

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 02-937A
CODE CHAPTER 5.04 RELATED TO)
SUPPORTING MARKETS FOR RECYCLABLE) Introduced by:
MATERIALS AND MAKING RELATED CHANGES) Mike Burton, Executive Officer
TO METRO CODE CHAPTER 2.19 TO)
ESTABLISH A RECYCLING BUSINESS)
ASSISTANCE ADVISORY COMMITTEE)

WHEREAS, support for recycling markets is an element of Waste Reduction Goal 9 of the Regional Solid Waste Management Plan; and,

WHEREAS, the Metro Council finds that the recycling goals of the Regional Solid Waste Management Plan cannot be met without an expansion of demand for recyclable materials; and,

WHEREAS, the expansion of demand for recyclable materials is identified as primarily a private-sector activity in the Regional Solid Waste Management Plan; and,

WHEREAS, the Metro Council finds that private recycling businesses have difficulty accessing capital from time to time; and,

WHEREAS, the Metro Council appropriated \$500,000 in FY 2001-2002 to be used for loans and grants to enterprises that use recyclable materials to make new products; and,

WHEREAS, it is the policy of the Council to approve procedures that address program administration, scope, selection criteria and evaluation prior to disbursement of funds for recycling market development; and,

WHEREAS, this ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. All sections of Metro Code Chapter 5.04 are repealed and Sections 3 through 8 of this Ordinance are adopted in lieu thereof.

Section 2. Metro Code Chapter 5.04 shall be re-titled "Recycling Business Assistance Program."

Section 3. Definitions

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

(a) "Recyclable material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

(b) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and accepted by the Oregon Department of Environmental Quality (DEQ).

Section 4. Policy and Purpose

(a) It is the policy of the district to support the creation, expansion, preservation, and diversification of markets for recyclable materials, in partial fulfillment of waste reduction requirements set out in the Regional Solid Waste Management Plan and in Oregon law.

(b) It is further policy of the district that support for recyclable materials markets shall:

- (1) Be based on the solid waste management hierarchy to first reduce, second reuse, third recycle, fourth compost, and lastly recover materials diverted from solid waste; and
- (2) Be directed toward enterprises that are ultimately self-sustaining.

Section 5. Funding and Budget

(a) The Metro Council shall create a separate account within the solid waste operating fund entitled "Recycling Business Assistance Account" to fund projects and proposals to further the policy expressed in this chapter. The Metro Council may from time to time appropriate funds to this account. Funds not disbursed in any one budget year shall be carried forward. Revenue accruing to the account shall be invested in accordance with Metro Code chapter 2.06.

(b) As part of Metro's annual budget process, the Executive Officer shall propose a budget for the Recycling Business Assistance Program for approval by the Council.

Section 6. Administration

(a) The Executive Officer shall administer the Recycling Business Assistance Program and shall:

- (1) Receive and consider the advice of the Recycling Business Assistance Advisory Committee on all aspects of program administration;
- (2) Publish the criteria for selecting projects, persons and businesses to be provided loans or grants, consistent with Section 7 of this Ordinance;
- (3) Review applications for loans and grants;
- (4) Prior to making a determination to approve or deny an application for a loan or a grant, receive and consider the recommendations of the Recycling Business Assistance Advisory Committee regarding each such application;
- (5) Approve or deny applications for loans and grants, consistent with Section 7 of this Ordinance; and

- (6) Provide a semi-annual report to the Council that includes information regarding the projects, persons and business that have received loans and grants, the amounts of funds disbursed for each loan or grant, and the history and current status of all outstanding loans and grants.
- (b) The Recycling Business Assistance Advisory Committee shall:
- (1) Make recommendations to the Executive Officer regarding criteria for selecting projects, persons and businesses to be provided loans or grants;
 - (2) Review applications for loans and grants;
 - (3) Make recommendations to the Executive Officer regarding approval or denial of such loans and grants; and
 - (4) Advise the Executive Officer on all other matters as necessary to fulfill the intent of this chapter.

