



METRO

Agenda

MEETING: METRO COUNCIL
DATE: May 29, 2008
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- 1. INTRODUCTIONS**
- 2. CITIZEN COMMUNICATIONS**
- 3. RECOGNITION OF METRO'S GENEROUS PARTICIPATION AND SUPPORT IN THE DEDICATION OF THE NEW WILDLIFE REFUGE CENTER** Penner
- 4. FINANCIAL CONDITIONS OF METRO 1998 TO 2007** Flynn
- 5. HAZARDOUS WASTE DISPOSAL CONTRACT (AUDIT RESULTS)** Flynn
- 6. CONSENT AGENDA**
 - 6.1 Consideration of Minutes for the May 15, 2008 Metro Council Regular Meeting.
 - 6.2 **Resolution No. 08-3947**, For the Purpose of Proclaiming the Week of May 28 through June 8, 2008 as Great Blue Heron Week
- 7. ORDINANCES – SECOND READING**
 - 7.1 **Ordinance No. 08-1186A**, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees for Fiscal Year 2008-09. Bragdon
 - 7.2 **Ordinance No. 08-1187A**, For the Purpose of Amending Metro Code Chapter 7.01 Relating to Excise Tax, Regarding Exemptions and Calculations. Bragdon
- 8. CHIEF OPERATING OFFICER COMMUNICATION**
- 9. COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for May 29, 2008 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, May 29 (Live)</p>	<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, June 1 2 p.m. Monday, June 2</p>
<p>Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, June 2</p>	<p>Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, May 31 11 p.m. Sunday, June 1 6 a.m. Tuesday, June 3 4 p.m. Wednesday, June 4</p>
<p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>

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.oregonmetro.gov and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

FINANCIAL CONDITIONS OF METRO 1998 TO 2007

Auditor Report

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber



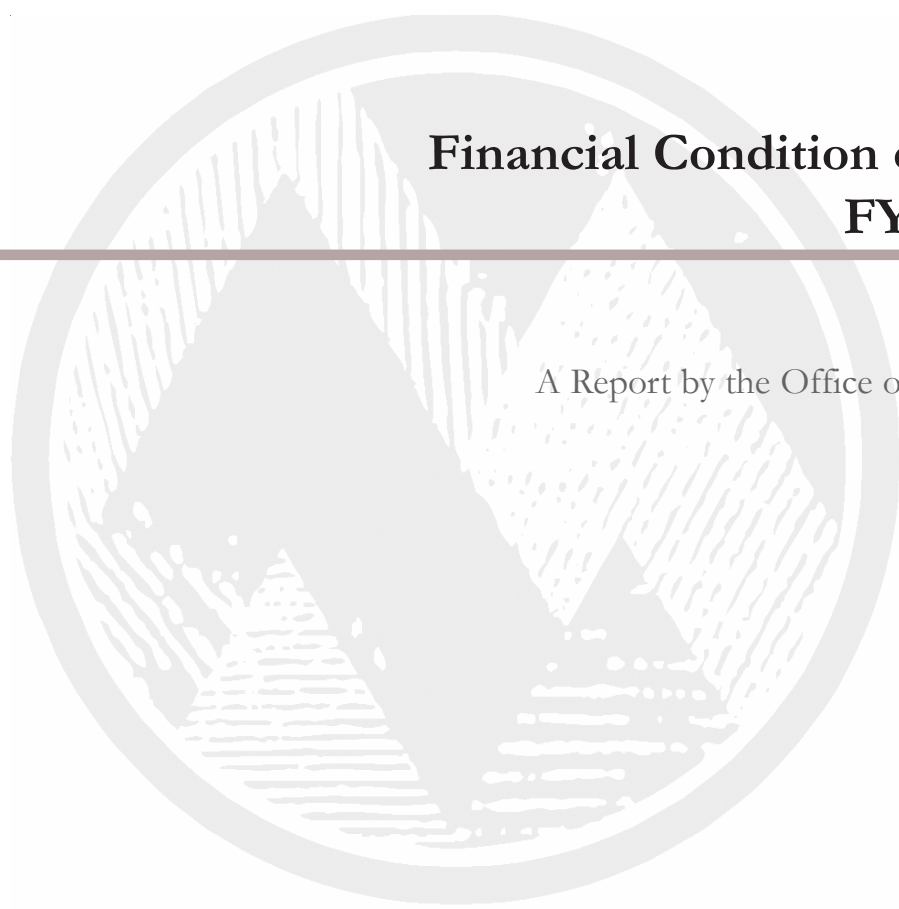
METRO

PEOPLE PLACES
OPEN SPACES

Financial Condition of Metro FY98-FY07

April 2008

A Report by the Office of the Auditor



Suzanne Flynn
Metro Auditor



METRO

**Suzanne Flynn
Metro Auditor**

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TEL 503 797 1892
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M E M O R A N D U M

April 25, 2008

To: David Bragdon, Council President
Rod Park, Councilor, District 1
Carlotta Collette, Councilor, District 2
Carl Hosticka, Councilor, District 3
Kathryn Harrington, Councilor, District 4
Rex Burkholder, Councilor, District 5
Robert Liberty, Councilor, District 6

From: Suzanne Flynn, Metro Auditor

Re: **Financial Condition of Metro, FY98-FY07**

The following report represents our audit of the financial condition of Metro over the past ten years. The last audit of financial trends was completed in September 1998. This report provides a check-up of how well Metro is doing financially based upon financial indicators that are recommended by the International City/County Management Association.

This audit was not included in the annual audit schedule but was added because I felt it would be a worthwhile report for the Metro Council and COO to receive on a regular basis. In the future, my office will conduct this audit every two years. We have discussed our findings and recommendations with Finance and Administrative Services and the COO and would like to acknowledge their assistance and cooperation in reviewing the report.

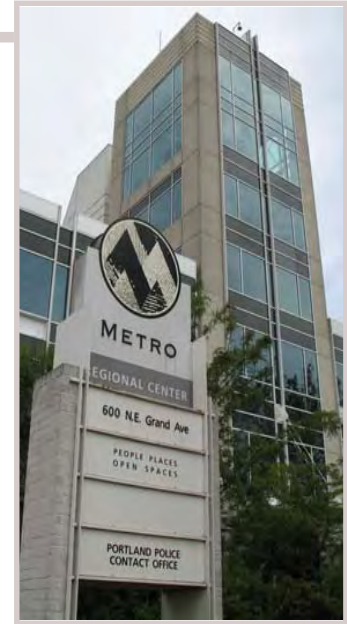
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INTRODUCTION

A government in good financial condition can afford to provide services on an on-going basis without disruption and can respond to changes. Financial condition can be monitored by reviewing long term trends in the areas of revenues received, expenditures, debt, assets, and the community's demographics and economy.

This report provides citizens and public officials with an overview of Metro's financial condition. It includes 25 financial and demographic measures covering a 10-year period, from fiscal year (FY) 1997-98 through 2006-07.



Highlights

- Revenues have grown faster than inflation and have increased at a higher rate than expenditures. However, revenues per capita have declined.
- As Metro has repaid long term debt from voter-approved bonds for the purchase of open spaces, the property taxes collected from residents have decreased.
- Revenue from excise taxes has increased 77%.
- Metro has over-estimated revenues in nine out of the ten past years.
- Expenditure per capita has declined 7%, perhaps indicating expenditure for Metro services has not kept up with population increases.
- Fixed costs have declined both in amount and as a percent of total expenditure.
- The number of Metro employees has remained stable in the last ten years. Employees per capita have declined.
- Expenditure on employee wages has increased 21% and fringe benefits have increased 27%.
- Unreserved fund balances are available to withstand financial down turns.
- Metro has a strong cash flow position to meet short-term requirements.

SCOPE & METHODOLOGY

The methodology in this report is based on recommendations from the International City/County Management Association in the publication *Evaluating Financial Condition: A Handbook for Local Government*. Funds included as operating funds are the general fund, special revenue funds, debt service funds, and the permanent fund. Not included as operating funds are capital projects funds, enterprise funds (Solid Waste and MERC), internal service funds, and trust funds.

We obtained data from the *Comprehensive Annual Financial Report* (CAFR) with the exception of some budgetary information from the adopted budgets and personnel cost information from the financial accounting system, PeopleSoft. Economic and demographic data is from outside published sources. All dollars are adjusted for inflation in current FY07, or 2007 dollars, whichever is appropriate.

Identifying and reporting on operations for Metro using the CAFR was somewhat complex because in the ten-year period we examined:

1. Metro's financial reporting of funds by fund type varied considerably. The majority of the changes were due to:
 - a. implementation of GASB Statement 34 in 2002, and
 - b. consolidation of a number of funds into the General Fund in FY06.

A schedule of the reclassification of fund types is included in the appendix. Funds over the ten year period were restated to reflect accounting treatment in the CAFR at June 30, 2007.

2. Reported transfers do not clearly identify amounts as transferred in and out for services provided by one fund to another, transfers of revenues collected by one fund for another, inter fund loans and transfers of fund balances. As a result, transfers among funds are not included. Although transfers among funds net to zero, when some funds are excluded from operating revenues or expenses, there will be a net balance between transfers in and transfers out.

As a result of the above, some indicators based upon CAFR information on assets and liabilities are reported for Metro as a whole and include Solid Waste and MERC business-type activities.

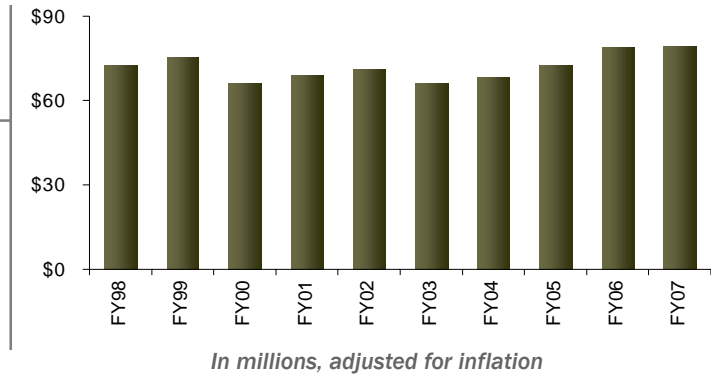
We reviewed information for reasonableness and consistency. We did not audit the accuracy of source documents or reliability of data in computer-based information. Most of the financial information in the report is from the CAFR and we therefore relied on the work of the Metro's external financial auditors. We conducted our work in accordance with generally accepted government auditing standards.

Revenues

Metro receives resources that pay for its operations from taxes levied, fees and charges earned as a result of the services it provides, or through grants received from other agencies or governments.

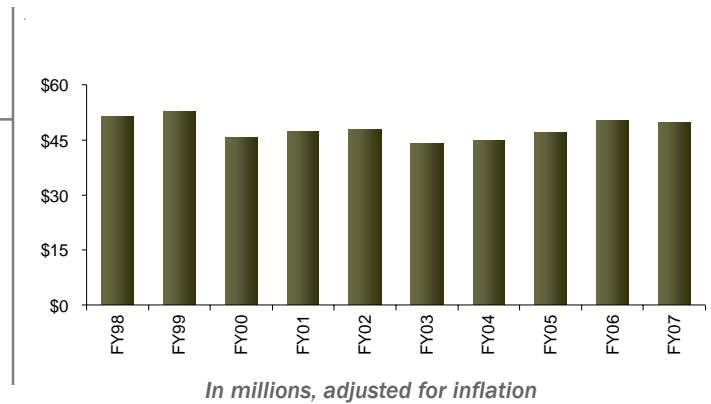
Operating Revenues

Operating revenues adjusted for inflation have increased 9% in the last 10 years.



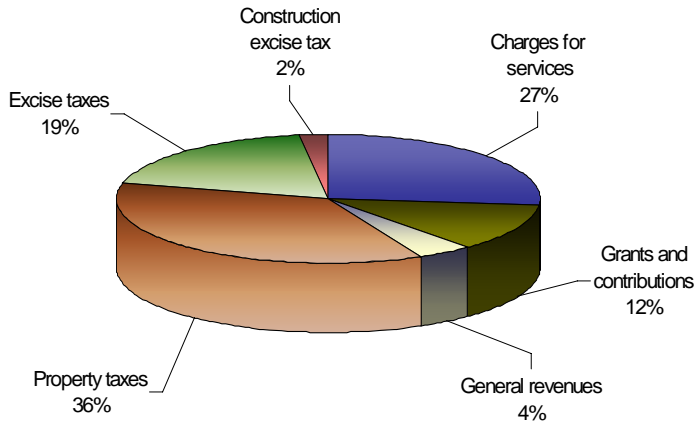
Operating Revenue Per Metro Resident

Operating revenues per Metro region resident have declined by 3%. In FY07, Metro received \$50 per resident in revenues.



