

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 2.04 TO )	ORDINANCE NO. 06-1123 <sup>A</sup>
REPEAL METRO CODE SECTION 2.04.026, TO )	
MODIFY OTHER PROVISIONS RELATING TO )	Introduced by Chief Operating Officer
METRO CONTRACTING, AND TO MAKE )	Michael J. Jordan, with the concurrence of
RELATED CHANGES )	Council President David Bragdon
)	

WHEREAS; Metro is required from time to time to contract for the provisions of goods and services, for the construction of public improvements and for the acceptance of grants, and

WHEREAS, it is in the public interest to assure that Metro’s public contracts, personal services contracts, public improvement contracts and grants are performed in accordance with Council policies and directions; now therefore,

THE METRO COUNCIL ORDAINS as follows:

Section 1. Metro Code Section 2.04.026 is amended to read as follows:

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

~~(1) Any contract which commits Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:~~

~~(A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.~~

~~(B) Any public improvement contract for an amount over \$50,000.~~

~~(C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.~~

~~(D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.~~

~~(E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the Metro Charter.~~

~~(F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the Metro Charter, over additional functions.~~

~~(2)(1)~~ Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or

~~(3)(2)~~ Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer may execute options to purchase real property.

~~(b) Prior to adoption of the annual budget, the Chief Operating Officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.~~

~~Thereafter, if the Chief Operating Officer proposes to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the Chief Operating Officer shall inform the Council President in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the Chief Operating Officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the Chief Operating Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President.~~

~~(c)(b) All contracts which require Council authorization pursuant to subsections (a)(1) or (b)(2) above and which are subject to procedures for competitive sealed bidding, for competitive sealed proposals, or for special procurements shall require Council authorization of the request for sealed bids, request for sealed proposals, or requests for special procurements to release of bidding or proposal or special procurement documents to vendors. At the time of Council authorization of the documents seeking competitive sealed bids, competitive sealed proposals, or special procurements, the Council may waive the requirement of Council authorization of the contract.~~

Section 2. Metro Code Section 2.04.028 is amended to read as follows:

#### 2.04.028 Council Information Reports

(a) Prior to adoption of the annual budget, the Chief Operating Officer shall provide the Council with a list of proposed contracts and proposed applications of Metro for grant funding over \$1950,000 to be entered into or sought during the next fiscal year. Following the adoption of the annual budget, if the Chief Operating Officer proposes (1) to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$1950,000 that the Council has not considered during the annual budget process; or (2) to seek any

individual grant funding in an amount greater than \$1050,000 that the Council has not considered during the annual budget process, the Chief Operating Officer shall inform the Council President in writing of such contract or grant proposal.

(b) The Chief Operating Officer shall provide a monthly report to Council showing all contracts awarded, ~~and amended~~ and/or completed during the preceding month, all Metro applications for grant funding greater than \$1050,000, and all grants awarded by Metro greater than \$25,000.

(c) The Chief Operating Officer shall make available to the Council on request information showing the status of all contracts whether listed in the adopted budget or not.

Section 3. Metro Code Section 2.04.046 is amended to read as follows:

#### 2.04.046 Personal Services Contract Amendments

(a) Personal services contracts ~~of an initial amount of \$50,000 or less~~ may be amended to increase the amount of the contract to no more than twice the original contract amount. The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this limit ~~requires~~ shall require approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract in light of the policies set forth in ORS 279A.015 and ORS 279B.010.

~~(b) Contracts with an initial amount of greater than \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$100,000 greater than the initial contract amount shall be subject to approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract, in light of the policies set forth in ORS 279A.015 and ORS 279B.010. Notwithstanding the provisions of subsection (a) of this section, personal services contracts may be amended to increase the amount of the contract to an amount more than twice the original contract amount if the original personal services contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work.~~

Section 4. Metro Code Section 2.04.053(a) is amended to add the following:

“(20) Contracts with any media outlet for the purchase of classified advertising, display advertising or the placement of public notices to publicize legal notices of public meetings and procurements.”

Section 5. Metro Code Section 2.04.058 is amended to read as follows:

#### 2.04.058 Public Contract Amendments

(a) The Chief Operating Officer may execute amendments to public contracts ~~which were not designated as contracts having a significant impact on Metro~~, provided that any one of the following conditions are met:

- (1) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional

work and the original contract governs the terms and conditions of the additional work; or

- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or

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(3) The contract amendment to a contract for a public improvement does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.

- (4) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection;

(5) The amendment is for a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work;

(6) The amendment is for a change order to a public improvement contract in order to meet an emergency; or

~~(4)~~ (7) The Metro Contract Review Board has authorized the extension of the contract amendment.

~~(b) No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance; except as follows:~~

- ~~(1) The Chief Operating Officer may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original scope of work included in the original contract. Provided, however, the Chief Operating Officer must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same~~

action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.

