

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: March 11, 2004
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the March 4, 2004 Metro Council Regular Meeting.

4. ORDINANCES – FIRST READING

4.1 **Ordinance No. 04-1037**, For the Purpose of Amending Metro Code Chapter 7.01 to Repeal the Sunset Date for Additional Excise Tax Dedicated to Regional Parks and Greenspaces Programs. Monroe

4.2 **Ordinance No. 04-1043**, For the Purpose of Amending Metro Code Chapter 5.03 to Amend License and Franchise Fees; and Making Related Changes to Metro Code Chapter 5.01. McLain

5. RESOLUTIONS

5.1 **Resolution No. 04-3433**, For the Purpose of Authorizing the Chief Operating Officer To Execute an Intergovernmental Agreement Regarding Maintenance and Funding for the Willamette Shore Line Right-of-Way. Monroe

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for March 11, 2004 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 Thursday, March 11 at 2 p.m. (live)</p>	<p>Washington County Channel 30 -- TVTV www.yourtv.org -- (503) 629-8534 Saturday, March 13 at 7 p.m. Sunday, March 14 at 7 p.m. Tuesday, March 16 at 6 a.m. Wednesday, March 17 at 4 p.m.</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>
<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Sunday, March 14 at 8:30 p.m. Monday, March 15 at 2 p.m.</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, 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 email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1037
METRO CODE CHAPTER 7.01 TO REPEAL)
THE SUNSET DATE FOR ADDITIONAL) Introduced by Council President David Bragdon
EXCISE TAX DEDICATED TO REGIONAL)
PARKS AND GREENSPACES PROGRAMS)

WHEREAS, on March 28, 2002, the Metro Council approved Ordinance No. 02-939A, amending the Metro Excise Tax set forth in Metro Code Chapter 7.01 to provide revenues for Metro's Regional Parks and Greenspaces Programs; and

WHEREAS, the continuation of such funding is necessary to provide financial support for the regional system of parks, natural areas, trails and greenways; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.024 is repealed.

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1037 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO REPEAL THE SUNSET DATE FOR ADDITIONAL EXCISE TAX DEDICATED TO REGIONAL PARKS AND GREENSPACES PROGRAMS

Date: February 26, 2004

Prepared by Jeff Tucker

BACKGROUND

On March 28th, 2002, the Metro Council passed Ordinance 02-939A ("For the Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenue for Metro's Regional Parks and Greenspaces Programs"). That ordinance provided for funding for Regional Parks and Greenspaces programs by increasing the Excise Tax on solid waste by \$1 per ton and dedicating that funding to the Regional Parks and Greenspaces Department. The ordinance also provided for the additional excise tax to be repealed June 30, 2004.

The \$1 per ton was implemented to maintain existing service levels for Regional Parks and Greenspaces programs without having to deplete of the Department's limited reserves. Some of these funds were dedicated to the Natural Resources Stewardship program to better manage the open space properties purchased under the 1995 Open Spaces bond measure. Environmental education program resources were redeployed to provide programs and services throughout the region, particularly in Washington and Clackamas counties where such programs were not as widely available. The new resources provided for the continuation of the Regional Trails program beyond the Open Spaces bond measure, and they partially funded the capital renewal and replacement needs of the department.

A permanent funding source for the Regional Parks and Greenspaces programs has not been secured, and continuation of the \$1 per ton will provide necessary support for these programs.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** The Metropolitan Greenspaces Master Plan was adopted by Council through Resolution No 92-1637 ("For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan"). It identified a desired regional greenspaces system. The Regional Framework Plan adopted by Metro through Resolution No. 97-715B ("For the Purpose of Adopting the Regional Framework Plan") stated Metro, in cooperation with local governments, shall pursue the identification and implementation of a long term, stable funding source to support the planning, acquisition, development, management and maintenance of the regional greenspaces system. Ordinance 02-939A established the \$1 per ton excise tax on solid waste and dedicated it to Regional Parks and Greenspaces programs.
3. **Anticipated Effects** This action will eliminate the expiration of the \$1 per ton excise tax on solid waste dedicated to Regional Parks and Greenspaces programs that is scheduled for June 30, 2004.

4. **Budget Impacts** This action does not authorize any budget authority. It provides for revenues to be allocated through the regular budget process, to be used to balance against authorized expenditures. It is estimated that this action will continue to provide approximately \$1.2 million for the Regional Parks and Greenspaces Department in FY 2004-05.

RECOMMENDED ACTION

Metro Council President David Bragdon recommends passage of Ordinance No. 04-1037 for the purpose of amending Metro Code Chapter 7.01 to repeal the sunset date for additional excise tax dedicated to Regional Parks and Greenspaces programs.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1043
METRO CODE CHAPTER 5.03 TO)
AMEND LICENSE AND FRANCHISE) Introduced by: Michael Jordan, Chief Operating
FEES, AND MAKING RELATED) Officer, with the concurrence of David Bragdon,
CHANGES TO METRO CODE) Council President
CHAPTER 5.01)

WHEREAS, Metro Code Chapter 5.03 establishes fees for solid waste facilities that are franchised by Metro; and,

WHEREAS, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling Department's budget, and has recommended that certain costs of regulating solid waste facilities, currently recovered from the Regional System Fee, instead be recovered from license or franchise fees; and,

WHEREAS, the FY 2004-05 Regional System Fee set forth in Metro Code section 5.01.045, as amended by Section 2 of Ordinance No. 04-1042, reflects the reallocation of certain regulatory costs to license and franchise fees; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 5.03 shall be retitled "License and Franchise Fees and Related Fees."