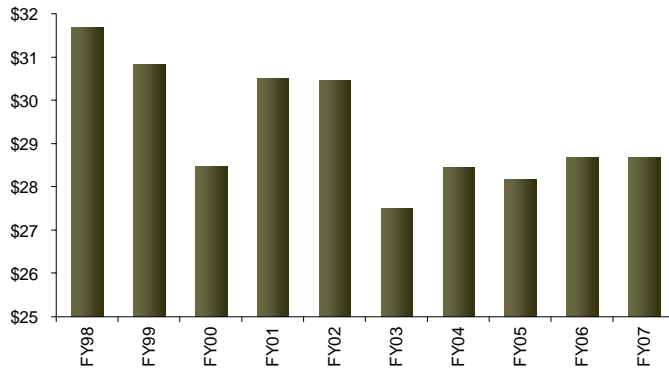
Oregon Convention Center

Revenues



Operating Revenues FY07

In FY07, revenues from taxes were the largest source of revenue (57%).



In millions, adjusted for inflation

Property Taxes

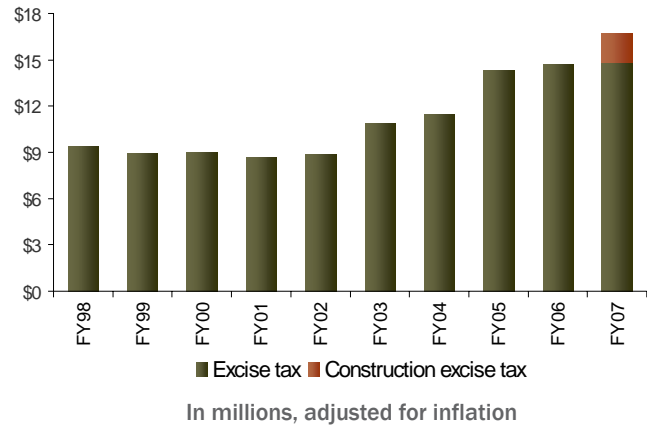
Revenues from property taxes have declined 9% over the last ten years as Metro repaid long term debt. In FY08, property tax revenues will increase because of the 2006 Natural Areas bond measure.



Revenues

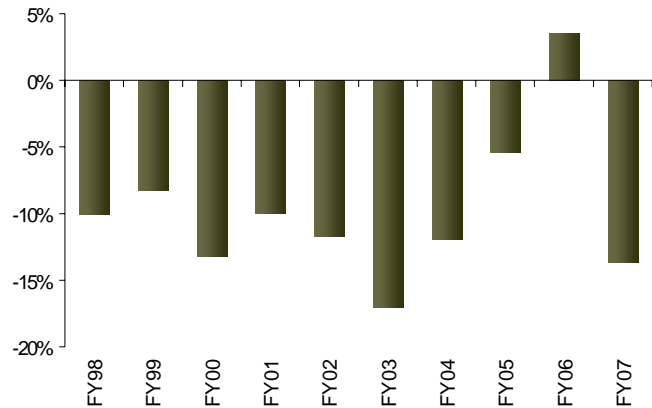
Total Excise Taxes

The excise tax is received from users of Metro facilities and services and is governed by the Metro Charter and Code. Revenues from excise taxes increased 77%. In FY06, Metro adopted a temporary construction excise tax levied on new construction to be used to support planning in areas of expansion. In FY07, this tax accounted for \$1.8 million, or 11% of the total excise tax received.



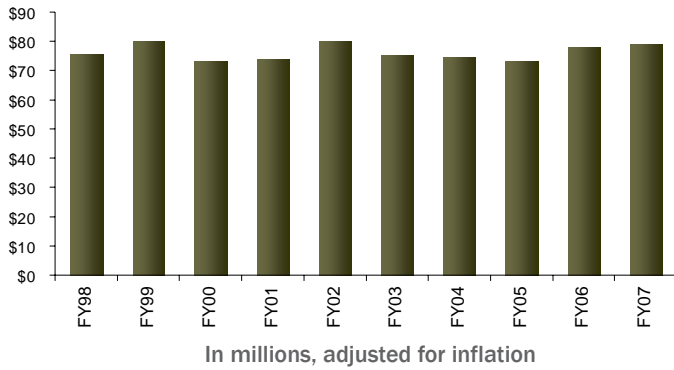
Revenue Shortfalls

Revenue shortfalls measure how well expected revenues were estimated each year. This is an important measure to track because significant shortfalls could require mid-year cuts of services or spending of reserve funds since Oregon does not allow deficit spending. The most significant shortfall (-17%) occurred in FY03. Most of the shortfalls that Metro has experienced are the result of the Planning Department overestimating revenues from grants.



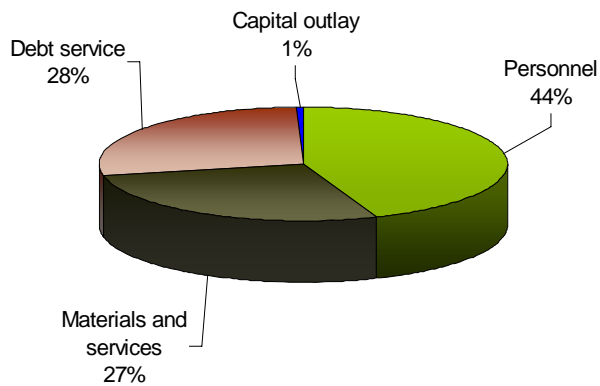
MetroPaint Recycled Paint

Expenditures



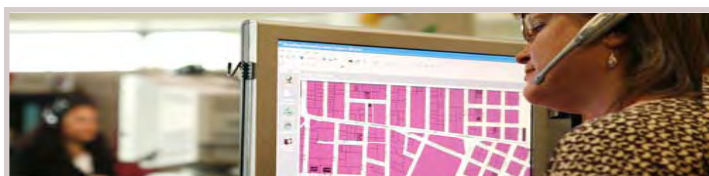
Operating Expenditure

Once adjusted for inflation, Metro spending has increased slightly (5%) in the last ten years. However, spending per Metro resident has declined by 7%.



Operating Expenditure FY07

During last fiscal year the largest single expense was for employee costs. Wages represented 74% of total cost for employees.

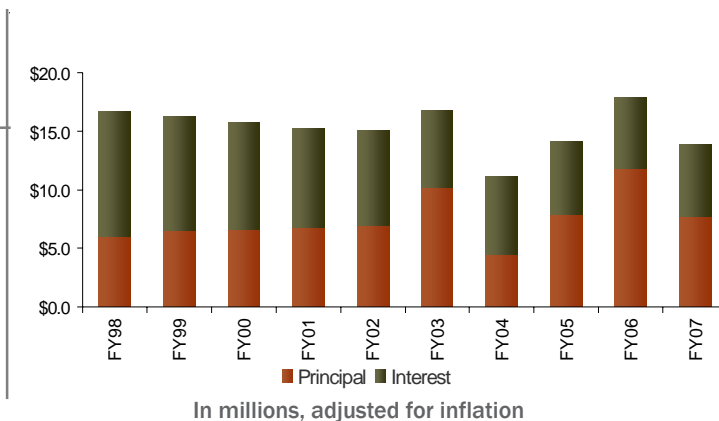


Solid Waste & Recycling Department Operators

Expenditures

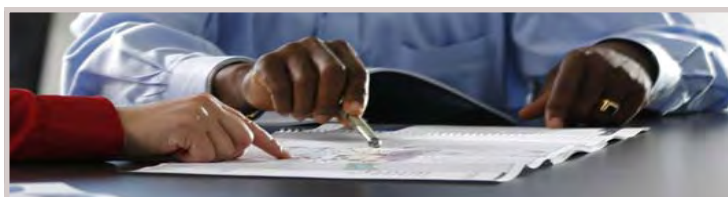
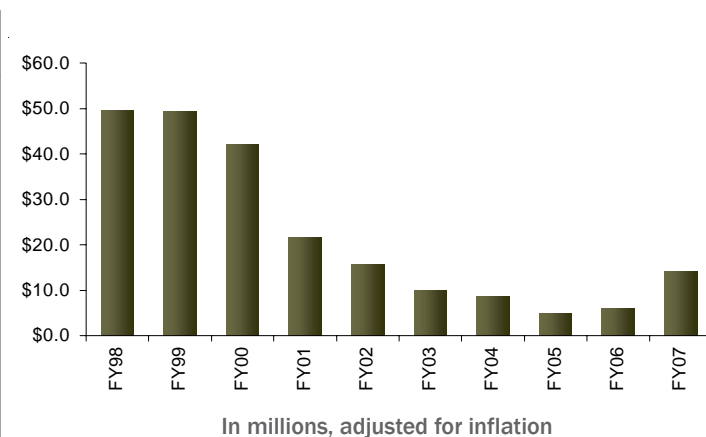
Fixed Costs

Decreasing fixed costs as a percentage of total operating costs are a favorable trend. Total fixed costs have declined 17%. As a percentage of total expenditures, fixed costs have decreased five percentage points.

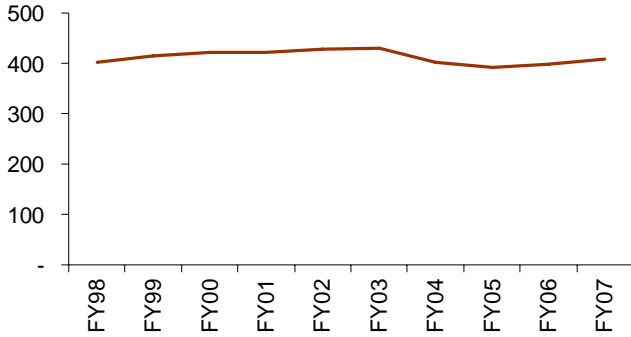


Capital Spending

Capital spending reflects investment in significant assets or improvements on assets such as buying land, buildings, exhibits and making improvements on parks. Capital spending declined as land purchases authorized by the 1996 Open Spaces bond measure decreased. Spending will again climb beginning FY08 as the 2006 Natural Areas bond measure becomes operational.

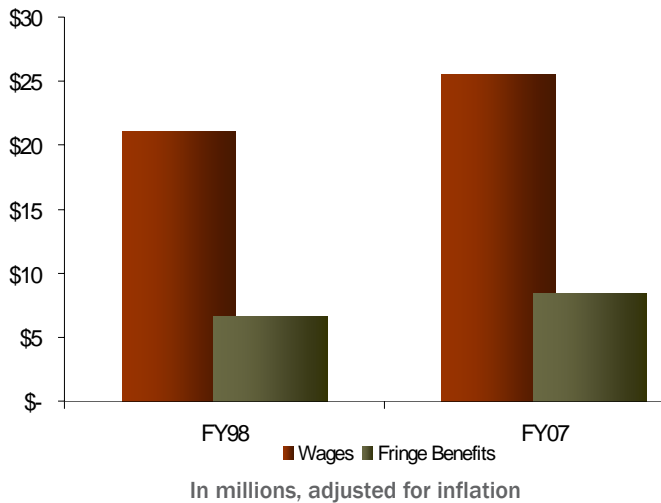


Expenditures



Metro Employees *

Employee wages and benefits represent the largest single operating expense. The total number of employees in the last ten years increased only 1%. Employees per 10,000 residents in the region have declined from 2.8 to 2.56.



Metro Employee Wages and Benefits *

Wages in the last ten years have increased 21% and fringe benefits have increased 27%. Average total compensation per employee has increased from \$69,000 to \$83,400. Most of this increase is likely the result of annual 3% adjustments based on bargained union contracts requiring Metro to increase wages correlative to increases in the Consumer Price Index (CPI).

* Excludes employees from MERC and Solid Waste Management

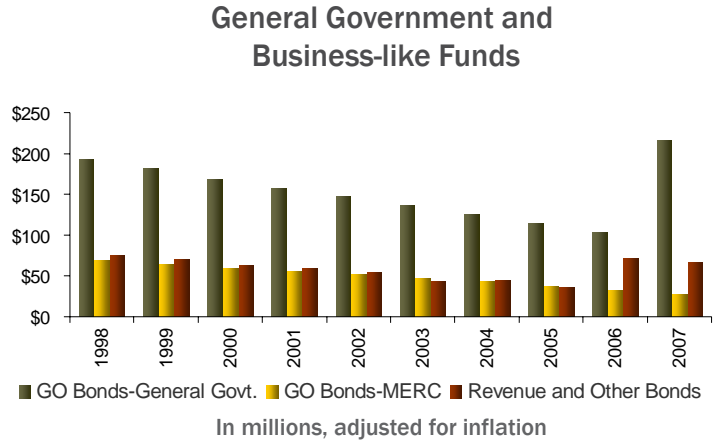


Oregon Convention Center

Financial Health

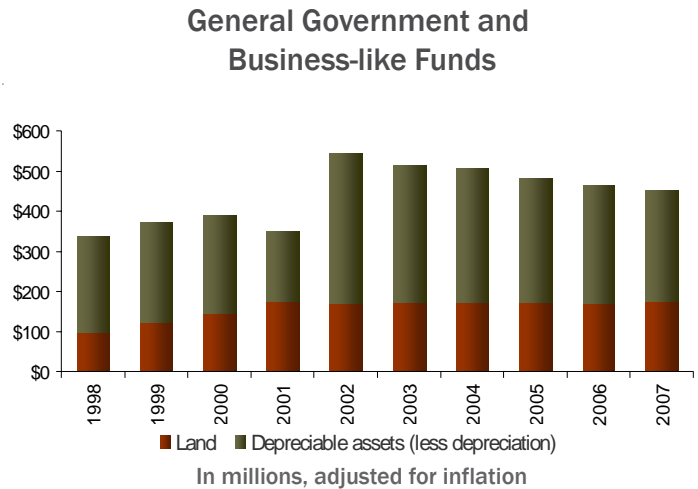
Long Term Debt at June 30, 2007

Most long term debt is from the sale of general obligation bonds that are approved by voters. As debt is repaid, the total long term debt declines. In 2007, Metro issued \$124 million in bonds intended for the purchase and preservation of natural areas. Approximately \$100 million in bonds authorized by voters remains unissued.