Section 7. Application Process, Criteria and Approval of Loans and Grants

- (a) There shall be an open public process for solicitation of loan and grant applications.
- (b) Any person may submit proposals for funding. Applications must be in writing and must address all criteria set forth in this Section.
- (c) All applications shall be reviewed and any recommendation to approve or deny an application for a loan or grant shall include the reasons for acceptance or rejection of the application.
- (d) Proposals recommended for approval shall be consistent with the Regional Solid Waste Management Plan and the policy and purposes of this Chapter.
- (e) Loans and grants shall not be approved if the loan or grant proceeds will be used to substitute for projects or programs funded by other sources.
- (f) Proposals that best enhance the waste reduction goals of the Regional Solid Waste Management Plan will receive priority consideration for approval.
- (g) Proposals shall be directed to the aid of private, for-profit and nonprofit businesses and shall increase or improve one or more of the following:
 - (1) The amount of locally-generated materials that are diverted from the waste stream and recycled;
 - (2) The number of uses for locally-generated recyclable materials;
 - (3) Use of feedstock from locally-generated recyclable materials rather than virgin materials;
 - (4) Markets for locally-generated recyclable materials; and
 - (5) Technology for the use of locally-generated recyclable material.

(h) Funds may not be provided for:

- (1) The cost of preparing loan or grant applications, proposals, stock or debt offerings, formation of partnerships, incorporations or other forms of business or other financing;
- (2) Ongoing costs or expenses;
- (3) Payment of fines, penalties, arrears, judgments or other such obligations; or
- (4) Proposals that degrade the quality of air, water and land resources.

(i) The Executive Officer may establish additional criteria for loan or grant approval and may seek recommendations regarding such criteria from the Recycling Business Assistance Advisory Committee.

(j) Prior to approval of an application for a loan or grant, the Executive Officer shall provide written notification to the Metro Council of the Executive Officer's intent to approve the loan or grant. The Executive Officer's notification shall provide the loan or grant applicant's name and address, describe the project for which the loan or grant is intended, provide the amount requested, and summarize the Recycling Business Assistance Advisory Committee's recommendation, the Executive Officer's evaluation of the criteria for approval established in this Section, and any other relevant issues considered during the Executive Officer's review of the application. After receiving the Executive Officer's notification, the Council also may review copies of the application and any contents of the application file. Within ten (10) calendar days of receiving the Executive Officer's notification, the Council may request to consider the application. If such request is made, the Executive Officer shall not approve the application or disburse any loan or grant proceeds without the Council's approval. If the Council does not request to review the application within ten (10) calendar days of receiving the Executive Officer's notification, the Executive Officer may approve the application and may disburse the approved loan or grant proceeds.

(k) It is the policy of Metro to provide equal opportunity to all applicants for the recycling business assistance loans and grants for which provision is made in this chapter. Metro shall not discriminate against any applicant on the basis of race, color, national origin, gender, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Section 8. Staff Support

The Regional Environmental Management Department shall:

(a) Provide administrative and staff support to the Recycling Business Assistance Advisory Committee. Additional technical assistance may be acquired following Metro's contract procedures. The Regional Environmental Management Department shall ensure that no funds shall be expended, disbursed or advanced from the Recycling Business Assistance Account for any administrative or staff support purpose or additional technical assistance. It is the intent of the Council that the entire amount set aside each year be disbursed for loans or grants promoting the purpose of this chapter and that all overhead and staff support expenses necessary for implementing the program be borne by the solid waste operating fund separate from the Recycling Business Assistance Account.

(b) Ensure compliance with all federal and state law relating to lending and the provision of loans and grants by a government entity.

Section 9. Section 10 is added to and made a part of Metro Code Chapter 2.19.

Section 10. Recycling Business Assistance Advisory Committee (RBAAC)

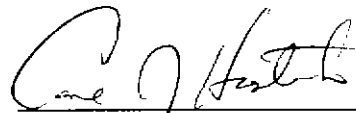
(a) Purpose. The purpose of the Recycling Business Assistance Advisory Committee is to advise the Executive Officer regarding administration of the Recycling Business Assistance Program pursuant to Metro Code Chapter 5.04.

(b) Membership. The committee shall be composed of seven members as follows:

- (1) An employee of Regional Environmental Management Department, who shall serve as committee chair;
- (2) A member of the Metro Council, who shall serve as vice-chair;
- (3) Two persons who have knowledge and experience in recycling principles, practices, and markets or end-uses for recyclable materials;
- (4) One person who has knowledge and experience managing a business;
- (5) One person who has knowledge of lending principles and practices and who is currently active in the private lending industry; and
- (6) One person who has knowledge of lending or grant-making principles and practices.

