

A G E N D A

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**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING  
DATE: January 11, 2007  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. PORTLAND STATE UNIVERSITY PUBLIC HISTORY PRESENTATION** Barber

**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the January 4, 2007 Metro Council Regular Meeting.

4.2 **Resolution No. 07-3750**, For the Purpose of Confirming the Re-Appointment of Gloria Candanoza to the Investment Advisory Board.

**5. ORDINANCES - SECOND READING**

5.1 **Ordinance No. 07-1135**, Amending Metro Code Chapter 5.02.027 to Modify Charges for Management of Certain Household Hazardous Wastes. Park

5.2 **Ordinance No. 07-1136**, For the Purpose of Amending Metro Code Chapter 2.21 (Claims under Ballot Measure 37) for Treatment of Claims against Metro under ORS 197.352 and Declaring an Emergency. Liberty

**6. RESOLUTIONS**

6.1 **Resolution No. 07-3759**, Confirming the New Waste Transport Contract as a Council Project and Confirming Lead Councilor and Council Liaisons. Harrington

**7. CHIEF OPERATING OFFICER COMMUNICATION**

**8. COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for January 11, 2007 Metro Council meeting**

<b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b> Channel 11 -- Community Access Network <a href="http://www.tvctv.org">www.tvctv.org</a> -- (503) 629-8534 2 p.m. Thursday, Jan. 11 (live)	<b>Portland</b> Channel 30 (CityNet 30) -- Portland Community Media <a href="http://www.pcmv.org">www.pcmv.org</a> -- (503) 288-1515 8:30 p.m. Sunday, Jan. 14 2 p.m. Monday, Jan. 15
<b>Gresham</b> Channel 30 -- MCTV <a href="http://www.mctv.org">www.mctv.org</a> -- (503) 491-7636 2 p.m. Monday, Jan. 15	<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, Jan. 13 11 p.m. Sunday, Jan. 14 6 a.m. Tuesday, Jan. 16 4 p.m. Wednesday, Jan. 17
<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.

**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).

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE RE- ) RESOLUTION NO. 07- 3750  
APPOINTMENT OF GLORIA CANDANOZA TO )  
THE INVESTMENT ADVISORY BOARD ) Introduced by Michael Jordan, Chief  
Operating Officer, in concurrence with David  
Bragdon, Council President

WHEREAS, The Metro Code, Section 7.03.030, provides that the Council confirm the names of persons for appointment to the Investment Advisory Board, and,

WHEREAS, Gloria Candanoza, having ably served as an Investment Board member, is qualified to continue to perform these duties, now, therefore, and

WHEREAS, The Council President, upon the recommendation of the Investment Officer, has appointed Gloria Candanoza for the term ending October 31, 2009,

BE IT RESOLVED that the Metro Council confirms the appointment of Gloria Candanoza as a member of the Investment Advisory Board for the term ending October 31, 2009.

ADOPTED by the Metro Council this eleventh day of January 2007.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 07-3750, FOR THE PURPOSE OF CONFIRMING THE RE-APPOINTMENT OF GLORIA CANDANOZA TO THE INVESTMENT ADVISORY BOARD

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Date: December 27, 2006

Prepared by: Brian Williams

#### BACKGROUND

Metro Code, Section 7.03.030, includes the creation of the Investment Advisory Board. One provision of this Code requires the Chief Operating Officer acting in the capacity of the Investment Officer to recommend to the Council for confirmation those persons who shall serve on the Board to discuss and advise on investment strategies, banking relationships, the legality and probity of investment activities, and the establishment of written procedures of the investment operation. The Metro Charter requires appointments to be made by the Council President subject to Council Confirmation. Metro Council President David Bragdon, upon the recommendation of the Investment Officer, has appointed Gloria Candanoza to the board subject to Council confirmation.

Gloria Candanoza, Operations Manager for Account Management at the Internal Revenue Service, Portland Site, has served on the Investment Advisory Board since February 21, 2001. During her time on the board Ms. Candanoza has become familiar with Oregon Revised Statutes relating to investments by municipalities and with Metro's Investment Policy. Her experience and knowledge has proven to be a valuable resource for the Investment Advisory Board.