Capital Assets at June 30, 2007

Capital assets are defined by Metro as having an initial cost of \$5,000 or more and an estimated useful life over one year. This chart represents assets in Metro's general government and business-type operations. Decreases beginning in FY04 are from increasing depreciation. The ratio of depreciation to depreciable assets increased from 24% in FY03 to 36% in FY07.



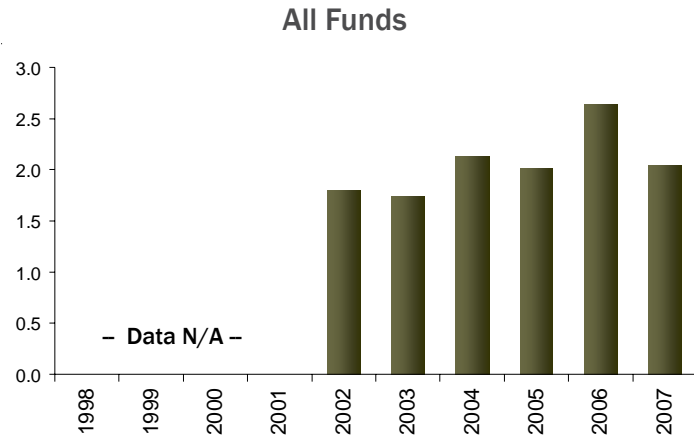
Columbia Ridge Landfill

Financial Health

Liquidity

Ratio of cash to current liabilities as of June 30

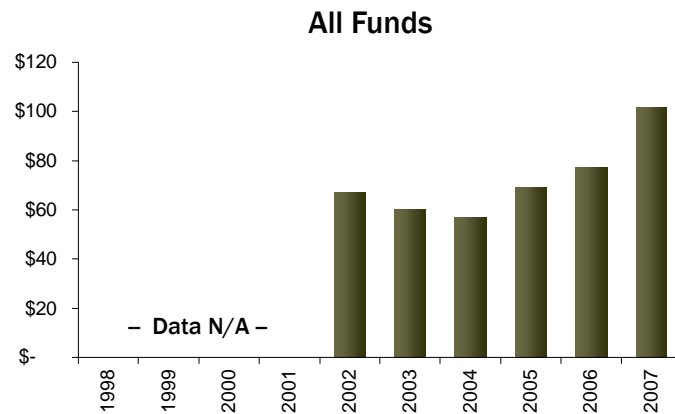
Liquidity measures Metro's ability to meet its short-term obligations. A ratio less than one-to-one is considered to be a warning sign. The liquidity ratio at Metro has consistently been above 1.0 and has been increasing. Because of accounting changes to meet new accounting standards, comparable data is not available prior to 2002.



Unreserved Fund Balances

as of June 30

The size of Metro's fund balances can affect the ability to withstand financial emergencies. Since 2005, unreserved fund balances have increased. Because funds were reported differently over the last ten years, unreserved fund balances can only be reported for all funds and is only comparable since 2002.



In millions, adjusted for inflation



Metro Regional Center

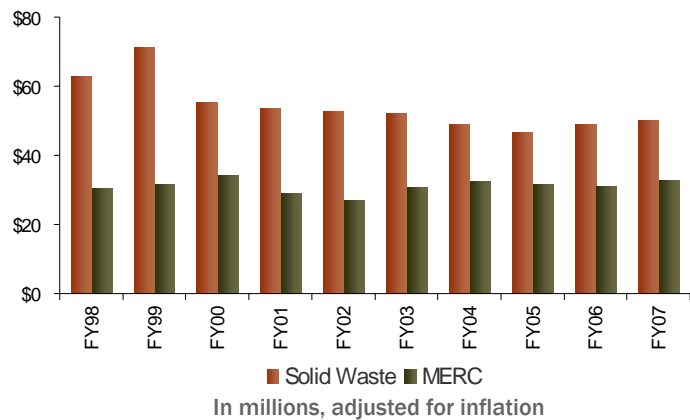
Proprietary Funds

Proprietary funds are funds that are used to track government activities that are operated similar to a business or to account for internal business services. Metro has three proprietary funds - two to track the business-type operations of the Metropolitan Recreation Exposition Commission (Oregon Convention Center, Portland Center for the Performing Arts, and Portland Metropolitan

Exposition Center) and the Solid Waste Management System. The Risk Management Fund is Metro's internal insurance service and accounts for charges and expenditures relating to insurance, workers' compensation and liability for pollution related losses.

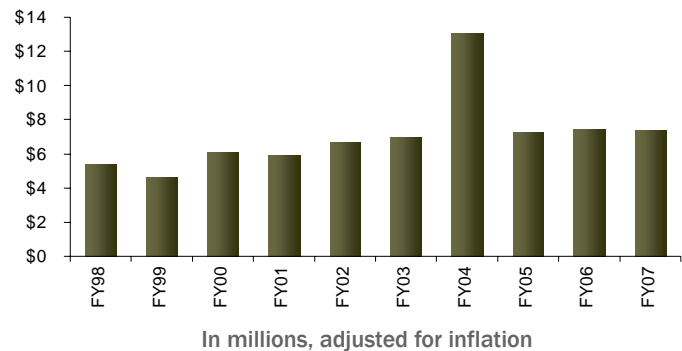
Expenditures for Business-type Operations

In the last ten years, expenditures for the **Solid Waste Management System** declined 21% while expenditures for **MERC** operations increased 8%.



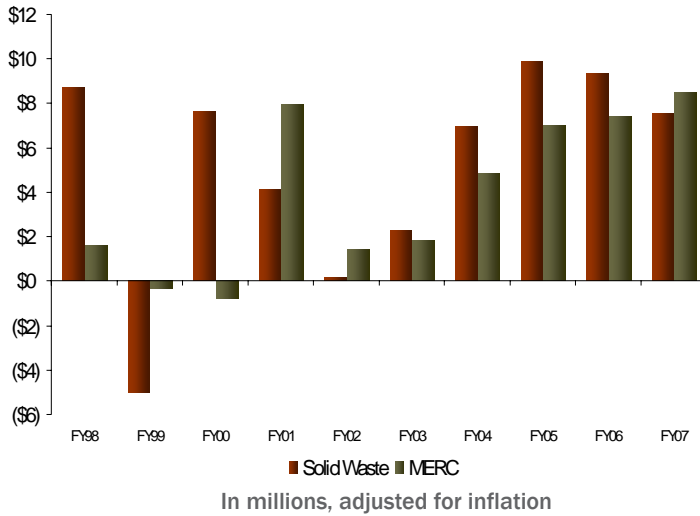
Expenditures for Risk Management

Expenditures on **risk management** activities have increased 37% in the past ten years. Because of probable future costs related to environmental conditions in the **Solid Waste Management System**, expenditures in FY04 increased by \$5.2 million as an acknowledgement of that liability.



Solid Waste & Recycling Department Operators

Proprietary Funds



Expenditures Under (over) Revenues

Since FY02, Solid Waste and MERC revenues have been above expenditures. In FY99, Metro prepaid future fixed costs in the Solid Waste transport contract, resulting in a \$4 million expenditure over revenues.

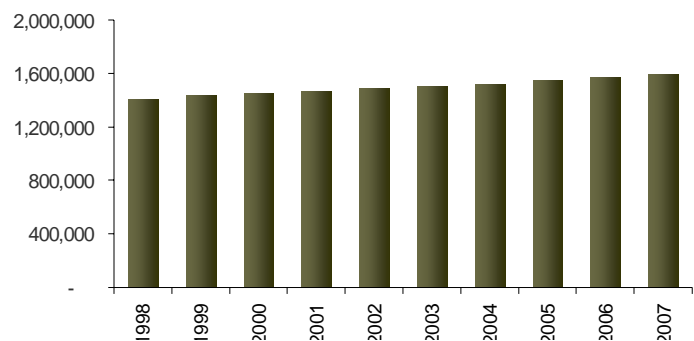
Economic and Demographic Trends

Bond rating agencies consider the socio-economic base of a community to be the most important area for valuation of the financial ability of a government to repay its debt obligation. A significant increase in

population, decline in number of jobs, businesses, per capita income, or increase in the unemployment rate could be warning signs for a government's financial condition.

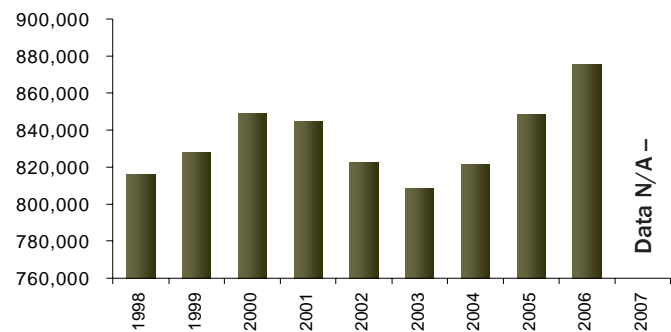
Population on July 1 Washington, Clackamas and Multnomah Counties

The population of the tri-county area has increased 11% in the last ten years. Collectively, these three counties represent 43% of Oregon's total population.



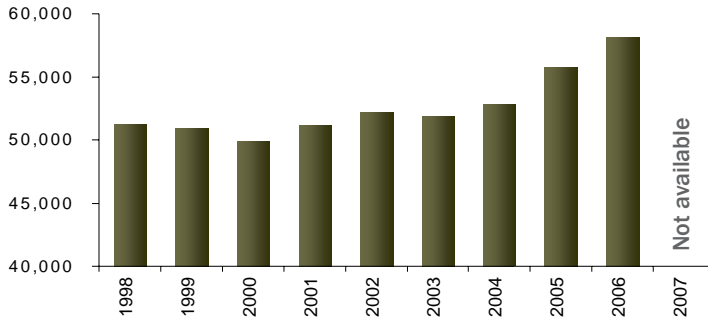
Number of Jobs Portland Metropolitan Area

During the ten year time period, the number of jobs in the Portland Metropolitan Area increased 7%.



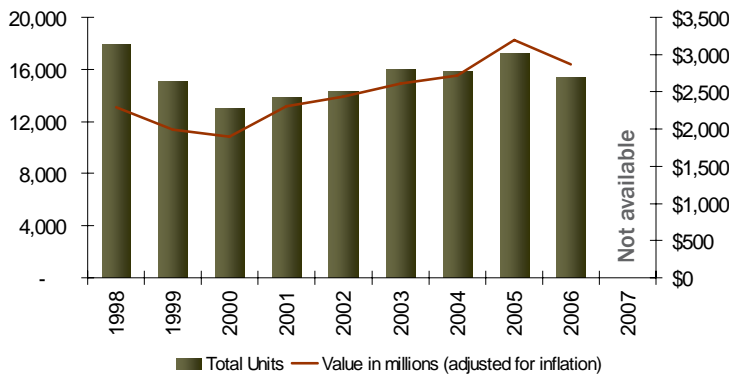
Max Light Rail System

Economic and Demographic Trends



Number of Businesses Portland Metropolitan Area

The number of businesses in the greater Portland metropolitan area has increased 13% from FY98.



New Construction

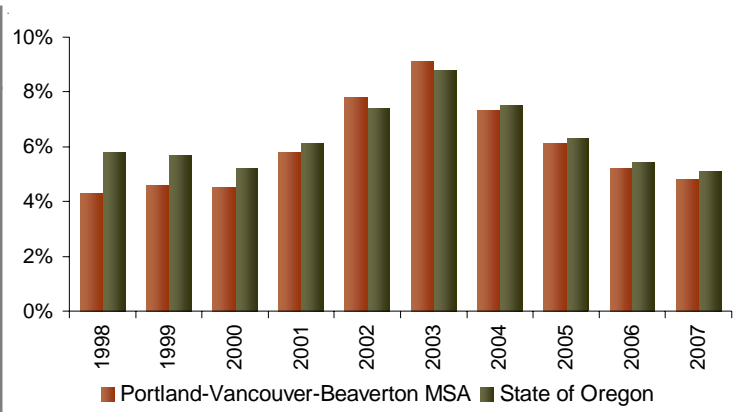
The number of total units added through new construction decreased 13% since 1998. The value of new construction adjusted for inflation increased 26% in the same time period.