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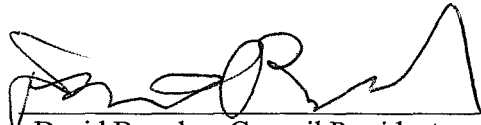
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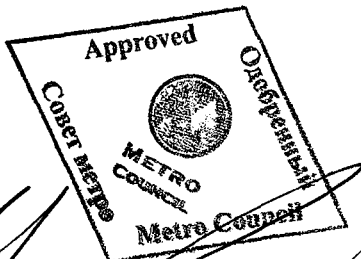
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~~(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.~~

ADOPTED by the Metro Council this 15<sup>th</sup> day of June, 2006.

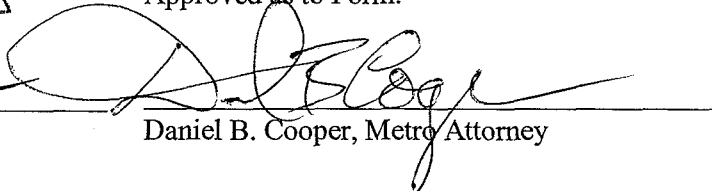
  
David Bragdon, Council President



Attest:

  
Christina Billington, Recording Secretary

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney

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- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or

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(3) The contract amendment to a contract for a public improvement does not increase the contract amount more than \$25,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.

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(5) The amendment is for a change order for additional work if the original contract was let by a formal competitive procurement, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work;

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~~(d) For the purpose of this section any contract which was subject to specific Council authorization of its execution prior to the effective date of this ordinance shall be considered to be a contract that has a significant impact on Metro.~~

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. 06-1123, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 to REPEAL METRO CODE SECTION 2.04.026, TO MODIFY OTHER PROVISIONS RELATING TO METRO CONTRACTING, AND TO MAKE RELATED CHANGES

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Date: May 12, 2006

Prepared by: David Biedermann

### BACKGROUND

In early 2005 the Metro Council updated the Metro Code regarding public contracts to reflect the 2003 Oregon Legislature major revisions to public contracting law, Oregon Revised Statutes Chapter 279. Subsequently, the Council engaged staff in discussing further changes to simplify the contracting process at Metro regarding the oversight of contracts and to include a similar Council overview of grant applications in generally the same manner as contracts. The proposed ordinance is the result of those conversations.

The focus of this legislation is fourfold:

- To simplify Council review prior and subsequent to budget adoption of the major contracts proposed in the budget,
- To ensure notification after budget adoption of newly proposed contracts (i.e., not in the adopted budget),
- To ensure the Council has the opportunity to be aware of all contracts at any time,
- To enhance Council awareness of the grant process to/from Metro.

The current system involves a complex set of rules regarding designation of a contract as having “significant impact”, which requires Council action. In some cases mandatory review is topical, in others it is monetary, and in still others it is both. However, unless a contract meets specific criteria, Council interest in a particular proposed contract may or may not be met as a result.

The proposed alternative is a simple one.

- The current designation of “significant impact” would cease. Instead, the Council would view contracts as a whole at budget time, not just specific ones meeting certain topical criteria.
- The proposed budget would have a list of all contracts over \$100,000 (increased from the current \$50,000 level) proposed for the coming fiscal year. The list would be grouped into: (1) contracts continuing from the current budget year into the new one, and (2) new proposed contracts (which would require standard bid procedures).

- As is the case now, as part of the budget adoption process, Council would accept the list of existing and proposed contracts, and no further review would be required.
- After adoption of the budget, any additional contracts over \$100,000 not in the list in the budget would require notification of the Council through a Chief Operating Officer communication (it could be a Council work session presentation, but in any case the current “10 day letter” process would continue). Council can either agree to proceed by declining to respond or any Councilor can request discussion at a work session.
- On a monthly basis, the Chief Operating Officer will provide the Council a list of all contracts awarded, amended and/or completed (“completed” being a new reporting criteria).
- Current grants over \$100,000 continuing from the current fiscal year and proposed grants the departments wish to pursue would be reported in the same manner. However, presentation of revenue grants during the budget process will not constitute legal appropriation. If the grant application is submitted, accepted and awarded to Metro by the granting agency, the responsible department must submit a budget amendment to recognize the revenue.
- Grants anticipated to be awarded by Metro (e.g., the Solid Waste enhancement and Nature in Neighborhood grants) would operate the same way, except the reporting level would be \$25,000. These would be budgeted as appropriations.

Two areas of contracting would require Council action (these are in the current Code) in any circumstance. These are:

- Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit.
- Any contract for the purchase, sale, lease or transfer of real property owned by Metro. The Chief Operating Officer could execute options (which would require Council approval) to purchase real property, however.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code 2.04, State of Oregon Revised Statutes (ORS) Chapters 279A, 279B and 279C.
3. **Anticipated Effects:** Will provide consistent and clear reporting mechanism to Metro Council for contracts and grants for Metro staff.

4. **Budget Impacts:** Minor cost savings. Eliminating the annual identification of “significant impact” contracts will save some staff time. Developing the list of proposed contracts is for the most part a function of reviewing the existing budget and proposed new work plans for the coming year. When the budgets are submitted to the Council, those resources already exist, thus we should be able to turn in the contract lists in less time and staff work.

#### **RECOMMENDED ACTION**

Chief Operating Officer recommends passage of Ordinance 06-1123.