Section 2. Metro Code Section 5.03.010 is amended to read:

5.03.010 Purpose and Authority

It is the purpose of this chapter to establish solid waste disposal license and franchise fees charged to persons regulated pursuant to Metro Code Section Chapter 5.01-140; fees on persons licensed to use a non-system facility pursuant to Metro Code section 5.05.035; and fees collected from users of facilities operating under special agreements with Metro adopted pursuant to Metro Code section 5.05.030, hereafter "Designated Facility Agreements."

Section 3. Metro Code Section 5.03.020 is repealed.

Section 4. Metro Code Section 5.03.030 is amended to read:

5.03.030 Annual License, Franchise and Designated Facility Fees

(a) Licensees, Franchisees and parties to Designated Facility Agreements, issued a solid waste disposal franchise, shall pay to Metro an annual franchise fees as set forth in this section. Such fees shall be paid in the manner and at the time required by the Chief Operating Officer or before January 1 of each year for that calendar year.

(b) ~~Annual solid waste disposal franchise fees shall be consist of a fixed charge \$300 per site as set forth in the following table; plus a charge per ton of solid waste, exclusive of source-separated material, accepted by the site, as set forth in the following table.~~

<u>Entity</u>	<u>Fixed Site Fee</u>	<u>Tonnage Fee</u>
<u>Party to a DFA</u>	<u>\$0</u>	<u>\$0.77</u>
<u>Licensees:</u>		
<u>Tire Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Yard Debris</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Roofing Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Non-System</u>	<u>\$300</u>	<u>\$0.77</u>
<u>Mixed waste/other</u>	<u>\$3,000</u>	<u>\$0.77</u>
<u>Franchisee</u>	<u>\$5,000</u>	<u>\$0.77</u>

(c) ~~Notwithstanding the charges set forth in subsection (b), provided, however, that said Fixed Site Fee shall be \$100 per site with no (\$0) Tonnage Fee for each non-system licensee franchised site that only transports/receives waste exclusively from the a licensed or franchised facility, or a company, partnership or corporation in which the franchisee has a financial interest in, and is held in the same name as, the non-system licensee.~~

(de) ~~Licensees, Franchisees and parties to Designated Facility Agreements who are issued licenses, franchises or Designated Facility Agreements during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one-quarter the same proportion of the annual fee shall be charged for any quarter or portion of a year quarter that the license, franchise or Designated Facility Agreement is in effect. The franchisee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise fees shall not for any reason be refundable in whole or in part. Annual franchise fees shall be in addition to franchise application fees.~~

Section 5. Metro Code Section 5.03.040 is amended to read:

5.03.040 Non-Payment of Franchise Fees

(a) The issuance of any license, franchise or Designated Facility Agreement shall not be effective unless and until the annual franchise fee has been paid for the calendar year for which the franchise is issued.

(b) Annual franchise fees are due and payable on January 1 of each year. Failure to remit said fee by said date shall constitute a violation of the Metro Code and of the franchise and shall subject the franchisee to enforcement pursuant to Code Section 5.01.180 in addition to any other civil or criminal remedies Metro may have.

Section 6. Metro Code Section 5.03.050 is amended to read:

5.03.050 Transfer and Renewal

For purposes of this chapter, issuance of a franchise shall include renewal and transfer of a franchise; provided, however, that no additional annual franchise fee shall be paid upon transfer or renewal when the annual franchise fee for the franchise being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective.

Section 6. Metro Code Section 5.01.140 is amended to read:

5.01.140 License and Franchise Fees

(a) The annual fee for a solid waste License ~~or shall not exceed three hundred dollars (\$300), and the annual fee for a solid waste Franchise shall be as set forth in Metro Code Chapter 5.03, not exceed five hundred dollars (\$500).~~ The Council may revise these fees upon 90 days written notice to each Licensee or Franchisee and an opportunity to be heard.

(b) The License or Franchise fee shall be in addition to any other fee, tax or charge imposed upon a Licensee or Franchisee.

(c) The Licensee or Franchisee shall pay the License or Franchise fee in the manner and at the time required by the Chief Operating Officer.

Section 7. Effective Date

The provisions of this ordinance shall become effective on July 1, 2004 or 90 days from the date this ordinance is adopted, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2004.

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. 04-1043 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.03 TO AMEND LICENSE AND FRANCHISE FEES, AND MAKING RELATED CHANGES TO METRO CODE CHAPTER 5.01

Date: February 24, 2004

Prepared by: Douglas Anderson

BACKGROUND

Summary

Ordinance No. 04-1043, and a companion Ordinance No. 04-1042, would establish solid waste fees (but not excise tax) for FY 2004-05. The two ordinances are related, and changes to one should be reflected in changes to the other.