#### ANALYSIS/INFORMATION

1. **Known Opposition** None.
2. **Legal Antecedents** None.
3. **Anticipated Effects** Confirmation of the re-appointment of Gloria Candanoza will provide continuity of experience of Investment Advisory Board members.
4. **Budget Impacts** There is no out-of-pocket expense created by the re-appointment of Candanoza to the volunteer position.

#### RECOMMENDED ACTION

Michael Jordan, Chief Operating Officer, in concurrence with Council President David Bragdon, recommends the confirmation of Gloria Candanoza for the term expiring October 31, 2009.

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER ) ORDINANCE NO. 07-1135  
5.02.027 TO MODIFY CHARGES FOR )  
MANAGEMENT OF CERTAIN HOUSEHOLD ) Introduced by Chief Operating Officer  
HAZARDOUS WASTES ) Michael J. Jordan, with the concurrence of  
 ) Council President David Bragdon

WHEREAS, in 2001 Metro Council adopted Metro Ordinance No. 01-907A and thereby determined that for a period of three years there should be no charge for household hazardous waste accepted at Metro facilities or hazardous waste collection events in a container of less than 10 gallons in capacity, to reduce barriers to safe management of such hazardous products from residences in the Metro region; and

WHEREAS, in 2004 the Metro Council adopted Metro Ordinance No. 04-1057 and thereby extended the hazardous waste fee exemption for an additional two years; and

WHEREAS, the hazardous waste fee exemption adopted in Ordinance No. 01-907A and extended in Ordinance No. 04-1057 is scheduled to expire on December 31, 2006; and

WHEREAS, Metro staff will evaluate a permanent HHW fee exemption and report back to the Metro Council on the issues, merits, economics, disposal options and potential effects of such an action, so that the Metro Council may implement either a permanent HHW fee exemption or a fee-based program to be effective October 2007; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 5.02.027 is amended as follows:

5.02.027 Charges for Management of Household Hazardous Wastes

(a) There is hereby established a Household Hazardous Waste Management Charge that shall be collected on all household hazardous waste accepted at Metro Hazardous Waste Facilities and at household hazardous waste collection events. Such Household Hazardous Waste Management Charge shall be in lieu of all other base disposal charges, user fees, regional transfer charges, rehabilitation and enhancement fees, and certification non-compliance fees that may be required by this chapter.

(b) The Household Hazardous Waste Management Charge shall be \$5.00 for the first 35 gallons of household hazardous waste that is delivered in a single transaction in containers of 10 gallons capacity or less and \$5.00 for each additional 35 gallons (or portion thereof) of household hazardous waste that is delivered in the same transaction in containers of 10 gallons capacity or less.

(c) The Household Hazardous Waste Management Charge shall be \$5.00 for a quantity of household hazardous waste that is delivered in a single transaction in containers greater than 10 gallons capacity, together with an additional charge for the contents of each container as follows:

- (1) \$5.00 for up to 25 gallons of household hazardous waste;
- (2) \$10.00 for more than 25 gallons of household hazardous waste.

(d) Each of the above charges may be waived by the Director of the Solid Waste & Recycling Department.

(e) Notwithstanding subsections (b) and (c) of this section, there shall be no charge for household hazardous waste accepted at Metro Hazardous Waste Facilities or household hazardous waste collection events in a container of less than 10 gallons capacity. The provisions of this sub-section (e) are repealed September 30, 2007.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

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David Bragdon, Council President

Attest:

Approved as to Form:

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Council Clerk Recording Secretary

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Daniel B. Cooper, Metro Attorney

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## **STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 07-1135 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02.027 TO MODIFY CHARGES FOR MANAGEMENT OF CERTAIN HOUSEHOLD HAZARDOUS WASTES**

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January 4, 2007

Prepared by: Jim Quinn

## **BACKGROUND**

Between 1993 and 2001, Metro collected a fee of \$5 for each 35 gallons of household hazardous waste (HHW) brought to our permanent collection facilities. No fee was collected from customers bringing waste to our one-day HHW collection events. In addition, customers who brought MSW to the transfer stations for disposal at the same time as bringing in an HHW load were not charged the fee. The revenue collected this way amounted to about 1% of the hazardous waste program's total operating costs.