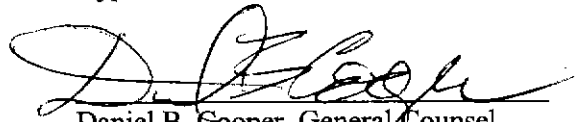
(c) Appointments. The Metro councilor serving on the committee shall be appointed by the Council Presiding Officer.

ADOPTED by the Metro Council this 14th day of March, 2002.



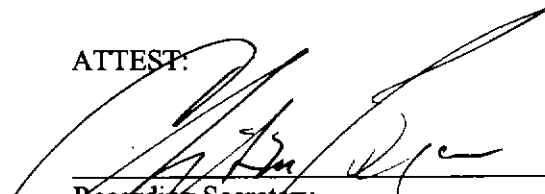
Carl Hosticka, Presiding Officer

Approved as to Form:



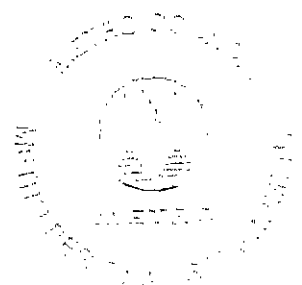
Daniel B. Cooper, General Counsel

ATTEST:



Recording Secretary

s:\share\dept\legislation\rbap ordinance #2final.doc



SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 02-937A, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.04 RELATED TO SUPPORTING MARKETS FOR RECYCLABLE MATERIALS AND MAKING RELATED CHANGES TO METRO CODE CHAPTER TO ESTABLISH A RECYCLING BUSINESS ASSISTANCE ADVISORY COMMITTEE

Date: March 11, 2002

Presented by: Councilor McLain

Committee Recommendation: At its March 6 meeting, the committee considered Ordinance No. 02-937A, and voted unanimously to send the resolution to the Council for adoption. Voting in favor: Councilors Bragdon, McLain, Park and Chair Atherton.

Background: Metro Code Chapter 5.04 originally addressed the purpose and process by which Metro provided grants to various parties under the old 1% for Recycling Program and the subsequent limited recycling business grant program. The proposed ordinance provides the implementing processes and procedures for a new larger scale recycling business loan and grant program. The program has a spending authorization of \$500,000 for the current fiscal year. The ordinance also establishes an advisory committee that will provide technical assistance in the evaluation of loan and grant applications and make recommendations concerning their disposition.

Committee Discussion:

Steve Engel, Recycling Business Loan and Grant Program Manager, presented the staff report. He noted that the loan and grant will meet a critical need for capital funding of recycling businesses. The proposed ordinance will establish loan and grant criteria that are specified tailored to start-up recycling businesses. He explained that many such businesses find it difficult to obtain "conventional" financing, in part, because lending institutions do not have the expertise to evaluate their businesses. Engel explained that the proposed ordinance will establish processes and procedures that will hopefully allow the program to become self-sustaining.

The ordinance had been previously scheduled at the committee's February 20 meeting, but it was removed from the agenda to provide an opportunity for the ordinance to be reformatted to more clearly outline its provisions and to add two amendments proposed by Councilor McLain. The amendments added language to provide an opportunity for Council review of any proposed loan or grant and to clarify that funding for the program would be considered annually during the budget review process. The "A" version of the ordinance included this reformatting and the proposed amendments.

STAFF REPORT

Ordinance No. 02-937A, For the Purpose of Amending Metro Code Chapter 5.04 Related to Supporting Markets for Recyclable Materials and Making Related Changes to Metro Code Chapter 2.19 to Establish a Recycling Business Assistance Advisory Committee.

January 5, 2002

Presenter: Terry Petersen

DESCRIPTION

This Ordinance amends Metro Code Chapter 5.04, to establish an evaluation and award process for recycling market development. In a related change, this ordinance also amends Metro Code Chapter 2.19 to create an advisory committee for the recycling market development program.

EXISTING LAW

Any amendment of Metro Code, in this case, Chapters 2.19 and 5.04, requires an ordinance approved by Metro Council, pursuant to Metro Charter Section 39(1). The provisions of the current Metro Code Chapter 5.04, adopted in 1988, governed Metro's first recycling market development program, "1% for Recycling," which awarded grants to private firms that used locally generated recyclable materials. The "1%" program has been unfunded and defunct for almost 10 years.

BACKGROUND

In the FY 2001-02 budget, the Council appropriated \$500,000 toward recycling market development. It was the Council's expectation that loans would be emphasized over grants in this round of funding. The Council also expected the Regional Environmental Management Department to develop an administrative process, including evaluation criteria and creation of an independent advisory committee, for the award of recycling market development funds.