This Ordinance No. 04-1043 amends Metro Code Chapter 5.03 to establish new license and franchise fees to be charged at privately-owned facilities. These new fees, recommended by the Solid Waste Rate Review Committee, are designed to recover Metro's costs of regulating private facilities. Unlike Metro's other rates, the new license/franchise fees would not be incurred by customers of Metro transfer stations. By absorbing some of the costs currently recovered by the Regional System Fee, these new charges reduce the Regional System Fee. If Ordinance No. 04-1043 is not adopted, the level of the Regional System Fee in Ordinance No. 04-1042 would have to be adjusted.

Because of the budget schedule this year, the numerical values of the FY 2004-05 rates had not been reviewed by the Solid Waste Rate Review Committee as of the filing deadline for the ordinances. This review is expected before mid-March, and should be forwarded to Council prior to March 25, which is the last day to make substantive amendments to the ordinances and remain on track for a July 1 implementation date for the new rates.

This ordinance emerged from the detailed study of the Department's cost structure by the Rate Review Committee ("RRC") this year. A basic starting principle in rate-setting (and articulated by the RRC) is that recovery of costs should be related to the causes of those costs, all else equal. Through their work this year, the RRC came to understand that certain of Metro's costs—regulation and auditing—are incurred because of the existence and operation of private solid waste facilities. Therefore, according to the basic principle, the regulated community should bear those costs. The RRC recommended that Metro investigate annual license and franchise fees to recover those costs.

This ordinance amends Metro Code Chapter 5.03, Disposal Site Franchise Fees, to accomplish this task. As Ordinance No. 04-1043 is closely related to the elements of the annual rate ordinance amending Metro Code Chapter 5.02 (Ordinance No. 04-1042), the reader is directed to the staff report for that ordinance for more information on the RRC's findings and recommendation.

INFORMATION/ANALYSIS

1. Known Opposition.

Although no specific opposition has been voiced as of this writing, this ordinance represents a new concept that has not had wide distribution and review.

Because this ordinance would reduce the Regional System Fee by reallocating costs to the new license and franchise fees, in general, persons who currently pay the RSF would be in favor of this ordinance. This is a broad class of persons, as the RSF is levied on all regional waste.

The licensees and franchisees who would be subject to the new fee can generally be assumed to be in opposition. However, two points argue against them being in strong opposition: (1) the license/franchise fee is less than the amount by which the RSF dropped, and so their entire fee burden will drop; (2) facility owners were well represented and participated in the public meetings when this fee was developed.

2. **Legal Antecedents.** Metro's license and franchise fees are set in Metro Code chapters 5.01 and 5.03 (where they currently conflict). Any change in these fees requires an ordinance amending Chapter 5.03 (and by implication, 5.01). This ordinance also corrects the discrepancies between Chapters 5.01 and 5.03.
3. **Anticipated Effects:** This ordinance will decrease the Regional System Fee levied on all regional ratepayers. The separate funding base helps to stabilize revenue.
4. **Budget Impacts.** These rates are designed to recover fully the department's costs of regulating private disposal facilities.

RECOMMENDATION

The Chief Operating Officer agrees with the principles embodied in this ordinance. However, the Chief Operating Officer awaits the final findings and recommendations of the Solid Waste Rate Review Committee before taking a specific position on Ordinance No. 04-1043.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF) RESOLUTION NO. 04-3433
OPERATING OFFICER TO EXECUTE AN)
INTERGOVERNMENTAL AGREEMENT) Introduced by Councilor Brian Newman
REGARDING MAINTENANCE AND FUNDING FOR)
THE WILLAMETTE SHORE LINE RIGHT-OF-WAY)

WHEREAS, in June 1988, Metro, TriMet, ODOT, the City of Portland, the City of Lake Oswego, Multnomah County and Clackamas County (the Consortium) entered into an Intergovernmental Agreement to Purchase the Jefferson Street Rail Line (also known as the Willamette Shore Line) for the purpose of preserving it for future rail transit use; and

WHEREAS, in November 1994, the parties of the Consortium entered into and Intergovernmental Agreement (IGA) for the management of the Willamette Shore Line right-of-way (Resolution No. 94-1868 For the purpose of adopting an Intergovernmental Agreement for management of the Willamette Shore Line Right of Way, January 1994.); and

WHEREAS, the Management IGA formally established the Consortium of Local Governments to manage the right-of-way, established TriMet as the overall manager of the right of way, and designated Lake Oswego as the responsible party for operations and maintenance of the right-of-way; and

WHEREAS, the current structure of the Consortium requires the approval of all Consortium members for all expenditures relating to the right-of-way; and

WHEREAS, the parties desire to supplement the Purchase IGA and the Management IGA to provide a mechanism to simplify the approval process so that authority is designated to specific Consortium members for expenditures related to specific purposes; and

WHEREAS, staff has drafted an IGA regarding maintenance and funding for the Willamette Shore Line right-of-way (Exhibit A); and the members of the Consortium met in October 2003 and recommended adoption of the draft IGA to the member jurisdictions and agencies; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into an Intergovernmental Agreement (as identified in Exhibit A) for the maintenance and funding of the Willamette Shore Line right-of-way.