In 2001 Metro Council adopted Metro Ordinance No. 01-907A, which established that for a period of three years there would be no charge for household hazardous waste accepted at Metro's Hazardous Waste Facilities and collection events, except for containers greater than 10 gallons capacity. This fee waiver was intended to help reduce stockpiles of HHW still held by residents of the Metro region, in order to reduce the risks to the environment and public health.

The household hazardous waste fee exemption adopted was originally scheduled to expire on December 31, 2004. Metro Ordinance No. 04-1057 extended this deadline to December 31, 2006, so that the issue of fees for HHW could be examined as part of developing the Regional Solid Waste Management Plan (RSWMP).

The primary argument against charging fees in an HHW program is that they may provide a disincentive to bringing hazardous waste in, and residents may be more likely to dispose of it improperly. The benefit of the revenue obtained must be balanced against this risk. In lieu of a fee, all funding for the hazardous waste program comes from the regional system fee. Each household in region pays approximately \$0.25 each month as part of their garbage bill.

During the course of developing the recent RSWMP revision, some analysis of the HHW fee question was conducted. A survey was done of customers bringing waste in to Metro's HHW facilities, and stakeholders were asked about the issue during the RSWMP public involvement process. In addition, a survey of leading HHW programs around the country was completed, including a look at whether or not they charge fees.

This ordinance extends the HHW fee waiver for an additional 9 months, so that Metro staff may evaluate a permanent HHW fee exemption and report back to the Metro Council on the issues, merits, economics, disposal options, and potential effects of such a program, versus a fee-based program. The Metro Council may then choose to implement either a permanent fee exemption program or a fee-based program to be effective October 2007.

## **ANALYSIS/INFORMATION**

## **1. Known Opposition**

None

## **2. Legal Antecedents**

Metro Ordinance No. 01-907A, which waived the HHW fee for containers less than 10 gallons in size through December 31, 2004, and Metro Ordinance No. 04-1057, which extended the waiver through December 31, 2006.

## **Anticipated Effects**

Adoption of Ordinance No. 07-1135 is not expected to have a substantial impact on HHW customers or loads.

## **Budget Impacts**

Prior to the 2001 HHW fee waiver, Metro's HHW program was collecting about \$40,000 annually from household customer at the facilities. Passage of this ordinance would eliminate this revenue from the hazardous waste program budget for an additional nine months.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Ordinance No. 07-1135.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) Ordinance No. 07-1136  
METRO CODE CHAPTER 2.21 (CLAIMS )  
UNDER BALLOT MEASURE 37) FOR )  
TREATMENT OF CLAIMS AGAINST ) Introduced by Michael Jordan, Chief Operating  
METRO UNDER ORS 197.352 AND ) Office, with concurrence by David Bragdon, Metro  
DECLARING AN EMERGENCY ) Council President

WHEREAS, the Metro Council adopted Metro Code Chapter 2.21 by Ordinance No. 05-1087A [For the Purpose of Adopting a Process for Treatment of Claims Against Metro Under Ballot Measure 37 by Adding Chapter 2.21 to Title II of the Metro Code (Administration and Procedure)], effective December 21, 2005; and

WHEREAS, the Metro Council has heard and entered final orders disposing of seven claims for compensation brought under Metro Code Chapter 2.21, the experience from which leads the Council to clarify its basis for determining whether a land use regulation has had the effect of reducing the fair market value of a claimant's property; and

WHEREAS, the Metropolitan Policy Advisory Committee has reviewed the proposed amendments and recommends that the Metro Council adopt them; and

WHEREAS, the Metro Council held a public hearing on the proposed amendments on January 11, 2007, and has considered the testimony; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Chapter 2.21 of Title II of the Metro Code, Claims Under ORS 197.352 (Ballot Measure 37), is hereby amended as indicated in Exhibit A, attached and incorporated into this ordinance.
2. The Findings of Fact and Conclusions of Law, attached and incorporated into this ordinance as Exhibit B, explain how the amendments comply with the Regional Framework Plan and state law.
3. This ordinance is necessary for the immediate preservation of the welfare of the people of the region because a large number of claims under Chapter 2.21 of Title III of the Metro Code has been filed recently to meet a deadline in ORS 197.352. The ordinance makes

significant changes to the way Metro evaluates claims. It is essential that claimants and the people of the region know about these changes as soon as possible because Metro must respond to the claims within 180 days after they are filed. An emergency is therefore declared to exist. This ordinance shall take effect immediately upon adoption, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this \_\_ day of January, 2007.