Economic and Demographic Trends

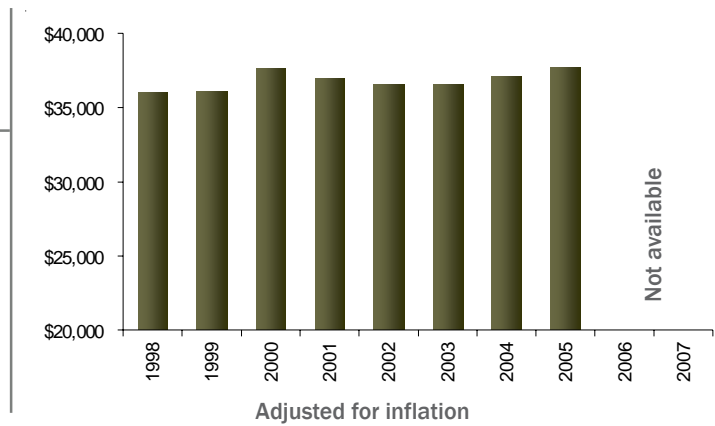
Unemployment Rate

Since FY03, the Portland metropolitan area's unemployment rate has been declining. Except in 2002 and 2003, the area's unemployment rate has been lower than the state.



Income Per Capita

Income per capita in the greater Portland metropolitan area has increased 5% from 1998 to 2005.



Recommendations

Recommendations

1. Revenues have consistently been over-estimated in the past ten years. This unfavorable trend was also noted in the first Financial Condition report issued in 1998. Metro should adopt a financial policy to suggest more conservative procedures for forecasting revenues.
2. Employee wages and benefits represent a significant share of operating costs. Metro should begin reporting these costs on an annual basis and review any major changes as a trend becomes available.

Management Response

**METRO**

April 11, 2008

Ms. Suzanne Flynn
Metro Auditor

Re: Financial Condition Report

We are very interested in the Financial Condition report produced by your office and have appreciated the opportunity to work with you during its development. Using the International City/County Management Association guidelines and a 10-year review period gives dimension and depth to the report. As you noticed, the steps Metro has taken to consolidate its funds make the report period challenging, and we appreciate the clarifying history chart in the appendix.

The report contains two recommendations to which we respond below.

1. Revenues have consistently been over-estimated in the past ten years. This unfavorable trend was also noted in the first Financial Condition report issued in 1998. Metro should adopt a financial policy to suggest more conservative procedures for forecasting revenues.

Response: We agree that accurate forecasting of revenues is important for both policy making and management decision making. Metro's financial policies are reviewed annually and published in the adopted budget. The first policy in the Revenue section requires that "Metro shall estimate revenues through an objective, analytical process." Instructions about forecasting revenues are provided annually during the budget preparation process, and all departments are aware of the expedited process available under Oregon budget law to recognize unexpected grants or other dedicated funds during a given fiscal year.

Most Metro revenues have been forecast well, perhaps even conservatively, for the last several years. As your report points out, the primary area of over-estimation throughout the reporting period occurs in the Planning Department's grant estimates, a substantial portion of which are pass-through federal transportation grant awards to other agencies. While the grant awards did not mature as forecasted, neither did the corresponding expenditures. In some cases grants budgeted in one year were not received until the succeeding year. Because transportation awards involve regional decision making, the past practice has been to relate the budgetary estimates to the regional Unified Planning Work Program (UPWP). Detaching the Metro budget plan from

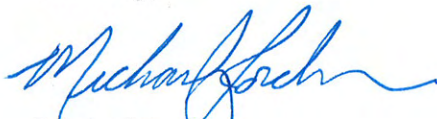
the UPWP is manageable at the operating level, but may have some unforeseen or unintended consequences at the political level. We have encouraged the Planning Department to make more realistic budget estimates, and we are pleased to see this reflected in the department's requested FY 2008-09 budget. We will continue to monitor the department's progress.

2. Employee wages and benefits represent a significant share of operating costs. Metro should begin reporting these costs on an annual basis and review any major changes as a trend becomes available.


Response: We agree with the recommendation and can see incorporating it into the budget summary section of the annual proposed budget volume and, later, the adopted budget volume. In the Budget Summary section we currently present a 10-year FTE chart and a "Current expenditures by category" chart, which shows personal services (wages plus benefits) as a proportion of total expenditures. Charting total wages and total benefits over time would display the relative proportions of wages and benefits side-by-side. In addition it would include the temporary and seasonal labor costs at MERC and the Zoo, information that is not captured in the standard FTE presentation because these types of employees are not included in FTE counts. In gross values we would expect to see a significant upward curve in both wages and benefits. Adjusted for inflation, we could provide a deeper context. Including a wages and benefits trend report in the CAFR is a bit more problematic because of the budgetary basis schedule construction, but we will consider if there is an appropriate way to include it in the statistical section where we report FTE using the Metro Adopted Budget as the source document.

We appreciate your work on this report. It focuses in on certain information specific to Metro's operation, but it also provides a regional economic perspective. While it may be ambitious to produce this report too frequently, we hope that you will consider periodic updates.

Sincerely,



Michael Jordan
Chief Operating Officer



William L. Stringer
Chief Financial Officer

Appendix

History of Metro Funds by Fund Type

Source: Metro CAFRs

FUND TYPE / FUND NAME	History										Operating Fund?	
	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07		
Governmental Funds												
General Fund	GF	GF	GF	GF	GF	GF	GF	GF	GF	GF	GF	Yes
Including consolidation of subfunds:												
<i>Zoo Operating Fund</i>	SR	SR	SR	SR	EF	EF	EF	EF	GF	GF	GF	Yes
<i>General Revenue Bond Fund - Zoo</i>	SR	SR	SR	SR	EF	EF	EF	EF	GF	GF	GF	Yes
<i>Planning Fund</i>	SR	SR	SR	SR	SR	SR	SR	SR	GF	GF	GF	Yes
<i>Regional Parks Fund</i>	SR	SR	SR	SR	SR	SR	SR	SR	GF	GF	GF	Yes
<i>Building Management Fund</i>	IS	IS	IS	IS	IS	IS	IS	IS	GF	GF	GF	Yes
<i>General Revenue Bond Fund-Bldg Mgmt</i>	IS	IS	IS	IS	IS	IS	IS	IS	GF	GF	GF	Yes
<i>Support Services Fund</i>	IS	IS	IS	IS	IS	IS	IS	IS	GF	GF	GF	Yes
Special Revenue												
<i>Smith & Bybee Lakes Fund</i>	ET	ET	ET	ET	SR	SR	SR	SR	SR	SR	SR	Yes
<i>Rehabilitation & Enhancement Fund</i>	ET	ET	ET	ET	ET	ET	ET	SR	SR	SR	SR	Yes
<i>Washington Park Parking Lot Fund</i>		SR										Yes
Debt Service												
<i>General Obligation Bond Debt Service Fund</i>	DS	DS	DS	DS	DS	DS	DS	DS	DS	DS	DS	Yes
Capital Projects												
<i>Open Spaces Fund</i>	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	CP	No
<i>Natural Areas Fund</i>											CP	No
<i>Metro Capital Fund</i>									CP	CP	CP	No
Including consolidation of subfunds:												
<i>Zoo Capital Fund</i>	CP	CP	CP	CP	EF	EF	EF	EF	CP	CP	CP	No
<i>Regional Parks Capital Fund</i>								CP	CP	CP	CP	No
<i>Regional Parks Special Accounts Fund</i>	ET	ET	ET	ET	SR	SR	SR	SR	CP	CP	CP	No
Permanent Fund												
<i>Cemetery Perpetual Care Fund</i>							PF	PF	PF	PF	PF	Yes
Fiduciary Funds												
Pension Trust												
<i>Deferred Compensation Fund</i>	PT	ET	ET	ET	PT							No
Proprietary Funds												
Enterprise Funds												
<i>Solid Waste Fund</i>	EF	EF	EF	EF	EF	EF	EF	EF	EF	EF	EF	No
<i>MERC Fund</i>	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	EF	No
Internal Services												
<i>Risk Management Fund</i>	IS	IS	IS	IS	IS	IS	IS	IS	IS	IS	IS	No

Notes
Changes in FY02 due to implementation of GASB 34.
Changes in FY06 due to consolidation of funds directed by Metro Council.

Fund Type Legend	Op Fund
General Fund	GF Yes
Special Revenue Funds	SR Yes
Debt Service Funds	DS Yes
Permanent Funds	PF Yes
Pension Trust Funds	PT No
Expendable Trust Funds	ET No
Capital Projects Funds	CP No
Internal Service Funds	IS No
Enterprise Funds	EF No
Component Unit	CU No



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**HAZARDOUS WASTE DISPOSAL CONTRACT (AUDIT
RESULTS)**

Auditor's Report

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber



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Metro Hazardous Waste Disposal Contract *Strengthen Contract Management*

May 2008

A Report by the Office of the Auditor

Suzanne Flynn
Metro Auditor



SUZANNE FLYNN

Metro Auditor

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Portland, OR 97232-2736
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May 8, 2008

To: David Bragdon, Council President
Rod Park, Councilor, District 1
Carlotta Collette, Councilor, District 2
Carl Hosticka, Councilor, District 3
Kathryn Harrington, Councilor, District 4
Rex Burkholder, Councilor, District 5
Robert Liberty, Councilor, District 6

From: Suzanne Flynn, Metro Auditor

Re: Audit of Hazardous Waste Disposal Contract

The following report covers our audit of the Hazardous Waste Disposal Contract administered by the Department of Solid Waste and Recycling. This audit was not included in our FY07-08 Audit Schedule and was initiated because of a special request from the Office of the Metro Attorney. The purpose of the audit was to determine the quality of the contractor's performance and if the Department had adequate procedures in place to administer the contract and monitor performance.

Metro's Hazardous Waste Program contracts for the transportation and disposal of waste it collects at its two facilities and from periodic collection events. In September 2005, a two-year contract was awarded to Phillips Services Corporation (PSC) in the amount of \$766,070 and extended an additional year, increasing the contract amount by \$491,103. My office contracted with environmental specialists to perform a review of PSC facilities and the disposal process. We also conducted a review of the Program's contracting procedures and found the procurement process to be fairly strong. However, we found that the Program had inadequately planned for administering the contract once it was awarded and did not have procedures in place to monitor or correct performance. While our contractors found no evidence that PSC was disposing of Metro's waste improperly, they did note weaknesses at one of the facilities and in the system to monitor compliance.

We have discussed our findings and recommendations with the Department Director and management for the Hazardous Waste Program. I would like to acknowledge and thank the management and staff who assisted us in completing this audit. A formal follow-up to this audit will be scheduled within one to two years.

A handwritten signature in cursive script, appearing to read 'Suzanne Flynn'.

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Background

Metro's Hazardous Waste Program (Program) is responsible for household hazardous waste management in the region and has established two facilities for hazardous waste collection at its solid waste transfer stations. It also operates periodic collection events in various locations to give households additional opportunities for disposal and operates another facility to collect and recycle latex paint. In addition, the Program is allowed to receive hazardous waste from small businesses and facilities, generated at one of Metro's facilities, or abandoned waste from its solid waste transfer stations or dumped illegally.

As part of the management system, the Program contracts for the transportation and disposal of the waste it collects. In May 2005, the program issued a request for proposals (RFP) for this service. A Program team evaluated five proposals and unanimously ranked Phillips Services Corporation (PSC) the highest. A contract was awarded to PSC for a maximum price not to exceed \$766,070 to begin September 2005 and end August 31, 2007. The contract was amended to extend the end date to 2008, increase the contract amount by \$491,103 and make changes in the disposal methods. The contract also was amended to allow Metro to charge a penalty if waste was not disposed of as required by contract specifications.

Scope and Methodology

The purpose of this audit was to review the contract with PSC to determine the quality of the contractor's performance and whether the Program had adequate procedures in place to administer the contract and monitor performance.

In order to determine the quality of the contractor's performance, the Auditor's Office contracted with an independent environmental consulting and engineering firm to review hazardous waste management and disposal. A separate report was received from the consultants and shared with the Program. To determine whether the Program had adequate procedures in place to administer the contract, we interviewed the assistant director, program manager, supervisors at the collection facilities, safety analyst, financial manager and staff, and the procurement manager. The RFP, procurement process documents, billing process, and reports that the Program receives from the contractor were also reviewed. We toured the Program's two collection facilities and reviewed reports generated by the collection facilities and how Metro facilities tracked shipping and disposal.

This audit was requested by the Office of Metro Attorney and was not on the regular audit schedule. It was conducted according to generally accepted government auditing standards. In order to rely on the work of the consultants, we determined that they were qualified and able to perform the work impartially.

Results

In 2000, this Office completed an audit of contracting practices and made recommendations to improve the management of contracts. That audit recommended an organizational structure that had clearly defined roles and responsibilities, a performance reporting system designed to determine the status of each contract and matters needing attention, a way to identify and mitigate high-risk situations, and procedures for employees who are responsible for managing contracts. While at the time auditors found the method for selecting contractors was generally sound, procedures were not in place to ensure adequate contractor oversight. For the most part, findings in the current audit are very similar.

Procurement documents strong

According to Metro-recommended procedures, the procurement process should begin with the development of a Request for Proposals (RFP) and scope of work. Both of these documents set the stage for selecting a service provider and the requirements that the contractor must meet.

In the most recent procurement for disposal services, the Program developed a comprehensive RFP that outlined in detail the types and volume of wastes received. The RFP included a scope of work that defined the process the contractor was required to follow to pick up and dispose of waste, track disposal and report back to the Program. The scope also included a requirement for insurance and bond coverage and that the contractor follow all applicable federal, state and local laws and regulations. These two documents together gave more than adequate notice to proposers of the work to be done and the standards that the contractor would be required to meet.

