

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF MAKING AREAS ) RESOLUTION NO. 92-1654  
OUTSIDE THE METRO BOUNDARY )  
ELIGIBLE TO RECEIVE "METRO ) Introduced by Rena Cusma  
CHALLENGE" GRANTS ) Executive Officer

WHEREAS, Metropolitan Service District Resolution No. 92-1594A adopted program activities for the third year of the Annual Waste Reduction Program for Local Government; and

WHEREAS, the Metro Council has appropriated \$500,000 in "Metro Challenge" grant funds to be allocated to local governments to help defray the costs of implementing their Annual Waste Reduction Programs in FY 1992/93; and,

WHEREAS, the 1991 Oregon Recycling Act specifies a recovery rate for Clackamas, Multnomah, and Washington Counties, in aggregate; and,


WHEREAS, residents within Clackamas, Multnomah, and Washington Counties but outside of the Metro boundary utilize the Metro solid waste disposal system and pay the associated fees; and

WHEREAS, the funding of waste reduction programs in the outer tri-county area is closely enough related to Metro's planning authority, waste reduction and landfill space conservation responsibilities to be for purposes 'authorized by law'; and

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

BE IT RESOLVED, that the Council of the Metropolitan Service District adopts a new procedure for allocation of "Metro Challenge" grants, multi-family recycling container grants, and neighborhood cleanup grants that will henceforth make such grants available to all areas within Clackamas, Multnomah, and Washington Counties that utilize the Metro solid waste disposal system and pay the associated fees.

ADOPTED by the Council of the Metropolitan Service District this 23rd day of July, 1992.

  
Jim Gardner, Presiding Officer

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1654, FOR THE PURPOSE OF MAKING AREAS OUTSIDE THE METRO BOUNDARY ELIGIBLE TO RECEIVE "METRO CHALLENGE" GRANTS

-----  
Date: July 22, 1992

Presented by: Councilor Hansen

Committee Recommendation: At the July 21 meeting, the Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1654. Voting in favor: Councilors Buchanan, Hansen, McFarland and Van Bergen. Councilor Wyers was excused.

Committee Issues/Discussion: Debbie Gorham and Steve Kraten, Solid Waste Reduction Staff, explained that the principal issue addressed in the resolution is the question of equitable access to the "Metro Challenge" grant program. For the current physical year the program has \$500,000 in funding. These funds are used to assist local governments in funding recycling and waste reduction programs. The funds are divided based on the population of the jurisdiction, but the program is presently limited to the population of jurisdictions within Metro's boundaries.

The resolution would permit jurisdictions outside of Metro's boundaries to have access to the program, provided that their garbage is processed through a Metro disposal facility. The principal areas affected by the resolution are portions of rural Clackamas County, including the city of Sandy. Applications for grant funding for these areas may come from Clackamas County for the unincorporated areas or from affected cities.

Two other issues that were addressed in the staff report, but not in the resolution, also were discussed by the committee. These issues were the proration of grants and the compliance review process. Historically, the solid waste staff has prorated grants when a jurisdiction has been late in submitting information required for approval of their local programs, though staff has exercised some flexibility depending on the reason for the delay. (For example, Washington County must obtain approval of its program by 11 cities.)

Kraten explained that, in order to receive grant funding, each city and county must submit its annual recycling and waste reduction program for Metro approval. These programs must meet the requirements of Metro's annual local government waste reduction program which is approved by the Council and the new mandates of 1991 state recycling legislation. In past years, these programs have been reviewed by Kraten and Gorham who have made recommendations to the department director. The director has made the final decision concerning local program approval.

Councilors McFarland and Van Bergen expressed concern about the "looseness" of the review criteria and process. Kraten explained that it is the department's intention to form a committee to review local programs that would include department staff and a representative of DEQ. Several councilors suggested that the council be represented on this committee, either by a councilor or by council staff. Bob Martin and Ms. Gorham had no objection.