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David Bragdon, Council President

Attest:

Approved as to form:

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Christina Billington, Recording Secretary

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Daniel B. Cooper, Metro Attorney

## Exhibit A to Ordinance No. 07-1136

### CHAPTER 2.21

#### CLAIMS UNDER ~~ORS 197.352~~ (BALLOT MEASURE 37)

SECTIONS	TITLE
2.21.010	Purpose
2.21.020	Definitions
2.21.030	Filing a Claim
2.21.040	Review of Claim by Chief Operating Officer and Recommendation
2.21.050	Hearing on Claim before Metro Council
2.21.060	Action on Claim by Metro Council
2.21.070	Conditions on Compensation or Waiver
2.21.080	Fee for Processing Claim

#### 2.21.010 Purpose

This chapter establishes a process for treatment of claims for compensation submitted to Metro under ~~ORS 197.352~~ (Ballot Measure 37). Metro adopts this chapter in order to afford property owners the relief guaranteed them by ~~Ballot Measure 37~~ ~~ORS 197.352~~ and to establish a process that is fair, informative and efficient for claimants, other affected property owners and taxpayers. It is the intention of Metro to implement ~~Measure 37~~ the statute faithfully and in concert with its other responsibilities, including its Charter mandate to protect the environment and livability of the region for current and future generations.

#### 2.21.020 Definitions

(a) "Appraisal" means a written statement prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon pursuant to ORS Chapter 674. In the case of commercial or industrial property, "appraisal" additionally means a written statement prepared by an appraiser holding the MAI qualification, as demonstrated by a written certificate.

(b) "Family member" means the wife, husband, son, daughter, father, brother, brother-in-law, sister, sister-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner of the real property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the real property.

(c) "Land use regulation" means a provision of a Metro functional plan or a land use regulation adopted by a city or county to comply with a Metro functional plan.

(d) "Owner" means the owner of the property, or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

(e) "Reduction in value" means a reduction in the fair market value of real property, or any interest therein, resulting from enactment or enforcement of a land use regulation ~~as of the date the owner makes a written claim for compensation.~~

(f) "Waiver" means action by the Metro Council to modify, remove or not apply the land use regulation ~~resulting in found to have caused~~ a reduction in ~~fair market~~ value.

#### 2.21.030 Filing a Claim

(a) A person may file a claim with Metro for compensation under ~~Measure 37~~ ORS 197.352 without following the process set forth in this chapter. Metro ~~will~~ may give priority to a claim filed under this chapter over claims filed without compliance with this chapter.

(b) A person filing a claim under this chapter must be the owner of the property that is the subject of the claim at the time the claim is submitted to Metro. The person must simultaneously file with Metro all claims against Metro under ~~Measure 37~~ ORS 197.352 that involve the property. The person shall submit the claim or claims to the Chief Operating Officer (COO) and shall include, at a minimum, the following information:

- (1) The name, street address and telephone number of the claimant and all other persons and entities with an interest in the property;
- (2) A title report issued no more than 30 days prior to submission of the claim that shows the claimant's current real property interest in the property, the deed registry of the instrument by which the claimant acquired the property, the location and street address and township, range, section and tax lot(s) of the property, and the date on which the owner acquired the property interest;
- (3) A written statement signed by all owners of the property, or any interest in the property, consenting to the filing of the claim;

- (4) ~~A copy of reference to~~ any and all specific, existing land use regulations the claimant believes reduced the value of the property and a description of the manner in which the regulation restricts the use of the property;
- (5) A copy of the ~~city or county~~ land use regulations that applied to the property at the time ~~the claimant acquired the property~~ the challenged land use regulations became applicable to, or were enforced against, the property;
- (6) ~~An appraisal that shows the reduction in value of the property that the claimant believes resulted from the land use regulation that restricts the use of the property and the methodology used in the appraisal, such as comparable sales data~~The claimant's purchase price for the property;
- (7) Evidence of the fair market value of the property prior to the application or enforcement of the challenged land use regulations to the property and the fair market value after application or enforcement of the regulations;
- (78) A description of the claimant's proposed use of the property if the Council chooses to waive a land use regulation instead of paying compensation; and
- (89) A statement whether the claimant is filing claims with other public entities involving the same property and a copy of any decision made by the entity on the claim.