ADOPTED by the Metro Council this 11th day of March, 2004.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN MEMBERS OF WILLAMETTE SHORE CONSORTIUM
REGARDING MAINTENANCE AND FUNDING FOR WILLAMETTE SHORE
LINE RIGHT-OF-WAY**

This Intergovernmental Agreement (“Agreement”) is made and entered into between the City of Portland, Oregon (“Portland”); METRO (“Metro”); the City of Lake Oswego, Oregon (“Lake Oswego”); Multnomah County, Oregon (“Multnomah”); Clackamas County, Oregon (“Clackamas”); the Tri-County Metropolitan Transportation District of Oregon (“TriMet”); and the Oregon Department of Transportation (“ODOT”) (collectively, the “Parties”), all acting in their capacities as members of the Willamette Shore Line Consortium. (the “Consortium”).

RECITALS

- A. The Parties are authorized to enter into this Agreement pursuant to ORS 190.110.
- B. In June 1988, Portland, Metro, Lake Oswego, Multnomah and Clackamas (the “Governmental Bodies”) entered into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line for the purpose of preserving the Jefferson Street Rail Line, also known as the Willamette Shore Trolley Line (the “Right-of-Way”) for public rail mass transit use (the “Purchase IGA”).
- C. Pursuant to the Purchase IGA, the Governmental Bodies have designated Portland as the holder of title to the Right-of-Way, in its capacity as a representative of the Governmental Bodies.
- D. In November 1994, the Governmental Bodies and Tri-Met entered into an Intergovernmental Agreement for the Management of the Willamette Shore Line Right-of-Way (the “Management IGA”). Pursuant to the Management IGA, the Consortium, comprised of the Governmental Bodies and TriMet, was established for the overall management of Right-of-Way.
- E. Pursuant to the Management IGA, the Consortium has designated Lake Oswego as the party responsible for current operation and maintenance of the Right-of-Way, consistent with the June 1990 Lease Agreement for the Jefferson Street Branch Rail Line Corridor between Lake Oswego and Portland.
- F. With the exception of issues relating to operation and maintenance of the Right-of-Way (for which Lake Oswego has been delegated authority to act), the current structure of the Consortium requires the approval of all Consortium members for all expenditures relating to the Right-of-Way.
- G. The Parties desire to supplement and amend the Purchase IGA and the Management IGA, and to provide a mechanism to simplify the approval process, so that authority is delegated to specific Consortium members for expenditures related to specific purposes, in accordance with the terms and conditions set forth below.

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the Parties hereto as follows:

AGREEMENT

1. Work Program and Budget.

a. Annually, the Consortium will adopt a Work Program and Budget related to maintenance and/or improvement of the Right-of-Way. The Budget will establish the amount of each party's annual contribution for maintenance, on a fiscal year basis. The Work Program and Budget shall describe projects to be completed, and shall include an estimated budget for each project.

b. The Consortium shall designate a Project Manager for each maintenance and/or improvement project. The Project Manager shall be vested with authority to make individual expenditures for each project consistent with the budget adopted by the Consortium. For expenditures in excess of the budgeted amount, the Project Manager will need to obtain prior written approval of each member of the Consortium.

c. Consistent with the Management IGA, Lake Oswego shall continue to be the party responsible for maintenance of the Right-of-Way, and shall be the Project Manager for maintenance projects.

d. The Consortium hereby designates TriMet as the Project Manager for capital improvement projects and as the Right-of-Way agent.

2. Oswego Obligations: Operation and Maintenance of Right-of-Way. Lake Oswego shall:

a. Track and dispense all funds budgeted for maintenance of the Right-of-Way ("Maintenance Funds"). Maintenance Funds shall include contributions from the Consortium members, proceeds from real property agreements with third parties, and all other local funds budgeted for maintenance of the Right-of-Way, and shall be deposited into and disbursed from Lake Oswego's "Trolley Fund". Lake Oswego shall make records concerning Maintenance Funds available to Consortium members upon request.

b. Conduct operation and maintenance activities in accordance with the Work Programs and Budgets annually adopted by the Consortium. In order to perform this obligation, Lake Oswego shall have the authority to determine whether operation and maintenance activities shall be performed with its own forces, by the operator of the Willamette Shore Trolley (the "Trolley Operator") (currently the Oregon Electric Railway Historic Society ("OERHS")), or by a contractor selected by Lake Oswego.

c. Bill the Trolley Fund for maintenance expenditures, consistent with the Work Programs and Budgets annually adopted by the Consortium.

d. Bill the Consortium members as provided in the budget for each member's contribution for maintenance, on a fiscal year basis.

e. On behalf of the Consortium, negotiate and execute third party agreements relating to operation of the Willamette Shore Trolley and maintenance of the Right-of-Way.

f. Make periodic progress and financial reports to the members of the Consortium.

3. TriMet Obligations: Capital Improvements. In its capacity as Project Manager for Capital Improvement projects, TriMet shall:

a. File grant application(s) with the Federal Transit Administration ("FTA") for federal grant assistance for capital improvements to the Right-of-Way, and be the FTA grantee. All parties to this Agreement shall cooperate in providing information on a timely basis as is required for any grant application and/or required to provide responses to inquiries from FTA or any other proposed grantor. Notwithstanding the Parties' anticipation that grant application(s) shall be filed with the FTA, nothing in this Agreement shall preclude TriMet from applying for any other federal or state of Oregon grant assistance for funding capital improvements to the Right-of-Way.

b. Conduct capital improvements in accordance with the Work Programs and Budgets annually adopted by the Consortium, including negotiation and execution of appropriate contracts.

c. Track and dispense grant and local match funds by:

i. First utilizing its own local fund contribution in matching federal funds on capital improvement projects; and

ii. In the event a Work Program and Budget adopted by the Consortium calls for the contribution of local funds by other members of the Consortium, billing the Trolley Fund for such funds.

d. Make periodic progress and financial reports to the members of the Consortium.