This ordinance responds to Council's expectations by creating the Recycling Business Assistance Program (RBAP). This ordinance also will establish the Recycling Business Assistance Advisory Committee (RBAAC) in Metro Code Chapter 2.19. The RBAAC will be comprised of experts in lending and recycling markets, and will include a member of the Council as a voting member.

BUDGET IMPACT

Council has already appropriated funds for this program in FY 2001-02. REM has resources to pay for unbudgeted Administrative Services Department (ASD) and Office of General Counsel (OGC) hours through transfer of funds. However, it is noted that this program's claim on ASD and OGC staff time, added to multiple requests from other programs, contributes to a cumulative budget impact.

OUTSTANDING QUESTIONS

Ordinance 02-937A delegates decision authority to the Executive Officer based on advisory committee recommendation, but provides for notice to Council and Council opportunity to review. Metro has other examples of significant funding decisions being made by the Executive Officer drawing on recommendations from an advisory committee that has a Councilor member (e.g., the Enhancement Grant and Transit-Oriented Development Grant programs). As with the TOD Grants, the Council will receive

notice of the Executive Officer's intention to approve a loan or grant and will have 10 days' opportunity to decide to review that decision. This approach preserves Council authority over expenditure of public monies, but also reduces two barriers that have been of concern: time and confidentiality. A full legislative process adds 6 to 8 weeks from decision to award; private lenders typically take less time than this from *application* to award. Business opportunities and decisions can become moot with this much delay. Second, there is risk that proprietary information will be revealed during the public process. There will only be a Council process in cases where Council finds reason to object to or examine a decision.

The Ordinance includes other safeguards in this delegation of authority:

- ◆ Council will consider the program budget for approval each year [Section 5[b)].
- ◆ Evaluation and award criteria are set forth in Metro Code (sections 4 and 7 of the Ordinance). Section 6[a][5] provides that the Executive Officer will approve or deny applications consistent with the criteria in Section 7. Section 7[c] of the ordinance requires the Executive Officer to provide the reasons for approving or denying an application.
- ◆ The Advisory Committee will be comprised of lending and recycling industry professionals and a Metro Councilor who will understand how to implement the criteria (Section 10[b]).
- ◆ The Executive Officer must report twice a year to the Council on the status of the program (Section 6[a][6]).

This set of safeguards is designed to ensure that the intent of the Council is carried out in implementing the market development program, while being responsive to the needs of the industry.

Loans approved through this program likely will involve more innovative terms than conventional loans from private banks. The Recycling Business Assistance Program is designed to assist businesses that cannot obtain sufficient, affordable capital from conventional lending institutions. The ordinance also establishes a requirement of not competing with private lenders, which means not taking business from them. Typically, banks and other lending institutions will refuse to make, or will charge high interest rates for, loans to companies that have brief tenure, low profit margins, specialty equipment, debt/equity ratios that do not meet conservative guidelines, or that operate in unfamiliar industries. RBAP applicants will have to document that their efforts to secure sufficient, affordable private funding were not successful or that the financing costs would have compromised their business viability.

All loans made through this program will be secured with sufficient collateral. All applicants will be investigated and analyzed by Regional Environmental Management staff and by professional lenders to ensure acceptable risk factors. No loans will be made without a reasonable certainty of the borrower's ability to repay. Compared with most grant programs, this process offers not only an exceptionally high level of scrutiny, but also will recover funds for future use. Although there is some risk of default, the means will be in place to recover defaulted funds through liquidation proceedings.

Council intended this program would assume some level of risk for the likely benefit of advancing the Metro region's recycling and recovery rate goals.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 02-937A.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.04 RELATED TO)
SUPPORTING MARKETS FOR RECYCLABLE)
MATERIALS AND MAKING RELATED CHANGES)
TO METRO CODE CHAPTER 2.19 TO)
ESTABLISH A RECYCLING BUSINESS)
ASSISTANCE ADVISORY COMMITTEE)

ORDINANCE NO. 02-937
Introduced by:
Mike Burton, Executive Officer

WHEREAS, support for recycling markets is an element of Waste Reduction Goal 9 of the Regional Solid Waste Management Plan; and,

WHEREAS, the Metro Council finds that the recycling goals of the Regional Solid Waste Management Plan cannot be met without an expansion of demand for recyclable materials; and,