(c) In addition to the information required by subsection (b) of this section, a person filing a claim under this chapter after December 4, 2006, shall also submit the following information with the claim:

- (1) A copy of the land use application the claimant has filed with the city or county in which the property lies; and
- (2) A copy of the final decision made by the city or county on the claimant's land use application indicating that the city or county applied the challenged land use regulation as a criterion as part of its final decision.

(d) A claim shall not be considered complete for purposes of subsections (4) and (6) of ~~Ballot Measure 37~~ ORS 197.352 until the claimant has submitted the information required by this section.

2.21.040 Review of Claim by Chief Operating Officer and Recommendation

(a) The COO shall review the claim to ensure that it provides the information required by Section 2.21.030. If the COO determines that the claim is incomplete, the COO shall, within 15 business days after the filing of the claim, provide written notice of the incompleteness to the claimant. If the COO does not notify the owner that the claim is incomplete within the prescribed 15 days, the claim shall be considered complete on the date it was filed with the COO.

(b) ~~If the COO receives a completed claim, t~~The COO shall conduct a preliminary review of a claim to determine whether ~~the claim it~~ satisfies all of the following prerequisites for full evaluation of the claim:

- (1) The property lies within Metro's jurisdictional boundary;
- (2) The land use regulation that is the basis for the claim is a provision of a functional plan or was adopted by a city or county to comply with a functional plan; and
- (3) The claimant acquired an interest in the property before the effective date of the land use regulation and has continued to have an interest in the property since the effective date.

(c) If the claim fails to satisfy one or more of the prerequisites in subsection (b) of this section, the COO shall prepare a report to that effect and recommend to the Metro Council that it dismiss the claim as provided in Section 2.21.060(a)(1).

(d) If the claim satisfies each of the prerequisites in subsection (b) of this section, the COO shall complete the review of the claim to determine whether:

- (1) The claimant owns an interest in the property and has owned an interest in the property without interruption since the ~~claimant acquired the interest and prior to the~~ effective date of the land use regulation that is the basis for the claim;
- (2) ~~The~~City, county, regional and state land use regulations that applied to the property at the time ~~the claimant acquired the property the challenged land~~

use regulation became applicable to, or were enforced against, the property allowed the claimant's proposed use and, if so, what criteria or conditions applied to the proposed use under the regulations;

- (3) The specific, existing land use regulation that allegedly reduced the value of the property allows the proposed use and, if so, what criteria or conditions apply to the proposed use under the regulation;
- (4) The specific, existing land use regulation that allegedly reduced the value of the property is exempt from ~~Ballot Measure 37 under subsection 3 of the measure~~ claims under ORS 197.352(3); and
- (5) If the specific, existing land use regulation that allegedly reduced the value of the property is not exempt ~~from Ballot Measure 37~~ under ORS 197.352(3), the regulation restricts the proposed use and the restriction has reduced the fair market value of the property. In making this determination, the COO will compare the value of the property before application or enforcement of the challenged land use regulation to the property with the value after the application or enforcement.

(e) The COO may commission an appraisal or direct other research in aid of the determination whether a claim meets the requirements of ~~Ballot Measure 37~~ ORS 197.352, and to assist in the development of a recommendation regarding appropriate relief if the claim is found to be valid.

(f) The COO shall prepare a written report, to be posted at Metro's website, with the determinations required by subsection (b) and (d) of this section and the reasoning to support the determinations. The report shall include a recommendation to the Metro Council on the validity of the claim and, if valid, whether Metro should compensate the claimant for the reduction of value or waive the regulation. If the COO recommends compensation or waiver, the report shall recommend any conditions that should be placed upon the compensation or waiver to help achieve the purpose of this chapter and the policies of the Regional Framework Plan.

(g) The COO shall provide the report to the Council, the ~~owner~~ claimant, the city or county with land use responsibility for the property, and other persons who request a copy. If ~~the COO determines that~~ the Council adopted the regulation in order to comply with state law, the COO shall send a copy of the report to the Oregon Department of Administrative Services.