4. Tri-Met Obligations: Right-of-Way Agent. In order to fully effectuate TriMet's ability to act as Right-of-Way Agent for the Consortium, Portland hereby agrees that TriMet shall be substituted as holder of title to the Right-of-Way for the benefit of the Consortium. In its capacity as Right-of-Way Agent, TriMet shall:

a. Act as the single point of contact within the Consortium for all issues involving encroachments into the Right-of-Way, and work with third parties to resolve issues involving such encroachments.

b. On behalf of the Consortium, negotiate and execute real property agreements relating to the Right-of-Way.

c. Work with local jurisdictions concerning public improvement projects that may impact the Right-of-Way.

d. Make periodic reports to the members of the Consortium.

5. General Provisions.

a. Term of Agreement: The term of this Agreement shall be for ten (10) years, commencing July 1, 2003, and may be renewed for a like term upon the approval of each of the Parties hereto.

b. No Third Party Beneficiaries: The Parties are the only parties to this Agreement, and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise, to any third party unless such third party is expressly described herein, or in a modification or amendment to the Agreement, and such third party is intended by the parties hereto to be a beneficiary of this Agreement or of such modification or amendment to this Agreement.

c. Notices: All notices and communications under this Agreement shall be directed to the representatives designated below:

For issues relating to Operation and Maintenance of the Right-of-Way:

Tom Tushner, PE
Assistant City Engineer
City of Lake Oswego
P.O. Box 369
Lake Oswego, Oregon 97034

For issues relating to Capital Improvements:

Amy Fandrich
TriMet
Capital Projects and Facilities
710 NE Holladay Street
Portland, Oregon 97232

For issues relating to Right-of-Way (other than operation and maintenance):

John Baker
TriMet
Capital Projects and Facilities
710 NE Holladay Street
Portland, Oregon 97232

For All Other Issues:

For Lake Oswego:

Tom Tushner, PE
Assistant City Engineer
City of Lake Oswego
P.O. Box 369
Lake Oswego, Oregon 97034

For TriMet:

Neil McFarlane
Executive Director, Capital Projects & Facilities
TriMet
710 NE Holladay Street
Portland, Oregon 97232

For Portland:

Vicky L. Diede
Office of Transportation
1120 SW 5th Avenue, Suite 800
Portland, Oregon 97204

For Metro:

Sharon Kelly
Transportation Planning Supervisor
Metro
600 NE Grand Ave.
Portland, OR 97232-2736

For Clackamas:

Cherie McGinnis
Staff Assistant
Clackamas County Board of Commissioners
906 Main Street
Oregon City, OR 97045

For Multnomah:

Karen Schilling
Planning Manager
Multnomah County
1600 SE 190th Avenue
Portland, OR 97233

For ODOT:

Ralph Drewfs
Light Rail Engineer
ODOT Region 1
123 NW Flanders
Portland, OR 97209

Any notices or communications hereunder shall be in writing and deemed effective if deposited in U.S. Mail (certified return receipt), hand delivered, or transmitted by facsimile with successful confirmation. Any Party may change its notice contact and/or address by giving prior written notice of such change to all other Parties at their notice addresses.

d. Integration: This document constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind.

e. Termination and Amendment: This Agreement may be terminated or amended by mutual written agreement of all Parties.

f. Waiver and Amendment: No waiver of any portion of this Agreement and no amendment, modification or alteration of this Agreement shall be effective unless in writing and signed by the authorized representative of all Parties

g. Interpretation of Agreement: The Parties agree that they jointly contributed to the drafting of this Agreement, and that in the event of any ambiguity, the terms of this Agreement shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement. Except as modified herein, all other agreements between the parties on the subject matter hereof remain in full force and effect. No course of dealing between the Parties and no usage of trade will be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement and no waiver by a Party of any right under this Agreement will prejudice the waiving Party's exercise of the right in the future.

h. Binding Effect: This Agreement shall be binding and inure to the benefit of each of the Parties' successors and assigns. No Party may assign its obligations under this Agreement without the express written consent of the other Parties.

i. Laws and Regulations: The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.

j. Indemnification: To the extent permitted by the Oregon Constitution and within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall indemnify and defend the others and their officers, employees, agents and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from its actions under this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.

k. Dispute Resolution: The Parties shall negotiate in good faith to resolve any dispute arising under or relating to this Agreement. If the Parties are not able to resolve a dispute within 30 days after such dispute has arisen, they shall submit the matter to mediation, each Party to pay its own costs and all Parties to share equally in mediation fees and costs. In the event the dispute is not resolved in mediation, the Parties shall submit the matter to binding arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the Parties and subject to appeal only as otherwise provided in Oregon law. The Parties shall each pay their own costs, but will share equally in fees and costs of the arbitration and/or arbitrator service. The Parties shall continue in the performance of their respective obligations under this Agreement notwithstanding any dispute. This dispute resolution procedure may be modified by mutual agreement of the Parties.

l. Choice of Law; Venue: This Agreement, and all rights, obligations and disputes arising out of this Agreement, shall be governed by Oregon law. Venue for all mediation and arbitration shall be in Multnomah County, Oregon.

m. Counterparts: This agreement may be signed in counterparts.

