



METRO

Agenda

MEETING: METRO COUNCIL – revised 4/9/07
DATE: April 12, 2007
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the April 5, 2007 Metro Council Regular Meeting.

3.2 **Resolution No. 07-3801**, Approving a Settlement Agreement with Juventino Avila Estrada DBA Avila Drywall Regarding Metro Notice of Violation No. Nov-161-06.

4. ORDINANCES - SECOND READING

4.1 **Ordinance No. 07-1144**, Adopting the Annual Budget for Fiscal Year 2007-08, Making Appropriations, Levying Ad Valorem Taxes, and Declaring an Emergency. (*Public Hearing only, no final action*) Bragdon

5. RESOLUTIONS

5.1 Removed from the agenda

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for April 12, 2007 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, April 12 (live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, April 15 2 p.m. Monday, April 16
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, April 16	Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, April 14 11 p.m. Sunday, April 15 6 a.m. Tuesday, April 17 4 p.m. Wednesday, April 18
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (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 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

APPROVING A SETTLEMENT AGREEMENT) RESOLUTION NO. 07-3801
WITH JUVENTINO AVILA ESTRADA DBA)
AVILA DRYWALL REGARDING METRO) Introduced by Metro Chief Operating Officer
NOTICE OF VIOLATION NO. NOV-161-06) Michael Jordan, with the concurrence of
) Metro Council President David Bragdon

WHEREAS, during the period from January 1, 2006 through August 31, 2006, Juventino Avila Estrada dba Avila Drywall delivered solid waste generated within the Metro boundary to the Riverbend Landfill without benefit of a non-system license and without paying the required regional system fees and excise taxes thereby violating Metro Code Sections 5.05.025 and 7.01.080; and

WHEREAS, on September 29, 2006, the Metro Chief Operating Officer (“COO”), issued Notice of Violation No. NOV-161-06 to Mr. Estrada for these violations; and

WHEREAS, Mr. Estrada submitted to Metro a timely request for a contested case hearing regarding NOV-161-06 in a letter dated October 8, 2006; and

WHEREAS, attorney Grant R. Burton informed Metro in a letter dated December 4, 2006 that he had been retained to represent Mr. Estrada in this matter; and

WHEREAS, Mr. Burton, on behalf of Mr. Estrada, provided documentation that some of the solid waste on which NOV-161-06 was based was generated from outside the Metro boundary and agreed to the terms of a settlement under which Mr. Estrada would pay civil penalties equivalent to the regional system fees and excise taxes owed on the waste generated from inside the Metro boundary; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties assessed by the Director or the COO; and

WHEREAS, the COO recommends that Metro fully settle NOV-161-06 with respect to the civil penalties imposed in NOV-161-06; now therefore

BE IT RESOLVED that the Metro Council approves settlement with Mr. Estrada regarding NOV-161-06 and authorizes the Chief Operating Officer to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____, 2007

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney
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SETTLEMENT AGREEMENT

Metro, a metropolitan service district and municipal government organized under the Oregon Constitution, Oregon Revised Statutes Chapter 268, and the Metro Charter, and located at 600 N.E. Grand Ave., Portland, OR 97232 (“Metro”) and Juventino Avila Estrada, dba Avila Drywall, residing at 239 N.W. Adams Ave., Hillsboro, OR 97124 (“Mr. Estrada”) enter this Settlement Agreement (“Agreement”) effective the date that this Agreement is fully executed (the “Effective Date”). Metro and Mr. Estrada shall collectively be referred to herein as the “Parties” and each individually as a “Party.”

RECITALS

- A. On September 29, 2006, Michael Jordan, Metro Chief Operating Officer, issued Notice of Violation No. 161-06 (“NOV-1612-06”) to Mr. Estrada (attached as Exhibit A). Based on an investigation conducted by Metro, Mr. Jordan found that Mr. Estrada had violated the provisions of Metro Code Sections 5.05.025 and 7.01.020 by delivering 1,830 tons of solid waste to the Riverbend Landfill, in 383 separate loads, without having obtained a Metro non-system license and without having paid Metro excise taxes on such waste. Mr. Jordan made a tax deficiency determination against Mr. Estrada in the total amount of \$20,767.94, and imposed a civil penalty of \$37,385.00 against Mr. Estrada for such violations.
- B. Mr. Estrada disputed Mr. Jordan’s conclusion that all of the solid waste in question had originated within the Metro boundary, and provided documentary evidence to support his position.
- C. The Parties enter into this Settlement Agreement to fully settle and compromise this dispute.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Confession of Judgment. Mr. Estrada shall execute the Confession of Judgment attached as Exhibit B to this Agreement and shall provide Metro with such executed document not later than five (5) days after the Effective Date of this Agreement.
2. Metro’s Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against Mr. Estrada for the violations alleged in NOV-161-06. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.

3. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision(s) of this Agreement shall not affect the enforceability of any other provision(s) of this Agreement.
4. Agreement Not Assignable or Transferable. This Agreement may not be transferred or assigned without the prior written approval of the Parties.
5. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
6. Severability. If any non-material provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
7. Entire Agreement. This Agreement is the entire agreement between the Parties.
8. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own counsel, and that it voluntarily enters into this Agreement.
9. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
10. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

**Juventino Avila Estrada,
dba Avila Drywall**

METRO

Michael Jordan, Chief Operating Officer

Date: _____

Date: _____

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Exhibit B to Settlement Agreement (Exhibit A to Resolution No. 07-3801)

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

)	Case No.
METRO, a metropolitan service district and municipal government)	
Plaintiff,)	CONFESSION OF JUDGMENT
v.)	
)	
Juventino Avila Estrada, dba, Avila Drywall,)	
Defendant.)	

Juventino Avila Estrada, dba Avila Drywall, confesses judgment in favor of METRO, a metropolitan service district and municipal government, for the sum of \$22,831.53, and authorizes the entry of judgment against him in this amount. METRO issued a notice of violation to Mr. Estrada on September 29, 2006, in which Metro made a tax deficiency determination against Mr. Estrada and imposed civil penalties against him for violations of Metro Code Sections 5.05.025 and 7.01.020. Mr. Estrada admits that he owes METRO the sum stated above as a result of such violations, specifically, his failure to obtain a Metro non-system license and pay Metro excise taxes for his delivery of 915 tons of solid waste originating within the Metro boundary, in approximately 191 loads, to the Riverbend Landfill in Yamhill County, Oregon, between January 1, 2006 and August 31, 2006.

In consideration for not executing on this judgment, Mr. Estrada promises to pay METRO the sum of \$22,831.53. Such sum is to be paid in monthly installments of not less than \$951.31 in any one payment, the first payment being due on April 30, 2007, and a like payment due on the last day of each month thereafter until the whole sum has been paid.

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

Exhibit B to Settlement Agreement (Exhibit A to Resolution No. 07-3801)

1 In the event that Mr. Estrada is overdue on the payment of two (2) of these installment payments
2 at any time, METRO shall provide Mr. Estrada with a written notice, mailed via regular U.S. mail
3 deposited in Portland, Oregon, and addressed to Mr. Estrada at 239 N.W. Adams Ave., Hillsboro, OR
4 97124. Such notice shall provide Mr. Estrada with not less than ten (10) days to cure such overdue
5 payments, and shall inform Mr. Estrada that he shall be in default of this Confession of Judgment if he
6 fails to cure such overdue payments or if he is overdue on three (3) such installments, as described
7 below.

8 In the event that Mr. Estrada either fails to cure overdue payments within the time period
9 provided by Metro’s cure letter, as described above, or is overdue on the payment of three (3)
10 installments, then Mr. Estrada shall be in default. In the event of such default, METRO may:

- 11 (a) Take a judgment order based on this confession against Mr. Estrada for:
 - 12 (i) the entire confessed sum, \$22,831.53, less any installments paid (“sum due”),
 - 13 (ii) one-half of one percent monthly simple interest on the unpaid balance of the
 - 14 entire confessed sum calculated from the date that this Confession of Judgment
 - 15 was executed by Mr. Estrada (“interest”), and
 - 16 (iii) reasonable attorney fees in trial court, appellate court, or both (“attorney fees”);
 - 17 and
- 18 (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.

21 _____
Juventino Avila Estrada, dba, Avila Drywall
22 Defendant

23 Date: _____

24
25 STATE OF OREGON)
26 County of _____) ss.

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

Exhibit B to Settlement Agreement (Exhibit A to Resolution No. 07-3801)

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On _____, 20____, personally appeared before me the above-named _____ and acknowledged the foregoing instrument to be [his/her] voluntary act and deed.

Notary Public for Oregon
My commission expires: _____

Assent to entry of judgment on the foregoing confession is hereby given.

Paul A. Garrahan
OSB No. 98055
Attorney for Plaintiff

SUBSCRIBED AND SWORN TO before me on _____, 20__.

Notary Public for Oregon
My commission expires: _____

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3801 APPROVING A SETTLEMENT AGREEMENT WITH JUVENTINO AVILA ESTRADA DBA AVILA DRYWALL REGARDING METRO NOTICE OF VIOLATION NO. NOV-161-06

April 12, 2007

Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

Avila Drywall is a business that cleans up drywall scrap from various construction sites and delivers it to disposal sites. It is operated by Juventino Avila Estrada. On September 29, 2006, Metro issued Notice of Violation No. 161-06 ("NOV-161-06") to Mr. Estrada for violating the provisions of Metro Code Sections 5.05.025 and 7.01.020 by delivering 1,830 tons of drywall waste to the Riverbend Landfill, in 383 separate loads, without having obtained a Metro non-system license and without having paid Metro excise taxes on such waste. Metro made a tax deficiency determination against Mr. Estrada in the total amount of \$20,767.94, and imposed a civil penalty of \$37,385.00 against Mr. Estrada for these violations.