Evaluation criteria heavily weighted to cost

The RFP outlined the criteria that were to be used in selecting a contractor. In order to be considered, the following items were to be included in the proposal:

- Transmittal letter
- Names and resumes of key staff
- Description of firm's experience
- List of present or former customers
- List of regulatory permits held
- Proposal price forms for each category of waste
- Description of other fees or costs
- Proposal security
- Surety form for Performance/Labor and Materials Bond

All responsive proposals were then scored by an evaluation team for experience and qualifications (30 points), total costs (50 points), and environmental soundness (20 points). Environmental soundness was based on a “Waste Reduction Hierarchy” developed by the Program that ranked the proposed disposal method of each waste stream from most desirable (reuse) to least desirable (landfill). Cost scores were determined by the full 50 points awarded to the lowest bid and points then allocated to the remaining proposals based on the proportion to the lowest bid.

Mathematically, it is possible for a proposer to overcome the cost weighting. However, when we analyzed the evaluators’ scoring spreadsheets to determine how easily a proposer in this competition who had proposed higher costs could overcome the 50 point weighting for cost, we found it might be difficult. Averaging the scores given by the evaluators, we determined that even if a proposal with the next lowest cost received the highest average scores in the two other categories and the proposal with the lowest cost received the lowest average scores, the weighting for cost could not be overcome. It should also be noted that this scenario was not the case because the lowest bid proposal did not receive the lowest scores in the other two categories.

Exhibit 1 RFP Scoring	Lowest cost/lowest scores in other categories	Next lowest cost/highest scores in other categories
Experience/Qualifications	14.7	24.7
Cost	50	35
Environmental Soundness	8	10
Total	72.7	69.7

SOURCE: Metro Auditor’s Office analysis of RFP scoring

Determining what is the best “deal” for Metro should be more than simply obtaining the lowest cost. In this case, the Program did recognize that cost should not be the only factor in choosing a firm and used a RFP process rather than simply asking for bids.

There are always trade-offs in determining how to choose a contractor, among them efficiency, economy, quality and risk. This is a high risk contract. The Program set high standards for the disposal of waste and there is considerable liability and responsibility to see that it is disposed of without causing harm. Best practices suggest that the weighting for cost should have been lower. Metro RFP procedures state that evaluators should look for the highest quality of work for the lowest cost and that the quality of work may be more important than cost.

Contract administration needs to be improved

Once the contract is awarded, contract administration is the activity that determines how well the work was performed. Contract administration starts with a clear statement of performance expectations in the scope of work and a contract administration plan that can measure the contractor's performance cost-effectively and provides documentation to pay accordingly.

The Transportation and Disposal of Hazardous Waste contract (Contract) has several performance expectations included in the Scope of Work. They are:

- Provide a hazardous waste manifest for signature for each waste shipment.
- Once received at a treatment storage or disposal facility, signed manifest copies are sent to Metro.
- Provide a report to Metro within 270 days of shipment if the waste is shipped to its final destination.
- Provide a report to Metro within 270 days if the waste was transported to an intermediate facility for treatment or storage and later shipped to a final disposition under a new manifest.
- Waste transported to a secondary facility under a new manifest must be uniquely identified.
- Provide a certificate of final waste management to Metro no more than 360 days from shipment.
- Dispose of each waste category in the method prescribed by Metro.
- Dispose of each waste category at a Metro approved facility.

To ensure performance, the contractor is required to allow Metro representatives to visit any facility it owns or operates - up to two visits per year per facility. The contractor must allow access to areas where Metro wastes are stored or processed, and all paperwork files relating to Metro waste.

The method and timing of payment is not specified in the contract. According to the Program, when the signed manifests are returned indicating the receipt of the waste at a facility, the quantity and type of waste is reconciled to Program records, and payment is made. This usually occurs 30 days after the waste is shipped. This results in the contractor being paid well before actual performance of the work (disposal) is completed.

Although performance expectations have been identified and the means to measure performance exists, the Program does not have a clear plan of how performance will be monitored. If the Program only relies on the reporting requirements, staff would not be aware of any performance problem until 270 days after the first shipment occurred. Further, the contractor would have already been paid for a possible nine months of work.

Monitoring quality needs to be strengthened

Not unlike many government agencies, the Program gave much attention to the contract award process; however, what to do after the contract was awarded received less. Monitoring for quality is essential, however, to ensure that benefit is received for public dollars. It is even more important when the service is high risk, such as the disposal of hazardous waste. A good quality assurance plan requires that responsibility and authority be clearly assigned, procedures be clear, documentation occurs, and action is taken. We found weaknesses in each of these areas.

Currently, no standardized procedures exist that guide roles and responsibilities in monitoring performance. The Program manager is responsible for contract monitoring but relies on facility staff to identify problems. These staff have no guidelines as to how problems should be identified, when they should be reported to the manager, how they should be documented, who takes action, and what action should be taken.

Program facility staff receive the signed manifests once waste has been received at a intermediate or final disposition facility. While this could be one logical point to check quality - that disposition required by the Contract actually occurred - staff are unclear as to how to monitor this and whether it is their role. The safety officer performed on-site inspections but procedures were not in place to guide how an investigation should be documented, reported, or acted upon. Position descriptions for these staff positions do not state that contract monitoring is a responsibility.

Program facility staff track in a database when the required reports are received for each type of waste that was shipped. Staff indicate they will usually notify the Program's manager or safety officer after one year when reports have not been received. In March 2007, the Program took action with PSC regarding the tracking requirements and withheld payment until reporting requirements were made current. In some cases, this was nine months after reports would have been due. The contract was extended; however, the amendment added a new

penalty for not disposing for waste as required by the contract. While the Program did act, in this case of inadequate performance, the response was not timely because of monitoring design deficiencies.

Progress on 2000 audit recommendations

An audit was completed by this office in 2000 titled, "Contracting: A Framework for Enhancing Contract Management." Many recommendations were implemented after the audit, but in the intervening years, procedures have changed. However, the weaknesses that they addressed can be found in this current contract.

**Exhibit 2
2000 audit recommendation status**

Recommendation	Status
Define and document the authority, roles and responsibilities of the various organizational units and positions involved in contracting activities, including the Contract Office, departments, and project manager.	Not clearly defined or documented.
Enhance the role of the Contract Office by providing it with the resources, authority and responsibility for oversight, quality control and support activities.	Procurement Services does not currently have authority or responsibility for quality control.
Improve contract oversight by conducting formal risk assessments to identify contracts requiring close monitoring and audits.	Metro currently conducts only informal risk assessments. In the case of this particular contract, the checkbox on the face of the contract used to identify high risk contracts was marked "N/A."
Establish a management reporting system geared toward providing oversight information to top management and departmental directors.	A monthly contract report distributed to management does not give adequate information for oversight.
Designate a formal contract coordinator in each department responsible for assuring that contracts are properly planned and monitored separate from the project manager and with the authority to counsel and direct project managers in developing contracts and evaluating contractor performance.	Was implemented, but has since changed.
Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in ...monitoring and evaluating contractor performance....and conducting risk assessments.	Procedures and guidance exist for procurement process but not for monitoring performance or conducting risk assessments.

Additional monitoring tools available

We contracted with Bergeson-Boese & Associates, Inc. (BBA) to perform a focused review of waste management disposal to determine the quality of the services PSC was providing. BBA reviewed the documentation by the Program and PSC to record the disposition of waste from receipt at the Program to final disposition at a facility. BBA also visited the two PSC facilities in Kent, WA and Tacoma, WA where waste from the Program is received, treated, or shipped to final disposition. While they found no evidence that PSC was disposing of Metro's waste improperly, they did note weaknesses in one of the facilities and in the system to monitor compliance. The methods they used to arrive at these conclusions could assist the Program in designing a monitoring plan that includes earlier warning of poor performance than the 360 day tracking deadline.

Visual observations about the quality of the facility. BBA performed unannounced visits at the Kent and Tacoma facilities. At the Kent facility, they noted that the onsite laboratory appeared to be infrequently cleaned, poorly maintained, and somewhat disorganized. Among the instruments used in the laboratory, two appeared to be "quite old" and in "questionable condition." The chemist also appeared to be somewhat unprofessional. The consultants, although not specifically knowledgeable about the handling of PCB's, expressed a concern about this particular waste and suggested additional scrutiny because it is a high risk waste. In contrast, the Tacoma facility was noted to be "clean, orderly, and well maintained." These types of observations could be integrated into a facility inspection checklist and used on a regular basis. When observations are negative and raise red flags, additional monitoring could then be scheduled.

The strength of other agency controls on operations. PSC facilities operate under federal, state, and local regulations. It is in the facilities' best interest to follow strict guidelines for hazardous waste disposal. As part of their review, BBA used the EPA's Enforcement and Compliance History (ECHO) website to determine PSC's compliance history. Both facilities were noted to have numerous compliance inspections in the last five years. BBA followed up on documented violations that were found with PSC facility representatives and was able to learn the nature of the violations.

BBA also noted a difference in the type of oversight provided by the cities of Kent and Tacoma. There is less oversight provided by the City of Kent. At Kent, the PSC facility tests the content of waste water and is allowed to make a decision as to whether the water can be disposed of into the City's system. At Tacoma, the PSC facility must send a sample to the City of Tacoma, who approves of any disposal of waste water.

These types of reviews can be accomplished at an employee's desk and do not necessarily require an onsite visit. They could be standardized and performed regularly. If conditions raise a concern, then a site visit could be conducted.

Review of tracking records to determine actual disposal.

According to the Program, 100 to 160 drums of hazardous waste are generated every one to two weeks. This means that, at the least 2,600 drums of waste are shipped annually. Each drum is labeled by the Program prior to shipment. However, once the waste is transferred to PSC, the ability to control tracking is lost. It is possible that waste is co-mingled with waste from other places and shipped to another location for disposal. BBA estimated at the conclusion of their review that it would take 200 to 300 man-hours to verify one full year of tracking from shipment by the Program to final disposal. Even then, according to BBA, there is no way to confirm with 100% confidence that Metro waste was disposed of as required in the contract.

There are methods which the Program could use to perform this type of review and control costs. Also, because of the potential cost, the Program could reserve this review only for when it is indicated because of information learned from the above two procedures. If indicated, the Program could sample certain waste streams, complete a random sample of all waste streams, or choose to review waste disposal at only one of the facilities. In preparation for such a review and to make it more economical, the Program could require in the next RFP process that the contractor diagram the waste streams through treatment to disposal.

Recommendations

Recommendations

1. **In order to balance the need for high quality with lower cost, the Program should change the RFP scoring system in the next procurement process.**
2. **In order to strengthen contract administration once a contract is awarded, the Program should:**
 - a. Develop a plan that will measure performance and include that plan in the RFP.
 - b. Clearly assign responsibility to staff who will be tasked with conducting monitoring activities.
 - c. Develop procedures for monitoring performance and reporting.
 - d. Develop procedures that outline what actions will be taken in response to poor performance and by whom.
 - d. Develop additional ways of measuring performance that can identify signs of prior poor performance.
 - f. Require firms that respond to an RFP to outline clearly how they will meet reporting requirements and the flow of hazardous waste materials from receipt at a Metro facility to disposal.
3. **In order to strengthen contract administration once a contract is awarded, Metro should:**
 - a. Strengthen the oversight role of the Procurement Manager.
 - b. Assign oversight responsibilities to Procurement Services for quality control.
 - c. Develop formal risk assessment procedures to determine which contracts should be monitored more closely.

Management Response



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Agenda Item Number 6.1

Consideration of the Minutes for the May 15, 2008 Metro
Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, May 15, 2008
Forest Grove Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Rod Park, Carl Hosticka, Carlotta Collette, Robert Liberty

Councilors Absent: Rex Burkholder (excused)

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

Terry Keirner, Forest Grove Chamber of Commerce, 2417 Pacific Ave, Forest Grove, OR, 97116, welcomed the Council. She hoped Council had a chance to travel through Forest Grove. Washington County was having a Tourism Show in Beaverton, and she invited Council to attend this show.

Mayor Kidd, City of Forest Grove, provided a PowerPoint presentation on the City of Forest Grove Economic Development Issues and Challenges (a copy of which is included in the meeting record). Councilors asked clarifying questions about his presentation. Councilor Harrington thanked the Mayor for the presentation. She introduced Councilors Miller and Uhing as well as City Manager Sykes.

Dave Waffle, City of Cornelius, presented a DVD titled: "An Accessible Future." He said this DVD was developed after there was a presentation before the Metro Council about parents with disabled children and the difficulties they had getting around the community. It explained the accessibility challenges in Cornelius including the lack of sidewalks, accessibility to the park, and crossing streets that had heavy traffic. Councilor Liberty talked about his experience with being in a wheel chair and the dangers of crossing streets. He felt it was nice to see the new sidewalk built with Metropolitan Transportation Improvement Program (MTIP) funds. Mr. Waffle explained the MTIP project. Councilor Harrington thanked Mr. Waffle for sharing his presentation and noted that the City of Forest Grove and Cornelius have benefited from the MTIP funds. She also talked about federal funding for the City of North Plains, which was not part of the Metro Jurisdictional Boundary. She noted the large presence of state highways that run right through both the City of Forest Grove and Cornelius. Councilor Park asked about MTIP dollars and the matching fund issues. Mr. Waffle talked about the decrease of buying power in matching funds. Councilor Liberty asked if they had been successful in having the Department of Transportation come and look at Cornelius. Mr. Waffle said they had yet to visit, but now that the DVD was available they would be sharing that the information.