IN WITNESS WHEREOF, the Parties have executed this agreement effective for the dates noted herein.

CITY OF PORTLAND, OREGON

Approved as to Form:

By: _____
Title: _____

Chief Deputy City Attorney for the
City of Portland

CITY OF LAKE OSWEGO, OREGON

Approved as to Form:

By: _____
Title: _____

City Attorney

MULTNOMAH COUNTY, OREGON

Approved as to Form:

By: _____
Title: _____

County Counsel, Multnomah County

CLACKAMAS COUNTY, OREGON

Approved as to Form:

By: _____
Title: _____

County Counsel, Clackamas County

METRO

Approved as to Form:

By: _____
Title: _____

Metro General Counsel

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON

Approved as to Form:

By: _____
Title: _____

Deputy General Counsel, Tri-Met

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3433, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT REGARDING MAINTENANCE AND FUNDING FOR THE WILLAMETTE SHORE LINE RIGHT-OF-WAY

Date: March 3, 2004

Prepared by: Sharon Kelly

BACKGROUND

The Willamette Shore Line right-of-way was purchased from the Southern Pacific Railroad in 1988 by a consortium of local jurisdictions and agencies (ODOT, Tri-Met, Metro, Portland, Lake Oswego, Clackamas County and Multnomah County). The right-of-way was purchased to prevent abandonment of the line and to preserve it for future passenger rail service. The title to the right-of-way is held by the City of Portland on behalf of the Consortium. Since 1990 the City of Lake Oswego has leased the right-of-way from Portland for the purpose of operating a trolley service on the line. Lake Oswego has contracted with a private non-profit operator (the Oregon Electric Railway Historical Society) to run the trolley service (Willamette Shore Trolley). Continuing the trolley operation provides an important reminder to the community that the rail line exists and preserves use rights in the portion that is owned for rail easement purposes.

The corridor is nearly seven miles long with a southern terminus in Lake Oswego and a northern terminus in Portland at RiverPlace. 4.6 miles of the right-of-way is owned through fee title, and the remainder is through a railroad easement. For the portion of the right-of-way that is owned through an easement, the easement is for rail purposes. Interest has been expressed in combining a bicycle/pedestrian path with the rail project in the corridor.

The current organizational structure for the Consortium includes each of the parties assuming different roles. For example, Metro chairs the Consortium and calls meetings as necessary, the City of Portland holds the title on behalf of the Consortium, TriMet acts as the right-of-way manager and manages issues related to the right-of-way, and Lake Oswego has been delegated authority related to operations of the Trolley and maintenance of the right-of-way. The current organizational structure requires the approval of all of the members of the Consortium for all expenditures related to the Right-of-way. The proposed IGA would simplify the process for expenditures for management of the right-of-way.

The resolution would authorize the Chief Operating Officer to execute the IGA (Exhibit A to Resolution No 04-3433) with the other members of the Consortium.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition to the proposed IGA.

2. **Legal Antecedents:**

- Resolution No. 86-715 (December 1986) For the purpose of entering into and Intergovernmental Agreement and extending funds to preserve the Southern Pacific Right-of-way (Jefferson Street Branch) between Portland and Lake Oswego. (Intergovernmental Agreement for an option to purchase and one year lease of the Jefferson Street Rail Line from Southern Pacific Transportation Company).

- Resolution No. 87-834 (December 1987) For the purpose of endorsing the recommendations of the Jefferson Street Project's Policy Advisory Committee and Committing Funds to Purchase of the rail line (Intergovernmental Operations Agreement that Authorized Portland to enter into agreement with Oregon Electric Historical Society for 7/87 to 12/87).
- Resolution No. 88-954 (July 1988) for the purpose of entering into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line.
- June 1990 – Lease Agreement for the Jefferson Street Branch Rail Line Corridor (between Portland and Lake Oswego).
- Resolution No. 94-1868 (January 1994) For the purpose of adopting an Intergovernmental Agreement for management of the Willamette Shore Line Right of Way.
- Resolution No. 03-3375 (October 2003) For the purpose of authorizing an Intergovernmental Agreement with the City of Portland to construct a sewer line within a portion of the Willamette Shore Line Right-of-way.

3. Anticipated Effects: The purpose of this IGA is to make the management of the Willamette Shore Line right-of-way less cumbersome for the jurisdictions and agencies that make up the Consortium of owners. Currently an Intergovernmental Agreement must be prepared and each of the Jurisdictional bodies must adopt a formal resolution to authorize expenditures. This can be a time consuming and costly process. The proposed IGA will expedite the process by authorizing TriMet (as the right-of-way agent for the Consortium) to protect the right-of-way, and Lake Oswego (as the operations and maintenance agent) to receive funds from the other Consortium member jurisdictions and use those funds to manage the operations of the Trolley and do the necessary maintenance.