Councilor Hansen noted that the review process has become more difficult as the scope of recycling and waste reduction programs has become more complex. She suggested that staff may want to include local government representatives on the review committee. Kraten expressed concern that local governments should not be in a position to approve their own programs. Councilor Hansen suggested that the department may want to consider the same process used to form the permanent enhancement committees to structure the program review committee.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 92-1654 FOR THE PURPOSE OF MAKING AREAS OUTSIDE THE METRO BOUNDARY ELIGIBLE TO RECEIVE "METRO CHALLENGE" GRANTS

Date: July 6, 1992

Presented by: Steven Kraten

#### BACKGROUND AND ANALYSIS

In order to facilitate the continued funding of local government waste reduction programs, the Metro Council appropriated \$500,000 in "Metro Challenge" grants to be allocated to local governments in FY 1992-93. In making these funds available, Metro renewed its challenge to local governments to take part in helping the region to achieve a waste reduction goal of 45 percent by the year 1995 and 50 percent by the year 2000. Resolution No. 90-1270, adopted by the Council, specifies that "Metro Challenge" grants:

- a. will be awarded to local governments upon submission to Metro of an Annual Waste Reduction Program (AWRP), approved by the Solid Waste Department.
- b. are to be used to defray the costs of administering the Annual Waste Reduction Program For Local Government.
- c. may not be used to retroactively fund programs or positions that are currently in place.

Aside from the above listed restrictions, local governments can utilize the grants as necessary to accomplish their waste reduction goals.

Provision b., above, has been interpreted to mean that local governments cannot use "Metro Challenge" funds for capital items, such as recycling containers, or as matching funds for other Metro grant programs. Though the smallest residential jurisdictions (Johnson City and Rivergrove) have been allowed to use their minimum allocation of \$500 each for neighborhood cleanups, other local governments have been discouraged from using "Metro Challenge" funds for any activity which falls under another Metro program.

The program has been quite successful. All local governments within the region have implemented waste reduction programs and the region's recycling rate has jumped from 28 percent to 38 percent since the program began. However, two issues require resolution. The first concerns the extent to which eligibility for Metro financial assistance is tied to compliance with the AWRP. The second issue concerns funding for waste reduction programs beyond the Metro boundary.

## POLICY ISSUES AND RECOMMENDATIONS

### **ISSUE #1 - Cooperative Compliance with the Annual Waste Reduction Program**

Questions have been raised about the degree to which local governments are permitted to deviate from the AWRP, the kind and extent of enforcement actions Metro might take, and the way in which decisions regarding these issues are made. During the past two years, Metro has required substantial compliance with the AWRP but not strict compliance. Substantial compliance means that a local government has complied to a large extent with all of the major provisions of the AWRP even though it may not have fully complied with every provision. Decisions as to whether local governments have substantially complied with the AWRP have been made by Waste Reduction Division staff with the concurrence of the Director. Under this system, two local governments had their "Metro Challenge" grants prorated in FY 1990/91 and one forfeited its grant entirely.

There are several reasons why Metro has not sought strict compliance. Each local government began its program from a different starting point. Rather than setting modest regional goals in consideration of those local governments with the least developed recycling systems, Metro and the watershed representatives selected more ambitious goals with the knowledge that some local governments would have difficulty achieving them.

A second reason that local governments have been allowed latitude with their programs is that unexpected problems sometimes occur. Curbside yard debris collection is a case in point. Unresolved issues concerning permissible charges prevented local governments from implementing their programs according to schedule.

Sometimes there are also unexpected opportunities. A postponement of the due date for Gladstone, Oregon City, and West Linn's AWRP was granted while they deliberated over whether to implement a joint program under the auspices of a new environmental service district.

Sometimes an issue is complex and whether or not a local government has complied is open to interpretation. Portland's garbage rates are an example. The City chose not to double the recycling component of the garbage rate for two-can customers. The question of whether it is appropriate to charge double for recycling is a question that was not considered at the time the AWRP was written to specify a higher per unit charge for the second can.

Another reason Metro did not seek strict compliance is that withholding grant funds from local governments that were deficient in certain aspects of their programs might have prevented some of the program from being implemented at all. Most importantly, building positive relationships and working cooperatively with local governments that are making a good faith effort to reduce waste is more effective than taking a punitive approach.