2. CITIZEN COMMUNICATIONS

Tom Beck, Fernhill Wetlands Council, 1324 Hawthorne Street, Forest Grove, OR, 97116, shared a brochure of the Fernhill Wetlands. He thanked Council for coming to this part of the county. He said they were a nonprofit organization that oversaw the wetlands. He shared details of the wetlands. He said the group had built viewing stations in the area. He also spoke of partnership that promoted activities about wetlands. He talked about the trail system and the connection to the wetlands. They appreciated the work that Metro was doing.

3. CONSENT AGENDA

- 3.1 Consideration of minutes of the May 8, 2008 Regular Council Meeting.
- 3.2 **Resolution No. 08-3946**, For the Purpose of Confirming the Appointment of David Davies and Cece Hughley Noel to the North Portland Rehabilitation and Enhancement Committee (NPREC).
- 3.3 **Resolution No. 08-3942**, For the Purpose of Allocating Regional Flexible Funding to Regional Transportation Programs for the Years 2012 and 2013, Pending Air Quality Conformity Determination and to Commit \$144.8 Million of Regional Flexible Funding to Bond Payments for Contributions to the Milwaukie Light Rail Transit and Wilsonville to Beaverton Commuter Rail Project.
- 3.4 **Resolution No. 08-3943**, For the Purpose of Declaring the Cemetery Perpetual Care Fund a Permanent Fund.

Motion:	Councilor Hosticka moved to adopt the meeting minutes of the May 8, 2008 Regular Metro Council and Resolution Nos. 08-3946, 08-3942, and 08-3943.
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Vote:	Councilors Harrington, Park, Collette, Hosticka, Liberty and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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4. ORDINANCES – SECOND READING

- 4.1 **Ordinance No. 08-1185**, For the Purpose of Annexing Lands on the West Side of SW 229th Avenue South of Tualatin Valley Highway to the Metro Jurisdictional Boundary.

Motion:	Councilor Harrington moved to adopt Ordinance No. 08-1185.
Seconded:	Councilor Liberty seconded the motion.

Councilor Harrington said this property was part of the Urban Growth Boundary but needed to be annexed into the jurisdictional boundary. She urged support.

Council President Bragdon opened a public hearing on Ordinance No. 08-1185. No one came forward. Council President Bragdon closed the public hearing.

Councilor Park asked about the Metro Code requirements for this annexation. Paul Garrahan, Senior Metro Attorney, said the Office of the Metro Attorney had reviewed this request and felt it was in compliance with the Code. Ken Martin, Consultant, provided an overview of the annexation request. Mr. Martin said there was nothing in state statutes that prohibited a cherry stem annexation. This was a normal annexation. Councilor Park said this was part of the 2002 Urban Growth Boundary (UGB) decision. He explained his reasoning for the question. Councilor Harrington clarified that this parcel was in the UGB.

Vote:

Councilors Park, Collette, Harrington, Hosticka, Liberty and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

4.2 **Ordinance No. 08-1186A**, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees for Fiscal Year 2008-09.

Council President Bragdon opened a public hearing on Ordinance No. 08-1186A and indicated that this was continued from last week.

Dave White, Tri County Council, 1739 NW 156th Ave, Beaverton, Oregon, 97006, said he spoke last week on the regional system fee and the outdoor school. He thanked Council for coming to his community. He noted that Councilor Park had asked a question about supporting the work that Metro does to pay for Metro functions. He said they do support Metro's work by paying the system fee. He noted Clackamas County Refuse and Recycling Association (CCRRA) Waste Reduction Education Highlights and how the haulers had supported schools. They were dedicated and committed to education. The issue was how you should pay for outdoor schools. He said haulers had asked him, was the money being distributed to all school districts in the Metro region or just Portland Public Schools, and what was there a formula or methodology for distributing the funds? He asked if Metro was going to pay for outdoor schools, was Metro going to pay for Green Schools as well? Councilor Park responded that the funds would be available to all students across the region. It was set up as a reimbursement program. He could have staff provide additional information on methodology. Council President Bragdon said he would like to see the figures as well. Mr. White said he needed to understand how the \$1.4 million would be utilized. Councilor Collette said it was not clear yet how the funds would be distributed. She said Multnomah Service District paid for children to go to outdoor school. Councilor Harrington said they were expecting to get information from Councilor Burkholder. She said the information was being put together and would be shared with the Council. She urged patience from her colleagues.

Council President Bragdon closed the public hearing and announced that this ordinance would be held over until May 29, 2008 for final consideration.

4.3 **Ordinance No. 08-1187A**, For the Purpose of Amending Metro Code Chapter 7.01 Relating to Excise Tax, Regarding Exemptions and Calculations.

Council President Bragdon opened a public hearing on Ordinance No. 08-1187A. No one came forward. Council President Bragdon closed the public hearing and announced that this ordinance would be held over until May 29, 2008 for final consideration.

5. RESOLUTIONS

5.1 **Resolution No. 08-3935**, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement With the City of Forest Grove For Trail Development.

Motion:	Councilor Harrington moved to adopt Resolution No. 08-3935.
Seconded:	Councilor Hosticka seconded the motion

Councilor Harrington said this Intergovernmental Agreement (IGA) was in response to a request from the City of Forest Grove to assist with trails. The City of Forest Grove was requesting continuation of a trail across the Metro property. Jim Morgan, Regional Parks and Greenspaces

Department, said this would authorize an IGA, which would lead to the development of an easement across Metro property. He further explained the IGA. The IGA committed Metro to allow the City to construct as well as maintain the trail. It was a relatively small easement but central to the linkage of the trail. He explained the trail alignment. Metro's program had tried to acquire the area but was unsuccessful. Fortunately the City of Forest Grove was able to acquire the property. This was something they had anticipated for some time. He talked about the grant to fund the trail. This would be a success project for a large trail system. Councilor Park asked about a city trail going through Metro property and the issue of dogs. Mr. Morgan said their policy was clear regarding dogs in natural areas. This was a possible exception and they would refer this issue to the local jurisdiction. Councilor Park said he was a bit uncomfortable doing this ad hoc without having the IGA in front of them. Councilor Harrington asked if this could be worked out in the IGA. Mr. Morgan said the IGA could be modified. Councilor Harrington summarized Councilor Park's concern about dogs not being allowed on Metro natural areas. Councilor Park said his concern was not pro or against dogs but was about a consistent policy across the region and possible exceptions. Council President Bragdon suggested having the Chief Operating Officer negotiate this issue with City of Forest Grove. Mr. Morgan said there was urgency from the City of Forest Grove for Metro to move forward but terms could be negotiated. Councilor Park said unless there was a change in Metro policy he felt they could work through this. Councilor Hosticka suggested a leash law to ensure dogs stay off Metro property. Council President Bragdon summarized the resolution and asked legal counsel about limitations to dogs, given the resolution mentioned bike and pedestrian access only. Mr. Garrahan said there had been discussion about dogs on Metro property. He suggested Council might want to suggest the COO negotiate this issue. If there were a substantive change, they would have to return to the Council for action. Councilor Park said he understood that the COO couldn't move forward without dealing with this issue. He said he was comfortable with moving ahead as long as there was consistency with the policy.

Vote:

Councilors Park, Collette, Harrington, Hosticka, Liberty and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, was not present.

7. COUNCILOR COMMUNICATION

Councilor Hosticka reported on the Metro Policy Advisory Committee (MPAC) meeting and indicated they recommended the resolution, Resolution No. 08-3940, having to do with Performance Based Growth management, as written. Councilor Park talked about Regional Solid Waste Management Plan and the Enforcement ordinances, which MPAC would consider on June 11th.

Councilor Collette said she was heading to Oregon City to consider applications for the enhancement grants. There were 22 applications.

Councilor Harrington updated the Council on the Regional Urban and Rural Reserves committee meeting. They had had a presentation on the forestry report. Mike Houck made a presentation on natural areas. Jim Johnson made a presentation on agriculture. The committee was presented with

a bit more clarity on rural reserve factors in addition to the proposed five-mile map, in order to kick-start the study areas. She also noted the public involvement activities and that at least seven events were being planned.

Councilor Liberty said the large national homebuilding firms, which had been active in the area were now discounting homes substantially as values dropped.

Council President Bragdon said there would be no meeting next week and the meeting was adjourned until May 29, 2008 at 2:00 p.m.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:30 p.m.

Prepared by

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

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
 MAY 15, 2008**

Item	Topic	Doc. Date	Document Description	Doc. Number
3.1	Minutes	5/8/08	Metro Council Meeting Minutes of May 8, 2008	051508c-01
1.0	Power Point Presentation	5/15/08	To: Metro Council From: Mayor Kidd, City of Forest Grove Re: City of Forest Grove Economic Development Issues and Challenges May 15, 2008	051508c-02
4.2	Newsletter	March 11-13, 2008	To: Metro Council From: Dave White, Tri-County Council Re: CCRRA Waste Reduction Education Highlights May 15, 2008	051508c-03
2.0	Brochure	5/15/08	To: Metro Council From: Tom Beck Re: Friends of Fernhill Wetlands brochure on the wetlands May 15, 2008	051508c-04
1.0	DVD	5/15/08	To: Metro Council From: Dave Waffle, City of Cornelius Re: DVD on An Accessible Future May 15, 2008	051508c-05

Agenda Item Number 6.2

Resolution No. 08-3947, For the Purpose of Proclaiming the Week of May 28 through June 8, 2008 as Great Heron Week.

Consent Agenda

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROCLAIMING THE)
WEEK OF MAY 28 THROUGH JUNE 8, 2008)
AS GREAT BLUE HERON WEEK)

RESOLUTION NO. 08-3947

Introduced by Council President
David Bragdon

WHEREAS, since 1986 the City of Portland has recognized the Great Blue Heron as the official symbol of the region’s efforts to maintain the highest possible standard of livability for its wildlife as well as its citizens; and

WHEREAS, the Great Blue Heron (*Ardea herodias*) as the largest heron in North America, standing four feet tall with a wingspan of six feet, gray in color and tinged with very distinctive blue markings, is a familiar and welcome sight in many natural areas throughout the Metro region; and

WHEREAS, on May 23, 1991, the Metro Council adopted Resolution No. 91-1453A (“For the Purpose of Endorsing the Week of June 2 - 9, 1991 as Great Blue Heron Week”), initiating Metro's participation in the annual Great Blue Heron Week celebration; and

WHEREAS, on May 28, 2008, the Portland City Council will proclaim May 28 through June 8, 2008 as the 22nd Annual Great Blue Heron Week extending the celebration to 12 days; and

WHEREAS, the Audubon Society of Portland and Urban Greenspaces Institute’s flyer of the 2008 Annual Great Blue Heron Week declares the theme of Great Blue Heron Week 2008 is “Connecting Green: Celebrating Parks, Trails and Natural Areas” and adds that the bird is symbolic of our region’s commitment to protecting and restoring the ecological health of our urban watersheds; and

WHEREAS, Great Blue Heron Week invites residents and visitors to celebrate by enjoying our region's natural areas at many sites already in public ownership such as Smith and Bybee Wetlands Natural Area, the Columbia Slough, Tualatin River National Wildlife Refuge, Creekside Marsh, Heron Lakes Golf Course, Oaks Bottom Wildlife Refuge and Jackson Bottom Wetland Preserve; and

WHEREAS, each year since the Portland City Council adopted the Great Blue Heron as the official city bird in 1986 the Metro region has celebrated the heron as an icon for access to nature. Creation of Portland Parks and Recreation’s City Nature Program, passage of Metro’s \$227.4 million bond measure, adoption of progressive watershed and urban forest management plans, the city’s Grey to Green initiative, and launching of the Connecting Green Alliance all represent successes toward integrating the built and natural environments and creating a more ecologically sustainable Metro region. During Great Blue Heron Week we celebrate these successes as well as future challenges. Metro urges residents to climb into a kayak, hop on a bike, or take a walk to enjoy the region’s greenspace heritage.

WHEREAS, participants of the Great Blue Heron Week celebration will learn about new natural areas that are important to the Metro region’s biological diversity and rich natural area heritage; now therefore,

BE IT RESOLVED, that in honor of the Great Blue Heron, a fitting symbol of livability for the entire Metro region's residents, both people and wildlife, the Metro Council proclaims the week of May 28 through June 8, 2008 as the 22nd Annual Great Blue Heron Week and encourages all citizens to participate in the walks, bike rides and paddles occurring that week in honor of the Great Blue Heron.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3947, FOR THE PURPOSE OF PROCLAIMING THE WEEK OF MAY 28 THROUGH JUNE 8, 2008 AS GREAT BLUE HERON WEEK

Date: May 12, 2008

Prepared by: Tony Andersen and Lake
McTighe

BACKGROUND

Great Blue Heron Week has been held the last week of May and first week of June each year in the Portland region since 1986, when the City of Portland recognized the Great Blue Heron as the official symbol of the region's efforts to maintain the highest possible standard of livability for its wildlife as well as its citizens. The Metro Council initiated its participation in the Great Blue Heron Week celebration when it adopted Resolution No. 91-1453A "For the Purpose of Endorsing the Week of June 29, 1991 as Great Blue Heron Week," and has continued to partner with the City of Portland, Portland Audubon Society, the Urban Greenspaces Institute, the Bureau of Environmental Services, River Renaissance and other organizations and agencies each year on the celebration.