4. Budget Impacts: There is no budget impact to Metro from this IGA. The IGA will allow for money to be transferred between members of the Consortium such as between Portland, Lake Oswego and TriMet for maintenance of the right-of-way.

RECOMMENDED ACTION

Approval of Resolution No. 04-3433

MINUTES OF THE METRO COUNCIL MEETING

Thursday, March 4, 2004
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Brian Newman, Rod Monroe, Carl Hosticka

Councilors Absent: Rex Burkholder and Rod Park (excused)

Council President Bragdon convened the Regular Council Meeting at 2:05 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the February 26, 2004 Regular Council Meetings.

Motion:	Councilor Newman moved to adopt the meeting minutes of the February 26, 2004, Regular Metro Council.
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Vote:	Councilors McLain, Monroe, Hosticka, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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4. ORDINANCES - SECOND READING

4.1 Ordinance No. 04-1034, For the purpose of Annexing into the Metro District Boundary approximately 202.9 Acres at Evergreen and Shute Roads in the City of Hillsboro and Declaring an Emergency

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1034.
Seconded:	Councilor Newman seconded the motion

Dan Cooper, Metro Attorney, explained the quasi-judicial nature of the proceedings. He explained that this was a proposal for annexation to the Metro boundary. Criteria in the Metro code governs how Council will make the decision. He stated that the decision that needs to be made must be based on the Staff Report provided by land use consultant, Ken Martin and any testimony heard today. Any information received from other parties about this property should be disclosed, but councilors need not disclose information received about this property from considering the Urban Growth Boundary (UGB) amendment previously in the fall of 2002.

Councilor McLain pointed out that Exhibit B explains why this property represents an important addition to the urban growth boundary. She noted that the information provided by Ken Martin

(Boundary Commission), provides criteria and findings. The property was brought into the urban growth boundary in December 2002. All of the appropriate planning and conditions were met (as per Metro's Boundary Officer, Bob Martin).

Council President Bragdon opened a public hearing on Ordinance No. 04-1034.

Becky Berger, 5455 NW Birch Avenue, Hillsboro, OR 97219, submitted a letter that is in the record. She represents the landowners of the Shute Road site. They are in unanimous agreement for this action. She thanked Council President Bragdon and Metro staff for their work and support to get this property shovel-ready.

Council President Bragdon closed the public hearing.

Councilor McLain closed by reiterating that this case has met all the requirements of the Metro code and boundary amendment process issues.

Vote:

Councilors Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

4.2 Ordinance No. 04-1033A, For the Purpose of Amending Metro Code Chapter 3.09 (Local Government Boundary Changes) to Allow Use of the Expedited Process for Changes to the Metro District Boundary and to Clarify Criteria for Boundary Changes, and Declaring an Emergency.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1033A.
Seconded:	Councilor Monroe seconded the motion

Councilor McLain explained that this resolution has been under consideration for some time. She reiterated the reasons for this resolution – to make the process of annexing territory to the Metro district easier and gives the process and criteria for incorporating a new city into Metro's boundary. She added that it has been discussed at length by Metro council, was fully reviewed by Metro Technical Advisory Committee (MTAC) and Metro Policy Advisory Committee (MPAC). Their suggested changes were included in the amended ordinance.

Council President Bragdon opened a public hearing on Ordinance No. 04-1033A. No one came forward. Council President Bragdon closed the public hearing.

Council President Bragdon concurred with Councilor McLain's comments.

Vote:

Councilors Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

5. RESOLUTIONS

5.1 Resolution No. 04-3427, For the Purpose of Responding to USDOT Concerns, Revising the Conformity Determination Report and Re-adopting the Portland Area Air Quality Conformity Determination for the 2004 Regional Transportation Plan and 2004-07 Metropolitan Transportation Improvement Program.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3427.
Seconded:	Councilor Hosticka seconded the motion

Councilor Monroe expressed his hope that this would be the end of the "saga" to meet the federal air quality conformity, explaining the reasons why the US Department of Transportation (USDOT) did not approve the air quality conformity determination approved by the Council on January 15, 2004. He cited three concerns: inadequate length of public comment period, not enough documentation on some transportation control measures, and a request for some emission credit calculations. A revised determination was passed on February 12 addressing all these concerns and a fourteen-day comment period was opened, along with advertising in The Oregonian. Councilor Monroe noted that there were approximately 30 visits to Metro's website per week and 7 documents downloaded, but no comments were received. No public testimony was received at the public hearing on February 26. On March 1, 2004, Transportation Policy Advisory Committee (TPAC) approved the measure after adopting some minor changes proposed by Department of Environmental Quality (DEQ). It was approved by a special meeting of Joint Policy Advisory Committee on Transportation (JPACT) members on March 1. With the approval of this measure today, several projects will be able to get underway immediately.

Vote:

Councilors Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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5.2 Resolution No. 04-3428, For the Purpose of Entering an Order Relating To Compliance with the Urban Growth Management Functional Plan.