WHEREAS, the expansion of demand for recyclable materials is identified as primarily a private-sector activity in the Regional Solid Waste Management Plan; and,

WHEREAS, the Metro Council finds that private recycling businesses have difficulty accessing capital from time to time; and,

WHEREAS, the Metro Council appropriated \$500,000 in FY 2001-2002 to be used for loans and grants to enterprises that use recyclable materials to make new products; and,

WHEREAS, it is the policy of the Council to approve procedures that address program administration, scope, selection criteria and evaluation prior to disbursement of funds for recycling market development; and,

WHEREAS, this ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 5.04 shall be re-titled "Recycling Business Assistance Program."

Section 2. Section 3 is added to and made a part of Metro Code Chapter 5.04.

Section 3.

Definitions:

(a) "Recyclable material" means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled, or composted for the same or other purpose(s).

(b) "Regional Solid Waste Management Plan" means the Regional Solid Waste Management Plan adopted as a functional plan by Council and accepted by the Oregon Department of Environmental Quality (DEQ).

Section 4. Metro Code Section 5.04.010 is amended to read:

5.04.010 Policy and Purpose

(a) It is the policy of the district to support the creation, expansion, preservation, and diversification of markets for recyclable materials, in partial fulfillment of waste reduction requirements set out in the Regional Solid Waste Management Plan and in Oregon law, a program of "One Percent for Recycling" as an innovative program which offers the potential to educate, inform and cultivate citizen participation in the solution to the region's solid waste problem.

(b) It is further policy of the district that support for recyclable materials markets shall: to support "One Percent for Recycling" as a means to foster implementation of innovative resource recovery technology and methods and that it is a means by which to attain further reuse, recycling and waste reduction in the region.

(1) Be based on the solid waste management hierarchy to first reduce, second reuse, third recycle, fourth compost, and lastly recover materials diverted from solid waste.

(2) Be directed toward enterprises that are ultimately self-sustaining.

Section 5. Metro Code Section 5.04.020 is amended to read:

5.04.020 Funding and Budget

The eCouncil shall create a separate account within the solid waste operating fund entitled "Recycling Business Assistance Account" equal to 1 percent of each fiscal year's solid waste operating budget, to be set aside to fund small-scale projects and proposals to further the policy expressed in this chapter. The Council may from time to time appropriate funds to this account. Funds not expended/disbursed in any one budget year shall be carried forward. Revenue accruing to the account shall be invested in accordance with Metro Code chapter 2.06.

Section 6. Metro Code Section 5.04.030 is repealed.

Section 7. Section 8 is added to and made a part of Metro Code Chapter 5.04.

Section 8.

Recycling Business Assistance Advisory Committee

In order to implement the Recycling Business Assistance Program there shall be created a Recycling Business Assistance Advisory Committee to be appointed in accordance with Section 14 of this Ordinance.

Section 9. Metro Code Section 5.04.050 is amended to read:

5.04.050 Administration.

The administration of this program shall be subject to the approval of the Executive Officer, as set forth in this section. ~~Recycling Advisory Committee provided for in section 5.04.040 above.~~

~~(a) On an annual basis a list of eligible projects shall be established by the recycling advisory committee. The projects list and criteria for allocating funds between projects shall be forwarded to the council for approval by the council. [NOTE. This paragraph has been edited and moved to new section 5.04.020(b), which may be found in Section 5 of this Ordinance.]~~

(a) The Executive Officer shall follow the application process and criteria for approving loans and grants set forth in Section 12 of this Ordinance.

(b) The Recycling Business Assistance Advisory Committee shall approve and

(1) Publish the criteria for selecting projects for funding; through an RFP process. The committee's recommendations and approvals shall be filed with the council.

(2) Review applications for loans and grants;

(3) Recommend approval or denial of such loans and grants;

(4) Advise on other matters as necessary to fulfill the intent of this chapter; and

(5e) The Executive Officer shall semi-annually report to the Council and the executive officer all projects approved, and the amounts of funds expended/disbursed for each project, and the status of all outstanding loans and grants.

