sources of revenue will need to be identified to support regional action beyond the current two-year funding.

**Metro Council Project Proposal**  
October 31, 2005

**Lead Councilor:** Brian Newman

**Council Liaisons:**

**Project Title:** Nature in Neighborhoods Nature-Friendly Practices Program

**Project Begin Date:** November, 2005

**Estimated Date of Completion:** July, 2006

**Project Description:**

The Metro Council recognizes the importance of encouraging the use of nature-friendly practices (also called low impact or habitat-friendly) for ecosystem health, and has pursued various strategies to serve developers, design professionals and property owners as part of the Nature in Neighborhoods initiative.

The non-regulatory approach includes Metro Council staffing to provide direct outreach to Home Builders Association and other industry groups. We will raise the visibility of the building industry's contribution to habitat health in the region in order to encourage all builders to adopt these practices in this region.

The Metro Council is continuing this effort as it was begun with the 1996 and 1997 stormwater practices awards giving to existing projects in the region. Partners in this effort include local jurisdictions and they will be approached for participation and/or sponsorship of these ongoing recognition efforts.

By working together on the way we build in this region and advancing the examples of how builders have demonstrated their interest in providing environmentally-friendly site design and structures, Metro Council and the building industry can forward the protection of natural areas now and in the future.

Question:

8. What are the incentives that effectively deliver new construction projects with above average habitat-friendly practices that can be implemented by Metro Council or partners?

**Outcomes:**

*February 2006*



Metro Council will be linked with the industry alliances that are optimal for creating change in the practices of HBA member builders and other associations serving the building and design professional communities. Additionally, public knowledge and recognition of the value of these building practices on on-the-ground conditions for fish and wildlife will be raised significantly.

**Connection to Council Goals and Objectives:**

- 2.1 Natural areas are large enough, have the appropriate balance of species and are interconnected with other natural areas so that normal ecological processes are maintained.
- 2.2 Our community is inspired to create a better future for wildlife and the environment.
- 2.3 The region's waste stream is reduced, recovered and returned to productive use, and the remainder has a minimal impact on the environment.
- 4.1 Regional needs are supported by appropriate regional funding mechanisms.
- 4.3 Metro provides services that fit its distinct competency or regional scope.

**Resources Required / Budget Implications:**

The project will be supported with existing Council staff as well as Nature in Neighborhoods 1.0 FTE (1 non-managerial staff) dedicated to establishing and administering the builders and design professionals program. Various initiatives may result in additional costs that will be handled in the annual budget process.

**November 15, 2005**

**Metro Council Project Proposal**

**Lead Councilor:** David Bragdon

**Council Liaisons:** Carl Hosticka, Rex Burkholder

**Project Managers:** Jon Coney – Principal  
Kate Marx, Randy Tucker

**Project Title:** Communications campaign plan for leading the New Look

**Project Begin Date:** October, 2005

**Estimated Date of Completion:** January, 2007

**Project Description**

The communication project liaisons will provide oversight for operation of the plan and serve as a rapid response team for managing emerging issues; for example, developing and approving talking points needed to respond to unforeseen opportunities and circumstances.

Based on direction by the Council in an October 2005 work session, the liaisons assigned to this project will provide oversight for the plan to achieve specific Council-centered outcomes. The plan will -

- Ensure that Councilors' time is used wisely in serving as messengers with breaking news and feature media, official events and special events, public meetings and local government activities.
- Coordinate communications activities and Council calendars, choosing the best matches between messenger and audience and ensuring geographic/district equity in creating communications opportunities that are Councilor-centered.
- Monitor Council communications opportunities for incorporating approved messaging in everyday communications.

**Policy Questions** (What major policy questions must be answered?)

- What are the target audiences and what are their particular interests? (Target audiences are currently divided into three major segments: public service partners, communities of interest, and residents of the region).
- Which elements of the New Look should each target audience be engaged in?
- What themes and messages will resonate with each target audience?
- What communications media should be used? Who should carry the message? What are the communications strategies and tactics for each target audience?
- How will councilors coordinate their communications and work together for maximum effect? Are councilors willing to speak with one voice? When there is disagreement among councilors on policy outcomes, how should staff manage media access given that limited opportunities exist? How should spokesperson assignments be distributed?
- How will coordination in messaging occur among the component parts of the New Look?
- What should be the scope of communications and stakeholder engagement given tradeoffs in time and expense? How can Metro achieve optimal efficiency for desired outcomes?

**Outcomes** (What will result from the project? What must be in place for the project to be considered complete?):

- The objectives for each target audience listed in the communications plan will be achieved. –For example, elected partners in the region will accept and adopt the new growth management issue frame and will join the Metro Council in using the new frame to communicate shared objectives.
- In order to ensure that all project objectives are promoted *and* defended in a manner that is understood and relevant to the public, and in a manner that preserves the Council's credibility, the Council and staff will be disciplined and thoughtful about managing information and adhering to new norms for effective communications and process management.
- The Council and staff will seek to contain costs of communications; Materials and Services costs will be allocated to the project budget in the Planning department.
- Public opinion research will be used to provide an understanding of the views of the broader public and to inform both the framing of key issues and the policy direction of the project.

**Connection to Council Goals and Objectives:**

3.1 Lead regional problem solving and regional initiatives.

3.4 Communicate effectively and develop constructive relationships with internal and external audiences.

**Resources Required / Budget Implications:**

One public affairs staffer has been assigned primary responsibility for supporting Council-centered activities and project communications for the duration of the New Look project and will serve as the principal staff contact with the project liaisons.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO.06-3666, DESIGNATING COUNCIL PROJECTS AND CONFIRMING LEAD COUNCILORS AND COUNCIL LIAISONS FOR NATURE IN NEIGHBORHOODS AND NEW LOOK COMMUNICATIONS

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Date: January 26, 2006

Prepared by: Michael Wetter

## BACKGROUND

This resolution adopts four new council projects: Nature in Neighborhoods Monitoring Program, Nature in Neighborhoods Grants Program, Nature in Neighborhoods Nature Friendly Practices and New Look Communications. Exhibit A to the resolution includes council project proposals that define the general scope of the projects. Project managers are responsible to bring a more detailed work plan to the council for approval at a later date.

In approving the three new Nature in Neighborhoods project proposals, the council may choose to acknowledge phase-out of the original Nature in Neighborhoods project, adopted on March 3, 2005. Some of the policymaking elements of this project are complete (such as the Government Coordination element which is now a project for management, rather than for policymaking). Other elements of the original Nature in Neighborhoods project are the subject of other council projects. These include the Greenspaces Bond Measure and the three Nature in Neighborhoods proposals that are part of the present resolution.

## ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Resolution 05-3551 adopted the original Nature in Neighborhoods project proposal.
3. **Anticipated Effects** Policymaking work will continue on the projects defined in the exhibit.
4. **Budget Impacts** The projects are supported within the approved Metro budget.

## RECOMMENDED ACTION

Approve the resolution adopting the four projects. Acknowledge the formal phase-out of the original Nature in Neighborhoods project.