Motion:	Councilor McLain moved to adopt Resolution No. 04-3428.
Seconded:	Councilor Newman seconded the motion

Councilor McLain explained that this resolution is being submitted to meet requirements of Metro Code Section 3.07.880.b that asks the Metro Council to set a public hearing date to determine if regional jurisdictions have been able to comply with the functional plan. She noted that on Table A, most of the jurisdictions have almost met total compliance. She also stated a full list of reports on Title 7 has been submitted. Only a few of the facilities are still working on Title 3 issues (e.g., Clackamas County). This resolution will confirm compliance and direct staff where further work needs to be pursued. This report is a success story thanks to the hard work of the staff and local jurisdictions.

Council President Bragdon spoke to the affordable housing issue (delegated to Councilor Burkholder) and concept planning for the newly urbanizing areas. He said more discussion is needed in these areas.

Councilor Hosticka noted that this resolution adopts the report and findings. Councilor McLain added that the resolution also provides Metro the opportunity to tell jurisdictions that they have completed their work.

Councilor Hosticka asked if there are established time limits for taking action on those areas that are not in compliance. Dan Cooper noted that compliance limits are set in the functional plan. In most cases, those time limits have passed, with the exception of some of the Title 7 reporting requirements. Some extensions have been asked for and granted. He explained that this is a

report of those jurisdictions that have complied. Enforcement actions for those that have not passed are subject to further Council discussion and action.

Vote:

Councilors Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
--

Councilor McLain explained that this is the last report that Brenda Bernards will work on before leaving for Tennessee. She applauded Brenda for her outstanding work that has been very useful to the Council and jurisdictions. She expressed the hope that Brenda will adequately train someone to fill her shoes.

6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan thanked Council President Bragdon and Chief Financial Officer (CRO) Bill Springer for their support in taking budget talks on the road. He also mentioned March Madness (Goal 5 and Industrial Lands) demands being placed on staff. The first meeting in Oregon City pointed out the need for additional staff at the open houses and staff have volunteered. In addition, Mr. Jordan noted that some property owners did not get their notice in the mail. A technical glitch relating to the transfer of data (from one program to another) occurred. Approximately 4,400 property owners did not get picked up on the mailing list – spread throughout the region. This error is now being corrected, and another open house will be held at Metro Regional Center to accommodate those people who did not receive the initial notice. Mr. Jordan has been assured by attorney Dick Benner that this error will not affect either of Metro's legal requirements, either under Measure 56 or 26-29.

7. COUNCILOR COMMUNICATION

Councilor Newman noted that an open space tour of the Butler Ridge property in Damascus is scheduled for Saturday, March 6th in conjunction with the Three Rivers organization. The focus of the tour will be on Damascus environmental issues and future plans to protect the buttes. He also noted his absence from Metro for one month – a fellowship in Europe that will focus on trans-Atlantic issues, European governance and environmental and urban growth management issues and policies. He noted that his trip is not funded by Metro but by the German Marshall Fund. Councilor Newman noted that if any of his constituents needed assistance, they should contact Councilor Newman's assistant.

Councilor President Bragdon acknowledged Councilors McLain and Newman's help at the Open House in Oregon City, which unexpectedly turned into a question and answer session, rather than the informal format planned. It was very productive and helpful for the hundreds of people in attendance.

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8. **ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 2:30 p.m.

Prepared by

Becky Shoemaker
Acting Clerk of the Council

Patty Unfred Montgomery
Council Support Specialist

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 4,
2004

Item	Topic	Doc Date	Document Description	Doc. Number
4.2	Res. 04-3427	2/27/04	Ordinance No. 04-1033A	030404c.01
5.2	Res. 04-3428	3/04/04	Revised pages to Exhibit A, Part 2 (pages 45, 53 and 54)	030404c.02

3-11-04

031104c-02

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

DATE: March 11, 2004
FROM: Michael Hoglund, Director, Solid Waste & Recycling
Douglas Anderson, Finance Manager, Solid Waste & Recycling
TO: David Bragdon, Metro Council President
Michael Jordan, Chief Operating Officer
RE: Delay of implementation date for FY 2004-05 solid waste rates

At the Council Work Session on March 2, you asked that we research the consequences of a delay in implementing solid waste rates past the first of the fiscal year. Specifically, you identified an effective date around September 1—a two-month delay from the historical target of July 1.

As a result of our inquiries, we have concluded that the implementation date can be delayed without serious consequences for private service providers or local government rate-setting.

Considerations

Haulers This topic was discussed at the regular meeting of Tri-C (local haulers' association), and the results conveyed in testimony before the Rate Review Committee on March 9. The haulers indicated opposition to delay. Their concern was that any delay in the Metro rate would extend the period during which they operate under old collection rates that do not fully cover costs.

Local Governments We met with solid waste staff from seven local jurisdictions, and—unanimously—they had no concerns about a delay of 1 to 3 months. Local governments set the rates for the haulers, and were quite familiar with the haulers' concerns expressed above. However, the local staff indicated their rate-setting schedule would be unaffected as long as Metro's rates are adopted prior to July 1. In other words, the 90-day referral period, which is the cause of delay for Metro's effective date, is not germane to the local rate-setting process.

Legal We have confirmed with the Metro Attorney that (1) there is no legal requirement to meet a July 1 date, and (2) delay would not affect the bond covenants, so long as the 110% coverage ratio is met for the entire fiscal year. We have recalculated the coverage ratio under a variety of "delay" scenarios, and have found the bond covenant would be met in all cases.

cc: Metro Councilors
Bill Stringer, CFO