Section 10. Metro Code Section 5.04.60 is amended to read:

5.04.060 Staff Support

~~The solid waste~~ Regional Environmental Management department shall

(a) Provide administrative and staff support to the Recycling Business Assistance Advisory Committee. ~~recycling advisory committee~~ Additional technical assistance may be acquired following Metro's contract procedures. The Regional Environmental Management Department shall and ensure that no funds shall be expended, disbursed or advanced from the Recycling Business Assistance Account 4 percent for ~~recycling budget amounts~~ for any administrative or staff support purpose or additional technical assistance. It is the intent of the Council that the entire amount set aside each year be expended/disbursed for loan contracts or grants promoting the purpose of this chapter and that all overhead and staff support expenses necessary for implementing the program be borne by the solid waste operating fund separate from the Recycling Business Assistance Account one percent amount.

(b) Ensure compliance with all federal and state law relating to lending or the provision of grants by public bodies.

Section 11. Section 12 is added to and made a part of Metro Code Chapter 5.04.

Section 12.

Application Process and Criteria for Approving Loans and Grants

- (a) There shall be an open public process for solicitation of loan and grant applications.
- (b) Any person may submit proposals for funding. Applications must be in writing, and must address all criteria set forth in this subsection.
- (c) All written applications shall be reviewed, and any recommendation as to approval or denial of funding shall include the reasons for acceptance or rejection of the funding application.
- (d) Proposals recommended for funding shall be consistent with the Regional Solid Waste Management Plan and the policy and purposes of this Chapter.
- (e) The fund shall not substitute for projects or programs funded by other sources.
- (f) Proposals that best enhance the waste reduction goals of the Regional Solid Waste Management Plan will receive priority consideration for approval.
- (g) Proposals shall be directed to the aid of private, for-profit and nonprofit businesses and shall meet one or more of the following guidelines. Funding will increase or improve:
 - (1) The amount of locally-generated materials that are diverted from the waste stream and recycled.
 - (2) The number of uses for locally-generated recyclable materials.
 - (3) Use of feedstock from locally-generated recyclable materials rather than virgin materials.
 - (4) Markets for locally-generated recyclable materials.
 - (5) Technology for the use of locally-generated recyclable material.
- (h) Funds may not be provided for:

(1) The cost of preparing loan or grant applications, proposals, stock or debt offerings, formation of partnerships, incorporations, or other forms of business or other financing.

(2) Ongoing costs or expenses.

(3) Payment of fines, penalties, arrears, judgments, or other such obligations.

(4) Proposals that degrade the quality of air, water, and land resources.

(i) It is the policy of Metro to provide equal opportunity to all applicants for the recycling business assistance loans and grants for which provision is made in this chapter. Metro shall not discriminate against any applicant on the basis of race, color, national origin, gender, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Section 13. Section 14 is added to and made a part of Metro Code Chapter 2.19.

Section 14. Recycling Business Assistance Advisory Committee

(a) Purpose. The purpose of the Recycling Business Assistance Advisory Committee (RBAAC) is to oversee administration of the Recycling Business Assistance Program pursuant to Metro Code section 5.04.050.

(b) Membership. The committee shall be composed of seven members as follows:

(1) The manager of the Waste Reduction and Outreach Division of the Regional Environmental Management Department, who shall serve as committee chair; and,

(2) A member of the Metro Council, who shall serve as vice-chair; and,

(3) Two persons who have knowledge and experience in recycling principles, practices, and markets or end-uses for recyclable materials; and,

(4) One person who has knowledge and experience managing a business; and

(5) One person who has knowledge of lending principles and practices and who is currently active in the private lending industry; and

(6) One person who has knowledge of lending or grant-making principles and practices.

(c) Appointments. The Metro councilor serving on the committee shall be appointed by the Council Presiding Officer.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

s:\share\dept\legislation\rbap ordinance.doc

STAFF REPORT

Ordinance No. 02-937, For the Purpose of Amending Metro Code Chapter 5.04 Related to Supporting Markets for Recyclable Materials and Making Related Changes to Metro Code Chapter 2.19 to Establish a Recycling Business Assistance Advisory Committee.

January 5, 2002

Presenter: Terry Petersen

DESCRIPTION

This Ordinance amends Metro Code Chapter 5.04, to establish an evaluation and award process for recycling market development. In a related change, this ordinance also amends Metro Code Chapter 2.19 to create an advisory committee for the recycling market development program.

EXISTING LAW

Any amendment of Metro Code, in this case, Chapters 2.19 and 5.04, requires an ordinance approved by Metro Council, pursuant to Metro Charter Section 39(1).