Great Blue Heron Week celebrates the strides that have been made towards providing access to nature in the heart of the city, integrating the built and natural environments, and creating a more ecologically sustainable metropolitan region. Prominent among these successes are two regional bond measures, one in 1995 and one in November 2006 - the Parks, Trails and Streams \$227.4 million bond has protected over 8,200 acres in public ownership and will add more than 5,000 additional acres to the public land base in the next decade. Additionally, over one-hundred miles of stream and river banks are now in public ownership. Furthermore, creation of Portland Parks and Recreation's City Nature Program, adoption of progressive watershed and urban forest management plans, the city of Portland's Grey to Green initiative, and launching the Connecting Green Alliance all represent successes toward integrating the built and natural environments and creating a green, ecologically-conscience region.

Participants of the Great Blue Heron Week celebration will learn about new natural areas that are important to the region's biological diversity and rich natural area heritage.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Resolution No. 91-1453A, "For the Purpose of Endorsing the Week of June 29, 1991 as Great Blue Heron Week."
3. **Anticipated Effects** Continued partnership with local governments, non-governmental entities, and communities to celebrate past success and define future challenges to protect water quality, fish and wildlife habitats and open space in the Portland region.
4. **Budget Impacts:** None.

RECOMMENDED ACTION

David Bragdon, Metro Council President, recommends adoption of Resolution 08-3947.

Agenda Item Number 7.1

Ordinance No. 08-1186A, For the Purpose of Amending Metro Code Chapter 5.02 to Establish Metro's Solid Waste Disposal Charges and System Fees for Fiscal Year 2008-09.

Second Reading

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 08-1186A
METRO CODE CHAPTER 5.02)
TO ESTABLISH METRO'S SOLID WASTE) Introduced by: Michael Jordan, Chief Operating
DISPOSAL CHARGES AND SYSTEM FEES) Officer, with the concurrence of David Bragdon,
FOR FISCAL YEAR 2008-09) Council President

WHEREAS, Metro Code Chapter 5.02 establishes charges for disposal of solid waste at Metro South and Metro Central transfer stations;

WHEREAS, Metro Code Chapter 5.02 establishes fees assessed on solid waste generated within the District or delivered to solid waste facilities regulated by or contracting with Metro;

WHEREAS, Metro's costs for solid waste services and programs have changed;

WHEREAS, pursuant to its charge under Metro Code section 2.19.170, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling department's proposed FY 2008-09 budget, rate methodology and cost allocations;

WHEREAS, Solid Waste Rate Review Committee recommends that the Metro Council adopt the rates set forth in this ordinance; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.02.025 is amended to read:

5.02.025 Disposal Charges at Metro South & Metro Central Station

(a) The fee for disposal of solid waste at the Metro South Station and at the Metro Central Station shall consist of:

(1) The following charges for each ton of solid waste delivered for disposal:

(A) A tonnage charge of \$~~47.09~~49.00 per ton,

(B) The Regional System Fee as provided in Section 5.02.045,

(C) An enhancement fee of \$.50 per ton, and

(D) DEQ fees totaling \$1.24 per ton;

(2) All applicable solid waste taxes as established in Metro Code Chapter 7.01, which excise taxes shall be stated separately; and

(3) The following Transaction Charge for each Solid Waste Disposal Transaction:

(A) For each Solid Waste Disposal Transaction completed at staffed scales, the Transaction Charge shall be \$8.50.

(B) For each Solid Waste Disposal Transaction that is completed at the automated scales, the Transaction Charge shall be \$3.00.

(C) Notwithstanding the provisions of subsection (A), the Solid Waste Disposal Transaction Charge shall be \$3.00 in the event that a transaction that is otherwise capable of being completed at the automated scales must be completed at the staffed scales due to a physical site limitation, a limit or restriction of the computer operating system for the automated scales, or due to a malfunction of the automated scales.

(b) Notwithstanding subsection (a) of this section,

(1) There shall be a minimum solid waste disposal charge at the Metro South Station and at the Metro Central Station for loads of solid waste weighing ~~240-440~~ pounds or less of ~~\$1725~~, which shall consist of a minimum Tonnage Charge of ~~\$8.50~~16.50 plus a Transaction Charge of \$8.50 per Transaction.

(2) The Chief Operating Officer may waive collection of the Regional System Fee on solid waste that is generated outside the District, and collected by a hauler that is regulated by a local government unit, and accepted at Metro South Station or Metro Central Station.

(c) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(d) The Director of the Solid Waste & Recycling Department may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

Section 2. Metro Code Section 5.02.045 is amended to read:

5.02.045 System Fees

(a) The Regional System Fee shall be ~~\$14.08-15.04~~16.04 per ton of solid waste, prorated based on the actual weight of solid waste at issue rounded to the nearest one-hundredth of a ton.

(b) Any waste hauler or other person transporting solid waste generated, originating, or collected from inside the Metro region shall pay Regional System Fees to Metro for the disposal of such solid waste. Payment of applicable system fees to the operator of a Designated Facility shall satisfy the obligation to pay system fees, provided that, if such solid waste is transported to a Designated Facility outside of the Metro region, then such waste hauler or other person must have informed the operator of the Designated Facility that the solid waste was generated, originated or collected inside the Metro region. In any dispute regarding whether such waste hauler or other person informed such operator that the solid waste was generated, originated, or collected inside the Metro region, such waste hauler or other person shall have the burden of proving that such information was communicated.

(c) Designated Facility operators shall collect and pay to Metro the Regional System Fee for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(d) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated from outside the Metro boundary, the load in its entirety shall be reported at the disposal site by the generator or hauler as having been generated within the Metro boundary, and the Regional System Fee shall be paid on the entire load unless the generator or hauler provides the disposal site operator with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary and the disposal site operator forwards such documentation to Metro, or unless Metro has agreed in writing to another method of reporting.

(e) System fees described in this Section 5.02.045 shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 3. Metro Code Section 5.02.047 is amended to read:

5.02.047 Regional System Fee Credits

(a) A solid waste facility which is certified, licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 or a Designated Facility regulated by Metro under the terms of an intergovernmental agreement shall be allowed a credit against the Regional System Fee otherwise due each month under Section 5.02.045 for disposal of Processing Residuals from the facility. The Facility Recovery Rate shall be calculated for each twelve-month period before the month in which the credit is claimed. The amount of such credit shall be in accordance with and no greater than as provided on the following table:

System Fee Credit Schedule

Facility Recovery Rate		
From Above	Up To & Including	System Fee Credit of no more than
0%	30%	0.00
30%	35%	9.92
35%	40%	11.46
40%	45%	13.28
45%	100%	14.00

(b) The Chief Operating Officer:

(1) Shall establish administrative procedures to implement subsections (b) and (c) of Metro Code Section 5.02.046; and

(2) May establish additional administrative procedures regarding the Regional System Fee Credits, including, but not limited to establishing eligibility requirements for such credits and establishing incremental System Fee Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (a) of this section.

(c) Any person delivering Cleanup Material Contaminated By Hazardous Substances that is derived from an environmental cleanup of a nonrecurring event, and delivered to any Solid Waste System

Facility authorized to accept such substances shall be allowed a credit in the amount of \$~~11.5812.54~~13.54 against the Regional System Fee otherwise due under Section 5.02.045(a) of this Chapter.

(d) During any Fiscal Year, the total aggregate amount of credits granted under the Regional System Fee credit program shall not exceed the dollar amount budget without the prior review and authorization of the Metro Council.

(e) The Director of the Solid Waste and Recycling Department shall make a semi-annual report to the Council on the status of the credit program. The report shall include that aggregate amount of all credits paid during the preceding six months and the amount paid to each facility eligible for the credit program. The report shall also project whether the appropriation for the credit program will be sufficient to meet anticipated credit payment requests and maintain existing contingency funding.

Section 4. Effective Date

The provisions of this ordinance shall become effective on September 1, 2008, or 90 days after adoption by Metro Council, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1186 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO ESTABLISH METRO'S SOLID WASTE DISPOSAL CHARGES AND SYSTEM FEES FOR FISCAL YEAR 2008-09

Date: May 8, 2008

Prepared by: Douglas Anderson

EXECUTIVE SUMMARY

Adoption of the FY 2008-09 Solid Waste Rate Ordinance would implement the rates shown in boldface in the following table. As a result, on September 1, 2008, the Metro tip fee would rise by \$3.61 per ton to \$74.75 and the Regional System Fee collected from privately-owned disposal sites would rise 96¢ to \$15.04 per ton.

Solid Waste Disposal Charges Effective September 1, 2008 through August 31, 2009

Solid Waste Rates	Current Rates	This Ordinance	Change
Transaction Fees			
Scalehouse users	\$8.50	\$8.50	- 0 -
Automated scale users	\$3.00	\$3.00	- 0 -
<u>Per-ton rates:</u>			
Tonnage charge	\$47.09	\$49.00	\$1.91
Regional System Fee	\$14.08	\$15.04	\$0.96
Excise tax	\$8.23	\$8.97	\$0.74
DEQ & host fees	\$1.74	\$1.74	- 0 -
Metro Tip Fee	\$71.14	\$74.75	\$3.61
Minimum charge	\$17	\$25	\$8.00

Notes

Boldface type indicates the rates that are amended by this ordinance.
See Background section for more on the recommended minimum charge.

The rates recover the net solid waste operating costs of the FY 2008-09 Proposed Budget released April 3, 2008. The rates also meet the other requirements of law: (a) they meet the Rate Covenant of the Solid Waste Revenue Bonds relating to the debt service coverage; (b) they comply with the requirement that charges for goods or services may not exceed the costs of providing the goods or services [Metro Charter, Section 15]; and comply with the state statute limiting the use of Metro's disposal fee revenue to solid waste uses [Oregon Revised Statutes section 459.335].

BACKGROUND

Solid Waste Rates

The proposed FY 2008-09 solid waste rates are based on the same rate policies and methodology as have been used for the past several fiscal years. All differences between the FY 2007-08 adopted rates and the FY 2008-09 proposed rates are due to changes in costs and tonnage flows.

Minimum Load Charge

The Rate Review Committee recommends increasing the minimum load charge from the current rate of \$17 for loads weighing up to 240 pounds, to \$25 for loads weighing up to 440 pounds. The proposed minimum charge consists of the \$8.50 transaction fee plus \$16.50 for the 440 pounds (.22 tons) of waste at the proposed tip fee of \$74.75 per ton.

The increase in the minimum charge is intended to provide an economic signal to self-haulers to consolidate loads; and thereby reduce traffic, queuing and delays at the transfer stations. A higher minimum charge is but one of a number of self-haul demand management options that have emerged from the recommendations of the Rate Policy Subcommittee of SWAC (2005-06), and the April 1, 2008 report of the department's self-haul study to Council.

INFORMATION/ANALYSIS

- 1. Known Opposition.** There is no known opposition.
- 2. Legal Antecedents.** Metro's solid waste rates are set in Metro Code Chapter 5.02. Any change in these rates requires an ordinance amending Chapter 5.02. Metro Council reviews solid waste rates annually, and has amended Chapter 5.02 when changes are warranted.
- 3. Anticipated Effects:** The proposed increase of \$3.61 in the tip fee (from \$71.14 to \$74.75 per ton) is similar to the \$3.78 change between FY 2003-04 and FY 2004-05, when the rate rose from \$67.18 to \$70.96 per ton. No significant effects were observed from this earlier change. Accordingly, staff anticipates no significant effects stemming from adoption of Ordinance No. 08-1186.
- 4. Budget Impacts.** These rates are designed to recover the department's net operating costs for FY 2008-09 as set forth in the Chief Operating Officer's Proposed Budget released on April 3, 2008.

RECOMMENDATION

The Chief Operating Officer recommends adoption of Ordinance No. 08-1186.