Mr. Estrada requested a contested case hearing in the matter and subsequently provided credible documentary evidence to support his claim that approximately half of the waste in question had originated from outside the Metro boundary. This is evidence that was requested from Mr. Estrada during the course of the investigation but which he failed to provide prior to the issuance of the Notice of Violation.

Adoption of Resolution 07-3801 will approve a settlement agreement with Mr. Estrada under which Mr. Estrada acknowledges his delivery of 915 tons of solid waste originating within the Metro boundary, in approximately 191 loads, to the Riverbend Landfill between January 1, 2006 and August 31, 2006 and promises to pay METRO the sum of \$22,831.53 in monthly installments of not less than \$951.31 over a two year period. This amount is equivalent to the regional system fee and excise tax owed plus a 25 percent penalty on the excise tax portion.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues a NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council.

3. Anticipated Effects

The effects of Resolution No. 07-3801 will be to approve a settlement that requires Mr. Estrada to pay METRO the sum of \$22,831.53 in monthly installments of not less than \$951.31.

4. Budget Impacts

No budget impact is anticipated.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 07-3801, approving a Settlement Agreement with Juventino Avila Estrada substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.

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BEFORE THE METRO COUNCIL

ADOPTING THE ANNUAL BUDGET FOR) FISCAL YEAR 2007-08, MAKING) APPROPRIATIONS, LEVYING AD VALOREM) TAXES, AND DECLARING AN EMERGENCY)	ORDINANCE NO 07-1144 Introduced by David Bragdon, Council President
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WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2007, and ending June 30, 2008; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2007-08 Metro Budget," in the total amount of FOUR HUNDRED SIXTY FIVE MILLION ONE HUNDRED NINETY NINE THOUSAND ONE HUNDRED THREE DOLLARS (\$465,199,103), attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per ONE THOUSAND DOLLARS (\$1,000) of assessed value for operations and in the amount of THIRTY SEVEN MILLION ONE HUNDRED SIXTY THREE THOUSAND SEVENTY FOUR DOLLARS (\$37,163,074) for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2007-08. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from the <u>Limitation</u>
Operating Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$37,163,074

3. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2007, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

4. The following funds are hereby consolidated into the MERC Fund – the MERC Operating Fund and the MERC Pooled Capital Fund. Balances remaining in these funds are consolidated with the MERC Fund effective July 1, 2007.

5. An interfund loan from the General Fund to the General Obligation Bond Debt Service Fund in an amount not to exceed \$2.0 million is hereby authorized. The loan will be made to provide cash flow for debt service payments due during the first six months of the fiscal year prior to the receipt of property taxes. The loan will be repaid, with interest, from property taxes levied for the purpose of paying general obligation debt service. Interest will be charged on the loan at a rate equal to the average yield on Metro’s pooled investments.

6. The Chief Financial Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor’s Office of Clackamas, Multnomah, and Washington Counties.

7. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2007, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council on this 21st day of June, 2007.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Chris Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 07-1144 ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2007-08, MAKING APPROPRIATIONS AND LEVYING AD VALOREM TAXES, AND DECLARING AN EMERGENCY

Date: March 15, 2007

Presented by: David Bragdon
Metro Council President

BACKGROUND

I am forwarding to the Metro Council for consideration and approval my proposed budget for fiscal year 2007-08.

Metro Council action, through Ordinance No. 07-1144 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Metro Council to adopt this plan must be completed by June 30, 2007.

Once the budget plan for fiscal year 2007-08 is approved by the Metro Council, the number of funds and their total dollar amount and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Metro Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's expenditures in the period between Metro Council approval in early May 2007 and adoption in June 2007.

Exhibit A to this Ordinance will be available subsequent to the Tax Supervising and Conservation Commission hearing June 7, 2007. Exhibits B and C of the Ordinance will be available at the public hearing on March 15, 2007.

ANALYSIS/INFORMATION

1. **Known Opposition** – Metro Council hearings will be held on the Proposed Budget during the months of March and April 2007. Several opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2007. The Commission will conduct a hearing on June 7, 2007 for the purpose of receiving information from the public regarding the Metro Council's approved budget. Following the hearing, the Commission will certify the budget to the Metro Council for adoption and may provide recommendations to the Metro Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2007-08 budget, effective July 1, 2007.
4. **Budget Impacts** – The total amount of the proposed FY 2007-08 annual budget is \$465,199,103 and 718.31 FTE.

RECOMMENDED ACTION

The Metro Council President recommends adoption of Ordinance No. 07-1144

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