#### 2.21.050 Hearing on Claim before Metro Council

(a) The Metro Council shall hold a public hearing on ~~the a~~ claim ~~that satisfies the prerequisites of Section 2.21.040(b)~~ before taking final action. The COO shall schedule the hearing for a date prior to the expiration of 180 days after the filing of a completed claim under Section 2.21.030.

(b) The COO shall provide notification of the date, time and location of the public hearing at least 25 days before the hearing to the claimant, owners and occupants of property within 500 feet of the subject property, the local government with land use planning responsibility for the property and any person who requests notification. The notification shall indicate that a copy of the COO's recommendation under Section 2.21.040 is available upon request.

#### 2.21.060 Action on Claim by Metro Council

(a) After the public hearing, but not later than 180 days after the filing of a claim under Section 2.21.030, the Metro Council shall consider the COO's recommendation and:

- (1) Determine that the claim does not qualify for compensation;
- (2) Determine that the claim qualifies for compensation and provide relief in the form of compensation or enhancement of the value of the property or decide not to apply the land use regulation; or
- (3) Determine that the claim qualifies for compensation and resolve to modify or remove the land use regulation.

(b) The Council shall take the action that is most consistent with the purpose of this chapter and the Regional Framework Plan.

(c) The Council shall issue an order with its decision and direct the COO to send the order to the claimant, ~~the city or county with land use responsibility for the property~~, persons who participated at the hearing held under Section 2.21.050, other persons who request a copy, and the Oregon Department of Administrative Services if the Council adopted the land use regulation to comply with state law.

#### 2.21.070 Conditions on Compensation or Waiver

(a) The Metro Council may place any conditions on its action under Section 2.21.060, including conservation easements and deed restrictions, that are appropriate to achieve the purposes of this



chapter. The Council shall place a condition on a decision under Section 2.21.060(a)(2) or (3) that the decision constitutes a waiver by the claimant of any further claims against Metro under Measure 37 involving the subject property.

(b) Failure by a claimant to comply with a condition provides a basis for action to recover any compensation made or revoke any action by the Council under Section 2.21.060(a)(2) or (3).

2.21.080 Fee for Processing Claim

(a) The COO may establish a fee to be paid by a person filing a claim at the time the person files the claim. The fee shall be based upon an estimate of the actual cost incurred by Metro in reviewing and processing claims. The COO may waive the fee if the claimant demonstrates that the fee would impose an undue hardship.

(b) The COO shall maintain a record of Metro's costs in reviewing and processing the claim. After final action by the Council under Section 2.21.060, the COO shall determine Metro's total cost and issue a refund to the claimant if the estimated fee exceeded the total cost or a bill for the amount by which the total cost exceeded the estimated fee.

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 07-1136, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.21 (CLAIMS UNDER MEASURE 37) FOR TREATMENT OF CLAIMS UNDER ORS 197.352 AND DECLARING AN EMERGENCY

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Date: December 18, 2006

Prepared by: Richard Benner

## BACKGROUND

The Metro Council adopted a process (now Metro Code Chapter 2.21) for treatment of claims under Measure 37 (now ORS 197.352), effective December 21, 2005. During the first two years following the effective date of the measure (December 2, 2004), Metro received 18 claims. Seven of those claims went through the full claims process under Chapter 2.21 to conclusion following a public hearing before the Council. During Metro's treatment of these claims, the Council revised its method for evaluating claims and determining whether Metro regulations had reduced the fair market values of claimants' properties. The methodology described in Chapter 2.21 no longer reflects the Council's practice.

By the terms of ORS 197.352, claims filed with government entities, including Metro, claims filed after two years following the effective date of Measure 37 are subject to different requirements from those filed earlier. Chapter 2.21 does not fully set forth these requirements for claims filed after the two-year deadline.

Other provisions of Chapter 2.21 are out of date as the result of codification of the measure in Oregon Revised Statutes and cases interpreting the measure.

In the last week prior to the expiration of two years following the effective date of the measure, Metro received 32 new claims. It is important that these claimants and the people of the region are aware of these changes to the extent they can be addressed in Metro's code on Measure 37 claims.

For these reasons, the Office of Metro Attorney proposes amendments to Metro Code Chapter 2.21.

## ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition to the proposed amendments.
2. **Legal Antecedents:** Measure 37 is now codified at Oregon Revised Statutes 197.352. The Metro process for addressing claims is in the Metro Code, Chapter 2.21.
3. **Anticipated Effects:** The amendments can be expected to better inform claimants and members of the public about the process Metro will follow when addressing claims and the methods Metro will use in determining whether a challenged land use regulation has had the effect of reducing the fair market value of a claimant's property.
4. **Budget Impacts:** The amendments can be expected to reduce slightly the costs to claimants in filing a claim and the costs to Metro in processing the claim.

**RECOMMENDED ACTION**

The Office of Metro Attorney recommends that the Metro Council amend Metro Code Chapter 2.21 as proposed by Ordinance No. 07-1136

BEFORE THE METRO COUNCIL

CONFIRMING THE NEW WASTE TRANSPORT ) RESOLUTION NO. 07-3759  
CONTRACT AS A COUNCIL PROJECT AND )  
CONFIRMING LEAD COUNCILOR AND ) Introduced by Council President David  
COUNCIL LIAISONS ) Bragdon

WHEREAS, the Metro Council is responsible for the operation of the region's solid waste disposal system, including how that waste is transported to the region's landfill in Gilliam County; and

WHEREAS, the current contract for the transport of solid waste expires in 2009; and

WHEREAS, the Metro Council will issue a new contract for the transport of solid waste no later than January 1, 2010; and

WHEREAS, the Metro Council is committed to identifying the best and most efficient methods for transporting the region's solid waste, including multi-modal transport options; and

WHEREAS, projects that are of a scope and complexity that, for purposes of efficiency, would benefit from the focused attention of a subset of the Council are designated by the Metro Council as Council Projects and are assigned a Lead Councilor and Council Liaisons; and

WHEREAS, the New Waste Transport Contract is such a project with policy questions relating to cost, safety, the environment, equity and economic development; and

WHEREAS, the Council President, working with members of the council, has designated councilors to play lead and liaison roles; now therefore

BE IT RESOLVED:

The Council concurs that the New Waste Transport Contract be designated as a Council Project, including designating Council President Bragdon as lead councilor and Councilors Rod Park and Kathryn

Harrington as Council Liaisons, as specified in Exhibit A.

ADOPTED by the Metro Council this 4<sup>th</sup> day of January, 2007.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

**Exhibit A**

**Resolution No. 07-3759**

**Metro Council Project Proposal / Work Plan**

**Part One: Council Project Proposal**

- 1) **Project Title: New Waste Transport (to Arlington) Contract**
- 2) **Lead Councilor: Council President Bragdon**
- 3) **Council Liaisons: Councilor Kathryn Harrington, Councilor Rod Park**
- 4) **Project Begin Date: *January 12, 2007***
- 5) **Estimated Date of Completion:** July 1, 2007 (Phase I) Spring/Summer 2008 (Phase II) Mobilization ending 1/1/10 (Phase III)
- 6) **Project Description (What issue/problem will be addressed?):**

Phase one consists of gathering information related to the transport mode options available to the Metro Council when considering transporting waste over the next contract term. This information will be presented to Solid Waste management and the Metro Council in order for the Council to choose an approach to pursue, including release of an RFP for procurement of waste transport services.

Phase two is to procure the new waste transport services contractor consistent with the approach chosen by the Metro Council. Phase III is mobilization by the contractor in anticipation of a start date no later than 1/1/2010.

- 7) **Policy Questions (What major policy questions must be answered?)**
  - What are the available strategies to ensure competition between the different modes?
  - How well do different transport configurations enhance the strengths of the Metro Council solid waste system, or the transportation of freight generally in the region, while recognizing system constraints?
  - What are the future risks or opportunities associated with implementing a particular system, including financial aspects as well as the barriers to implementation, and how the risks can be minimized while opportunities are maximized?

- Should consistency with Regional Freight System Policies of Metro’s Regional Transportation Plan<sup>1</sup> and industrial lands policies of the Regional Framework Plan<sup>2</sup> be ensured?
- How should economic development opportunities<sup>3</sup> and commodity backhaul opportunities rank relative to other considerations?
- What is the Council policy regarding risk (e.g., safety) associated with different modes/scenarios?
- What is the Council position regarding trade-offs between cost and environmental and energy benefits? How should neighborhood and community impacts be measured?
- What is the Council’s potential policy regarding length of contract to accommodate amortization schedules for different modes?
- What is the Council’s position regarding lowest cost contract versus experience and reliability?