Now that the program has been successfully implemented and the local governments understand how it works, it is appropriate to formalize the way the grant program will be administered to achieve the greatest level of cooperative compliance. It is recommended that:

1. submission of Annual Waste Reduction Programs after the end of July of each fiscal year will result in a proration of the associated "Metro Challenge" funds according to the following formula:

$$\text{Funding for late programs} = \text{original allocation} [(12 - \text{number of months late}) / 12]$$

Regardless of the day of the month on which the program is received, the full month is counted in the number of months remaining. For example, the proration schedule for a city with an allocation of \$10,000 is as follows:

<u>Program Submitted by</u>	<u>Proration Formula</u>	<u>Prorated Allocation</u>
July 31	\$10,000 (12/12)	\$10,000
Aug. 31	10,000 (11/12)	9,167
Sept 30	10,000 (10/12)	8,333
⋮	⋮	⋮
⋮	⋮	⋮
June 30	10,000 (1/12)	833

In order to be considered "on-time," a program must include a report summarizing the previous year's program. A copy of the local government's resolution formally adopting the program must be received by Metro within 60 days of program approval. Late adoptions will count toward proration in the same way as late programs.

For programs that involve more than one local government, only the amount allocated to the late local government(s) will be prorated. For example, three local governments, City A, City B, and City C submit a joint program. The three cities' "Metro Challenge" allocations are \$12,000, \$6,000, and \$2,000, respectively. The program is submitted to Metro by the end of July but City B does not adopt it until 90 days after it is approved by Metro and City C's previous year's summary report is not submitted until October. Grants for the joint program would be prorated as follows:

	<u>Full Allocation</u>	<u>Prorated Allocation</u>
City A	\$12,000 (12/12) =	\$12,000
City B	6,000 (11/12) =	5,500
City C	<u>2,000 (9/12) =</u>	<u>1,500</u>
Totals	\$20,000	\$19,000

2. as part of their AWRP's, local governments be required to submit budgets showing how they intend to use "Metro Challenge" grants to further their waste reduction programs.
3. evaluation of local governments' Annual Waste Reduction Programs and eligibility for "Metro Challenge" grants will be made by a committee composed of Solid Waste Department staff. The recommendations of the committee will be submitted to the Director of Solid Waste for concurrence before grants are disbursed.

## **ISSUE #2 - Funding of Programs Outside the Metro Boundary**

At the time the "Metro Challenge" program was adopted by the Council, it was specified that grants would be allocated to local governments based on population. For the first two years of the program, the population figures used to allocate grants to Washington, Clackamas, and Multnomah Counties were based only on the populations of those parts of the unincorporated counties that lay within the Metro boundary. About 42 percent of unincorporated Clackamas County's population is outside the Metro boundary yet most of that population's solid waste goes into the Metro system. Twenty percent of Washington County's population and 11 percent of Multnomah County's is outside the boundary. Clackamas County provides waste reduction programs to the entire county and thus, on a per capita basis, is under funded relative to other local governments.

A related issue is the question of whether or not to provide funding for incorporated cities which use the Metro system, pay Metro fees, but are outside the Metro boundary. With a population of 4,275, Sandy has now passed the 4,000 limit and must comply with the provisions of the 1991 Oregon Recycling Act. If Clackamas County extends its waste reduction program to include Sandy then Metro might want to include Sandy's population in the allocation equation. Another question that arises is what to do if Sandy is included in the allocation equation but the City wants to implement its own program rather than contract with the County. The Metro Council would then have to decide whether or not Sandy is eligible to submit an Annual Waste Reduction Program (AWRP) and receive a "Metro Challenge" grant directly.

The issue also has ramifications for other grant programs, specifically matching grants for multi-family recycling stations and neighborhood cleanup programs.

As for legal issues, there does not appear to be any prohibition on Metro providing services outside its boundaries. A copy of written advice prepared by the Office of General Counsel is included as Attachment A.

The 1991 Oregon Recycling Act states that Metro is the coordinating agency for waste reduction activities within the three county region (though the local governments themselves have the responsibility to meet the recovery target.) Based on Metro's coordination role and the principle that contributing local governments should receive benefits roughly in proportion to their contributions, it is recommended that:

1. Washington, Clackamas, and Multnomah Counties each be granted "Metro Challenge" funds to extend their waste reduction programs to any or all parts of the unincorporated county that are

outside the Metro boundary and pay Metro fees on waste disposed. The amount of funds shall be proportional to the population of the areas served.