Agenda Item 7.2

Ordinance No. 08-1187A, For the Purpose of Amending
Metro Code Chapter 7.01 Relating to Excise Tax,
Regarding Exemptions and Calculations

Second Reading

Metro Council Meeting
Thursday, May 29, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO) ORDINANCE NO. 08- 1187A
CODE CHAPTER 7.01 RELATING TO EXCISE)
TAX, REGARDING EXEMPTIONS AND) Introduced by Chief Operating Officer
CALCULATIONS.) Michael Jordan with the concurrence of
) Council President David Bragdon

WHEREAS, the Metro solid waste excise tax is a component of the Metro solid waste tip fee and an ambiguity regulating its calculations should be clarified; and

WHEREAS, the Metro Council finds is appropriate to eliminate the excise tax on the Oregon Zoo since the zoo is now a component of the Metro General Fund; and

WHEREAS, the Metro Council finds that policies for establishing appropriate reserves should be adopted as budget policies; and

WHEREAS, The Solid Waste Department’s Excise Tax effective date for modifications is September 1. To avoid additional modification dates for excise tax, the exemption of the Zoo from Excise Tax should be effective the same date; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 7.01.020 Tax Imposed and the amendments there to adopted by Ordinance 07-1147B are amended as follows:

(a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by Metro, each user except users of solid waste system facilities shall pay a tax of 7.5 percent of the payment charged by the operator or Metro for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by Metro. If the Council so establishes a lower rate of tax, the Chief Operating Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

(c) For the privilege of the use of the solid waste system facilities, equipment, systems, functions, services, or improvements owned, operated, licensed, franchised, or provided by Metro, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro’s contractor for disposal of

putrescible waste shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. In addition, each user of solid waste system facilities and each solid waste facility licensed or franchised under Chapter 5.01 of this Code to deliver putrescible waste directly to Metro’s contractor for disposal of putrescible waste shall also pay the additional tax in the amount set forth under Section 7.01.023 for each ton of solid waste exclusive of compostable organic waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(d) For the Metro fiscal year beginning July 1, 2002, the tax rate imposed and calculated under [subsections \(c\) through \(g\)](#) of this section shall be sufficient to generate net excise tax revenue of \$6,050,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.

(e) (1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) compostable organic waste delivered to Metro Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in subsection (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under subsection (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro’s excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2006-07, and each fiscal year thereafter, the rate determined by this subsection shall be effective as of September 1st unless another effective date is adopted by the Metro Council.

(2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.

(f) By March 1st of each year, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:

(1) For the twelve (12) month period ending the previous December 31, the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to Section 7.01.050(a) of this chapter, and

(2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if the Regional Recovery Rates corresponding to each calendar year set forth on the following schedule had been achieved:

Year	Regional Recovery Rate
2005	56%
2006	56.5%

2007	57%
2008	57.5%
2009	58%

The result of such calculation by the Chief Operating Officer shall be used to determine the excise tax rate under sub-section (e)(1).

(g) (1) A solid waste facility which is licensed or franchised by Metro pursuant to Metro Code Chapter 5.01 shall be allowed a credit against the Excise Tax otherwise due under Section 7.01.020(e)(1) for disposal of Processing Residuals from such facility. The Facility Recovery Rate shall be calculated for each twelve (12) month period before the month in which the credit is claimed. Such credit shall be dependent upon the Facility Recovery Rate achieved by such facility and shall be no greater than as provided on the following table:

Excise Tax Credit Schedule

Facility Recovery Rate	Excise Tax	
From Above	Up To & Including	Credit of no more than
0%	30%	0.00
30%	35%	1.92
35%	40%	2.75
40%	100%	3.51

(2) During any Fiscal Year, the total aggregate amount of excise tax credits granted under the provisions of this subsection shall not exceed the dollar amount budgeted for such purpose without the prior review and authorization of the Metro Council.

(3) The Chief Operating Officer may establish procedures for administering the Excise Tax Credits set forth in subsection (g)(1), including, but not limited to, establishing eligibility requirements for such credits and establishing incremental Excise Tax Credits associated with Recovery Rates which fall between the ranges set forth in paragraph (g)(1).

2 Metro Code Section 7.01.023 Additional Excise Tax is amended as follows:

7.01.023 ~~Amount of~~ Additional Excise Tax; ~~Budgeting of Additional Revenue for Regional Parks and Greenspaces Programs and Tourism Opportunity and Competitiveness Account~~

Commencing September 1, 2006, the additional excise tax authorized in Section 7.01.020(c) shall be \$3.14 per ton. For each fiscal year following fiscal year 2006-07, the additional excise tax shall be not less than the amount of the additional excise tax in the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland-Salem (All Urban Consumers) reported for the first six (6) months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Chief Operating Officer deems appropriate, and shall be effective as of September 1st each year unless another effective date is adopted by the Metro Council.

Section 3: ~~Metro Code 7.01.028 Budgeting of Excess Revenues is repealed and the amendments there to that would have gone into effect on July 1, 2009 are also repealed.~~

Section 4: Metro Code Section 7.01.050 Exemptions is amended as follows:

(a) The following persons, users and operators are exempt from the requirements of this chapter:

(1) Persons, users and operators whom Metro is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the state of Oregon.

(2) Persons who are users and operators of the Portland Center for the Performing Arts.

(3) Persons whose payments to Metro or to an operator constitute a donation, gift or bequest for the receipt of which neither Metro nor any operator is under any contractual obligation related thereto.

(4) Any persons making payment to Metro for a business license pursuant to ORS 701.015.

(5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to Metro for any purpose other than solid waste disposal, use of a Metropolitan Exposition and Recreation Commission (Metro ERC) facility, or use of the Oregon Zoo.

(6) Users of the following facilities:

(A) Facilities that are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than Disposal Sites or Transfer Stations that are not subject to the requirements of Metro Code Section 5.01.125(a);

(B) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances;

(C) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.

(7) Persons making payments to Metro for the following purposes:

(A) Individual or corporate sponsorship or naming rights contracts. A naming rights contract is any contract under which a Metro or Metro ERC facility or part of a facility (as authorized by Metro Code Chapter 2.16) will be named for the sponsor in exchange for payment from the sponsor. A sponsorship contract is a contract under which the sponsor's name or logo will be used in connection with a district facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for payment from the sponsor. This exemption applies to any payments pursuant to sponsorship or naming rights contracts, including payments of money, goods, services, labor, credits, property, or other consideration.

(B) Payments for advertising at Metro facilities and Metro ERC facilities.

(C) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether Metro agrees to utilize the payment for a specific purpose including all payments to the Oregon Zoo Parents program;

(D) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects;

(E) Payments that entitle a person to admission to a fund-raising event benefiting the Oregon Zoo that is not held on the grounds of the Oregon Zoo;

(F) Payments that entitle a person to admission to a special fund-raising event held at the Oregon Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Oregon Zoo and the proceeds of the event are contributed to the Oregon Zoo;

~~(G) Payments collected with admission to the Oregon Zoo in the form of a Conservation Admission Surcharge;~~

~~(H) Notwithstanding the provisions of subsections (C) through (G) above, all payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.~~

(8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.

(9) A tire processor which is regulated pursuant to Metro Code Chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.

(10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for

purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.

(11) Persons making the following payments:

- (A) Payments that entitle a person to admission to an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (B) Payments to an operator that entitle a person to purchase booth space or exhibit space, or utilities or services associated with such booth or exhibit space, at an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator; and
- (C) Payments to a user or operator that entitle a person to purchase goods, services, food, or beverages from a user or operator selling such goods, services, food, or beverages at a Metro ERC facility.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to any operator authorized by a management agreement or services agreement with Metro ERC to provide catering services, to provide food and beverage concessions services (other than vending machines), or to operate parking lots at Metro ERC facilities shall be subject to tax.

(12) Persons making the following payments:

- (A) Payments to a person or entity other than Metro that entitle a person to admission to an event that is held at a Metro regional park; and
- (B) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food or beverages at an event being held at a Metro regional park pursuant to the terms of a special use permit issued by Metro; and
- (C) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food, or beverages at an event that is being sponsored and conducted by Metro at a Metro regional park.
- (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to an operator authorized by Metro to sell goods, food or beverages or to provide services at a Metro regional park shall be subject to tax.

(13) Persons, users or operators making payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall not be subject to tax

regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

_____(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a Metro facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator.

Section 5: This ordinance takes effect September 1, 2008.

ADOPTED by the Metro Council this _____ day of _____ ~~2005~~2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1187, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 RELATING TO EXCISE TAX, REGARDING EXEMPTIONS AND CALCULATIONS

Date: April 24, 2008

Prepared by: Dan Cooper/Karen Feher

BACKGROUND

One of the main purposes of this legislation is to continue aligning the Metro Excise Tax Code with Metro Financial Policies and the intent of the consolidation of the General Fund. By way of background on these issues, the FY 2005-06 budget introduced changes in both process and presentation in order to provide greater transparency, provide stronger adherence to Financial Policies and dovetail with the Council's strategic planning process. This action is a continuation of those changes as well as accomplishing necessary housekeeping changes to Metro Code Chapter 7.01.

Over the years, Metro's growth has involved taking on unique activities that are deemed regional in nature. During that process Metro tacked on each of those activities budgetarily by creating separate budget funds for each activity. This was partially done to meet funding restrictions for those new activities or allow for time to decide or formalize permanent acceptance of the activities. Effective July 1, 2005 Metro combined all discretionary budgetary funds into one fund in order to more effectively accomplish the following:

- Provide fiscal and budgetary transparency.
- Emphasize agency programs rather than department budgetary funds.
- Relate programs to Council objectives.
- Enable flexibility in setting of priorities for the overall agency as well as funding those priorities.

This was the first step in changing Metro's operational culture of separate department activities by setting Council priorities and constructing programs that meet those priorities.

An ongoing review of the excise tax code demonstrated inconsistencies with Metro's financial policies and constraints on the Metro Council's flexibility to meet the changing needs of Metro's programs. When the Oregon Zoo became a Metro responsibility, as was the practice, a separate fund was established to record all financial transactions of the zoo. As enterprise revenues generated by the zoo contained the excise tax for the use of the zoo facilities, this excise tax was recorded separately as General Fund revenue. Now that the zoo revenues are recorded directly into the General Fund, a separate recording of excise tax is unnecessary. In addition the zoo's "Future Vision" master plan report, presented to Council last year, recommended eliminating excise tax on zoo activities. Therefore this ordinance presents, for your consideration, amending section 7.01.050 to exempt the users of the Oregon Zoo from excise tax effective September 1, 2008. In the coming year Metro will evaluate exempting other general fund functions from excise tax.

Staff Report for Ordinance 08-1187

In addition to the above, several needed housekeeping changes to code are as follows:

- Clarifies section 7.01.02(d). This section is ambiguous leading the reader to possibly interpret it as applying not only to the per ton tax calculation but also to the “7.5%” tax calculation in section 7.01.02(a). To resolve this, the code is amended specifying the sections these criteria apply to.
- Repeals Metro Code Section 7.01.028, that sets a “Recovery Rate Stabilization Reserve” as establishing reserves are more properly a Council budget responsibility rather than a code provision. The following is the deleted section:

7.01.028 Budgeting of Excess Revenue

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020(e) exceed the net excise tax revenue amount set forth in Section 7.01.020(d) as adjusted by Section 7.01.022, such additional revenue shall be apportioned as follows:

- (a) Such excess net excise tax revenue shall first be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The amount of excess net excise tax revenues in such account shall not exceed an amount equal to 10 percent of the total amount of excise tax collected under Metro Code Chapter 7.01 during the period of the two (2) most recent Metro fiscal years. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.
- (b) If at the end of any fiscal year the maximum permitted balance for the Recovery Rate Stabilization Account has been reached, during the following fiscal year any additional excess net excise tax revenues shall be used to increase the tax credit provided under Metro Code Section 7.01.020(g) for any solid waste facility that has achieved a Facility Recovery Rate greater than 45%. Such excess revenue shall be used on a dollar-for-dollar basis to reduce the tax liability of all such qualifying facilities. The amount of the additional tax credit shall not exceed the total excise tax otherwise due from the facility under this chapter.
- (c) Any remaining excess revenue over the amounts apportioned in subsections (a) and (b) of this section shall be placed in the account established in subsection (a).

(Ordinance No. 00-857B, Secs. 5-6. Amended by Ordinance No. 06-1116, Sec. 3; Ordinance 07-1147B, Sec. 13.)

Note: The amendments to Metro Code Section 7.01.028 pursuant to Section 13 of Ordinance No. 07-1147B become operative July 1, 2009, and are set forth as follows:

Commencing with the Metro fiscal year beginning July 1, 2000, and each year thereafter, if the tax revenues collected under the tax rate imposed by Section 7.01.020(e) exceed the net excise tax revenue amount set forth in Section 7.01.020(d) as adjusted by Section 7.01.022, such excess net excise tax revenue shall be placed in a Recovery Rate Stabilization Reserve established in the Metro General fund. The budgeting or expenditure of all such funds within this account shall be subject to review and approval by the Metro Council.”

- A previous ordinance (Ordinance 06-1116: For the Purpose of Amending Metro Code Chapter 7.01 Relating to the Metro Solid Waste Excise Tax. Adoption: March 30, 2006) removed code dedications of the “other” excise tax to specific departments amended 7.01.23 of the code. That amendment did not change the title of the section consistent with the changes to the code and it still calls out specific department dedications for the “other tax”. The new title will be “7.01.012 Calculation of Amount of Additional Excise Tax”

ANALYSIS/INFORMATION

1. Known Opposition: None known
2. Legal Antecedents: This amends the Metro Code Chapter 7.01.
3. Anticipated Effects.
 - a. Provides consistency with Financial Policies
 - b. Maintains Council flexibility in budgeting and strategic planning
 - c. Accomplishes housekeeping changes for consistency with other portions of the Metro Code
4. Budget Impacts. Allows ease in calculation of anticipated and actual expenditure of Excise Tax in any given year. The Proposed Budget is consistent with the proposed changes to code.