BACKGROUND

Metro Code Chapter 5.04 governed Metro's first recycling market development program, "1% for Recycling," which awarded grants to private firms that used locally generated recyclable materials. The "1%" program has been defunct for almost 10 years. However, Metro Code Chapter 5.04 provides a good outline of administrative process, evaluation criteria, and a decision framework for the award and disbursement of funds for recycling market development.

In the FY 2001-02 budget, the Council appropriated \$500,000 toward recycling market development. It was the Council's expectation that loans would be emphasized over grants in this round of funding. The Council also expected the Regional Environmental Management Department to develop an administrative process, including evaluation criteria and creation of an independent advisory committee, for the award of recycling market development funds.

This ordinance is a response to Council's expectations. This ordinance builds on the administrative framework of Metro Code Chapter 5.04. This ordinance also will establish the Recycling Business Assistance Advisory Committee (RBAAC), comprised of experts in lending and recycling markets, and includes a member of the Council as a voting member. However, the passage of Ordinance No. 00-860A, "Metro Advisory Committees," now necessitates an amendment of Metro Code Chapter 2.19 whenever a new advisory committee is created. Accordingly, this ordinance also amends Metro Code Chapter 2.19 in order to re-establish a Recycling Market Development Advisory Committee consistent with past administrative practice.

BUDGET IMPACT

Council has already appropriated funds for this program in FY 2001-02. REM has resources to pay for unbudgeted Administrative Services Department (ASD) and Office of General Counsel (OGC) hours through transfer of funds. However, it is noted that this program's claim on ASD and OGC staff time, added to multiple requests from other programs, contributes to a cumulative budget impact.

OUTSTANDING QUESTIONS

Delegation of decision authority to the Executive Officer based on advisory committee recommendation: Metro already has examples of significant funding decisions being made by the Executive Officer in response to recommendations from advisory committees that include a Councilor member (e.g., the Enhancement Grant and Transit-Oriented Development Grant programs). Although some business assistance grants in the past have been awarded by resolution of the Council, use of the legislative process for decision-making has prevented various parties from making application. Two barriers have been of most concern: time and confidentiality. First, the legislative process adds 6 to 8 weeks from decision to award; private lenders typically take less time than this from *application* to award. Business opportunities and decisions can become moot with this much delay. Second, there is risk that proprietary information will be revealed during the public process. If these barriers were removed, the pool of potential applicants would widen, and Metro would improve the probability of receiving higher-quality proposals.

This ordinance delegates award authority to the Executive Officer, based on recommendations from an advisory committee, which can make decisions in a timely manner and with little risk to revealing proprietary information. The Ordinance includes significant safeguards in this delegation of authority:

- ◆ Evaluation and award criteria are set forth in Metro Code (sections 4 and 12 of the Ordinance). The ordinance (in Section 9[a]) mandates that the Executive Officer will ensure that the advisory committee follows these criteria in all of their deliberations and decisions.
- ◆ The Committee will be comprised of lending and recycling industry professionals and a Metro Councilor who will understand how to implement the criteria (Section 14[b]).
- ◆ The Executive Officer must report twice a year to the Council on the status of the program (Section 9[b][5]).

This set of safeguards is designed to ensure that the intent of the Council is carried out in implementing the market development program, while being responsive to the needs of the industry and increasing the likelihood that high-quality applications will be submitted.

Loans approved through this program likely will involve higher risk than conventional loans from private banks. The Recycling Business Assistance Program is designed to assist businesses that cannot obtain sufficient, affordable capital from conventional lending institutions. The ordinance also establishes a requirement of not competing with private lenders. Typically, banks and other lending institutions will refuse to make, or will charge high interest rates for, loans to companies that have brief tenure, low profit margins, specialty equipment, debt/equity ratios that do not meet conservative guidelines, or that operate in unfamiliar industries. RBAP applicants will have to document unsuccessful efforts to secure sufficient, affordable private funding to accomplish their recycling objectives.

All loans made through this program will be secured with sufficient collateral. All applicants will be investigated and analyzed by Regional Environmental Management staff and by professional lenders to ensure acceptable risk factors. No loans will be made without a reasonable certainty of the borrower's ability to repay. Compared with most grant programs, this process offers not only an exceptionally high level of scrutiny, but also will recover funds for future use. Although there is some risk of default, the means will be in place to recover defaulted funds through liquidation proceedings.

Council intended this program would assume some level of risk for the likely benefit of advancing the Metro region's recycling and recovery rate goals.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 02-937.