2. any incorporated city within the Metro boundary be given the opportunity to enter into a contract with Washington, Clackamas, and Multnomah Counties and any cities within those counties (inside of or outside of the Metro boundary) for the provision of waste reduction programs to those local governments provided that they pay Metro fees on waste disposed. Metro shall allocate funds proportional to the population of the areas served.
3. any city with a population of 4,000 or greater that is within Washington, Clackamas, or Multnomah Counties and pays Metro fees on waste disposed may, at their own request, submit an AWRP and be eligible to receive a "Metro Challenge" grant.
4. related grant programs be similarly allocated. This includes multi-family recycling container funds and neighborhood cleanup funds.

#### **BUDGET IMPACT**

There is no direct budget impact to Metro for the current fiscal year, however, there will be an effect on the budgets of local governments. Granting funds for services to areas outside the Metro boundary will reduce per capita allocations within the boundary. A few local governments within the boundary will receive larger grants but the majority will be negatively impacted.

Also, the precedent of providing grants for areas outside the boundary will likely create pressures on Metro to increase the amount of recycling related grant appropriations in future years.

#### **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends approval of Resolution No. 92-1654

MH:ay  
KRAT\REPORTS\STAF0706.RPT



**METRO**

2000 S.W. First Avenue  
 Portland, OR 97201-5398  
 503/221-1646

# Memorandum

**Date:** October 9, 1991

**To:** Vickie Rocker, Public Affairs Director

**From:** Todd Sadlo, Senior Assistant Counsel *TS*

**Regarding:** METRO'S OBLIGATION TO PROVIDE PROGRAMS OUTSIDE ITS BOUNDARIES  
 Our file:

## Question Presented

By your memo dated August 26, 1991, to Dan Cooper, you stated that Waste Reduction Education and Promotion staff members are receiving requests from Washington and Clackamas counties to provide services to schools and other jurisdictions outside Metro's boundaries. You ask, "given the provisions of Metro's Code, Senate Bill 66 and other requirements that may apply, what is Metro's obligation to provide programs outside its boundaries?"

## Answer

Metro has no obligation to provide services outside its boundaries, but may do so in appropriate circumstances.

## Summary

Metro is not obligated by state or federal law to provide services to individuals, schools or jurisdictions outside Metro boundaries. Senate Bill 66, (1991 Oregon Laws, Ch. 385) does not obligate Metro to provide services outside of District boundaries. Under SB 66, Metro has been assigned responsibility for reporting to DEQ the waste reduction efforts of all jurisdictions within the tri-county area. However, the responsibility for reaching a specific recovery rate is the responsibility of "Clackamas, Multnomah and Washington counties, (and all jurisdictions within them) in aggregate." Absent intergovernmental agreements, no particular jurisdiction obtains authority over, or the responsibilities of, another due to this provision.

Section 9 of SB 66 states that the "opportunity to recycle" must be provided by "the city, county or metropolitan service district responsible for solid waste management," and that

Vickie Rocker  
Page 2  
October 9, 1991

violating jurisdictions may be subjected to civil penalties. To avoid possible penalties, it is important that all jurisdictions within Metro boundaries delineate the responsibilities of each party. This section does not, however, extend Metro's responsibility for providing a component of the "opportunity to recycle" to people or jurisdictions outside of its boundaries.

Metro has express authority to provide, outside of District boundaries, by contract, the same types of services that it is allowed to provide inside the District. Metro also has implied authority to make expenditures outside of the District, if such expenditures help it to carry out its statutory responsibilities. Public policy dictates obvious restraints on the amount of District revenue that should properly be spent outside the District.

### Discussion

According to information from the Metro Data Resource Center, 122,474 people live in the "outer tri-county area," between Metro's boundaries and the boundaries of the three counties. This represents 10.43 percent of the total tri-county population. There are eight incorporated jurisdictions in the outer tri-county area, containing 17.2 percent of its population.

### **Obligations Outside of District Boundaries**

Earlier memoranda from this Office and from the Planning Department have discussed Metro's authority in the outer tri-county area. A memorandum dated July 13, 1989, from Larry Shaw to Rich Carson explains that Metro's enforcement authority related to solid waste extends to its borders, unless that authority is extended through intergovernmental agreement with the local government exercising jurisdiction. In a memorandum dated August 16, 1989, to Rena Cusma, Rich Carson points out that the Regional Solid Waste Management Plan is a plan for the entire tri-county area. (See RSWMP, Section I, page i) The memo suggests that the DEQ/EQC could recognize Metro as the solid waste planning authority for the tri-county area, and could then take steps to enforce our plan in areas within the tri-county area that are outside Metro boundaries. It continues to be true that Metro is free to establish plans relating to the entire tri-county area (under ORS 268.390), but does not have clear authority to directly enforce such plans outside its borders.