**8) Outcomes (What must be in place for policy development to be considered complete?)**

- Completion of the analysis of different scenarios in relation to the policy questions and Council values under consideration
- Feedback obtained from Council and other stakeholders in order to formulate the parameters of the RFP for a long-haul transport contract
- Selection of a new waste transport contractor(s)
- Successful mobilization and delivery of waste transport services

**9) Connection to Council Goals and Objectives**

- Goal 2- Environmental Health
  - objective 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.
  - objective 2.4- The Metro Council is a model for green business practices.
- Critical Success Factor- 1. Financial and Operational Excellence
  - 1.3 Maintain stable and appropriate level of funding for Metro Council programs

**10) Resources Required / Budget Implications**

- Anticipated total project costs of approximately \$410,000 (see worksheet)
- Anticipated value of new waste transport contract is estimated to be \$140,000,000 over ten years.

<sup>1</sup> Available at [http://www.metro-region.org/library\\_docs/trans/2004rtp\\_chapter1no\\_maps.pdf](http://www.metro-region.org/library_docs/trans/2004rtp_chapter1no_maps.pdf)

<sup>2</sup> Available at [http://www.metro-region.org/library\\_docs/land\\_use/exhibit\\_b.pdf](http://www.metro-region.org/library_docs/land_use/exhibit_b.pdf)

<sup>3</sup> Metro’s IGA with Gilliam County includes an assessment of the potential to stimulate barge operations at its Willow Creek facility.

**End Here for Council Project Proposal – This Portion is Adopted by Resolution**

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**Part Two: Work Plan Element -**

Complete this portion after the council project is approved by resolution.  
This element is presented to council for approval by motion.

**11) Project Manager**

**12) Metro Role (What is Metro’s role and the role of Metro councilors?)**

**13) Stakeholders (Who are the major stakeholders and implementing parties? How will stakeholders and the public participate in the project?)**

**14) Major Milestones**

**15) Communications (What is the communications plan? If incomplete, how and when will it be developed?)**

**16) Staff Work Products (What will be produced by Metro staff, consultants, or staff from other organizations?)**

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<b>Work Elements and Products</b>	<b>Responsible Party</b>	<b>Due Date</b>	<b>FTE</b>	<b>M&amp;S</b>	<b>Total \$</b>
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**17) Project Schedule**

## Council Workplan Budget Worksheet Form

Classification Title		Workplan Estimate		
		Hours	FTE	Amount
			0.00	\$0
<b>Step 1</b>	<b>Step 2</b>		0.00	\$0
		<b>Step 3</b>	0.00	\$0
Director II	\$127,810	200.00	0.10	\$12,781
Program Director II	\$116,190	350.00	0.17	\$19,752
Manager I	\$80,090	416.00	0.20	\$16,018
Legal Counsel II	\$96,030	208.00	0.10	\$9,603
Principal SW Planner	\$70,185	1,456.00	0.70	\$49,130
Senior SW Planner	\$63,682	624.00	0.30	\$19,105
Program Supervisor I	\$67,410	208.00	0.10	\$6,741
Senior Transportation Planner	\$63,682	208.00	0.10	\$6,368
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
			0.00	\$0
<i>Total Project Salaries &amp; Wages</i>		<i>3,670.00</i>	<i>1.77</i>	<i>\$139,498</i>
Leave Estimate	14.00%			\$19,530
Fringe Estimate				
Variable	25.70%			\$40,870
Fixed (per FTE)	\$8,645			\$15,302
PERS Reserve	6.65%			\$10,575
Total Personal Services		3,670.00	1.77	\$225,775
Central Service Overhead Estimate	26.75%			\$60,395
Materials & Services				\$99,000
Capital Outlay				<b>Step 4</b>
Contingency				
Other (specify):				
Financial Analysis				\$25,000
	<b>Step 4</b>			<b>Step 4</b>
<b>Total Project Cost</b>		<b>3,670.00</b>	<b>1.77</b>	<b>\$410,170</b>