For the most part, Metro's funding "obligations" are established by state or federal law, or by the Metro Council. Federal or state law may require that certain programs be provided, in effect forcing the Metro Council to commit funds to the program. In the absence of such mandates, Metro is free to budget funds for any purpose "authorized by law." (ORS 294.100) In general, this includes expenditures expressly authorized, as well as expenditures that aid the District in carrying out its statutory duties. (See Burt v. Blumenauer, 299 Or. 55, 699 P.2d 168 (1985)).

Vickie Rocker  
Page 3  
October 9, 1991

There do not appear to be any state or federal mandates in effect that require Metro to provide solid waste services to individuals, schools or other jurisdictions outside Metro boundaries. Senate Bill 66, (1991 Oregon Laws, Ch. 385) does not obligate Metro to provide services outside of District boundaries.

In its amendments to ORS 459.180, SB 66 requires that Metro submit an annual "opportunity to recycle" report on behalf of Multnomah, Washington and Clackamas counties and the cities within them. (1991 Oregon Laws, Section 11) However, the responsibility for reaching a specific recovery rate is assigned to "Clackamas, Multnomah and Washington counties, (and all jurisdictions within them) in aggregate." As with the other "wastesheds" described in SB 66, all jurisdictions within the wasteshed will hang together if recovery rates are not reached. Nevertheless, absent intergovernmental agreements, no particular jurisdiction obtains authority over, or the responsibilities of, another due to this provision.

Section 9 of SB 66 establishes who must provide the "opportunity to recycle." It provides that "the city, county or metropolitan service district responsible for solid waste management" is the responsible party. Inside its boundaries, Metro is directly responsible for the disposal component of solid waste management, but in the outer tri-county area it currently has only self-imposed planning responsibilities. Under Section 90 of the Act, a \$500 per day civil penalty can be imposed on a city, county or metropolitan service district that fails to provide the opportunity to recycle as required. To avoid possible penalties, it is important that all jurisdictions within Metro's boundaries delineate the responsibilities of each party. This section does not, however, extend Metro's responsibilities outside of its boundaries.

#### **Authority to make Expenditures Outside of District Boundaries**

A corollary question raised by your memo is whether Metro has the authority to make expenditures of District funds outside of the District. ORS 294.100 states that it is unlawful for any public official to expend public money "for any other or different purpose or purposes than authorized by law."

There is no per se rule that a jurisdiction may not make expenditures outside of its territorial limits. (15 McQuillan 39.21, n.118) Under Oregon law, the initial question is whether authority exists for the proposed expenditure. (Burt v. Blumenauer, *supra*)

In the absence of a charter, the source of Metro authority is statutory. Express authority has been granted to Metro to provide, "By contract, metropolitan and local aspects of services authorized under this chapter to areas outside the district boundaries." (ORS 268.030(d)) District programs to reduce the amount of recyclable materials being landfilled are essential to long term maintenance of landfills, and are generally within the power of the District.

Vickie Rocker  
Page 4  
October 9, 1991

(ORS 268.300, 268.317(1),(3)) Metro's implicit authority to educate the public regarding waste reduction and to promote waste reduction may properly be extended beyond its borders if that extension helps Metro carry out its statutory duties.

The funding of waste reduction and education programs in the outer tri-county area ~~are~~ is closely enough related to Metro's planning authority, waste reduction and landfill space conservation responsibilities to be for purposes "authorized by law." (Although precise figures are not available, many persons living in the outer tri-county area use and thereby impact Metro facilities and contribute to Metro solid waste programs through payment of user fees.) It appears therefore that District money may be spent in the outer tri-county area, on waste reduction education and promotion. The requirement that public money may only be spent for purposes "authorized by law" does not directly limit the amount of money that may be spent on a public purpose. Public policy, however, dictates obvious restraints on the amount of District revenue that should properly be spent outside the District.

1045

cc: Bob Martin  
Debbie Gorham  
Steve Kraten  
Marie Nelson  
Becky Crockett