 **Metro** | *Agenda*

Meeting: Metro Council
Date: Thursday, October 16, 2014
Time: 5 p.m.
Place: City of Oregon City, City Hall, Commission Chambers
625 Center Street
Oregon City, OR 97045

CALL TO ORDER AND ROLL CALL

1. **CITIZEN COMMUNICATION**
2. **CLACKAMAS COUNTY FILM & MEDIA INDUSTRY CLUSTER PRESENTATION** **Catherine Comer & Jamie Johnk, Clackamas County**
3. **MAIN STREET OREGON CITY** **Jonathan Stone, Main Street Oregon City**
4. **NATURAL AREAS PROGRAM HIGHLIGHTS IN OREGON CITY PRESENTATION** **Kathleen Brennan-Hunter, Metro**
5. **WILLAMETTE FALLS LEGACY PROJECT PRESENTATION** **Jim Desmond, Metro**
6. **CONSIDERATION OF COUNCIL MEETING MINUTES FOR OCTOBER 2, 2014**
7. **ORDINANCES – FIRST READ**
 - 7.1 **Ordinance No. 14-1344**, For the Purpose of Amending Metro Code Title V, Solid Waste, to Revise Chapter 5.06, Community Enhancement Programs
 - 7.2 **Ordinance No. 14-1345**, For the Purpose of Amending Metro Code Chapter 2.04 to Update Metro Contract Policies and Procedures
8. **CHIEF OPERATING OFFICER COMMUNICATION** **Martha Bennett, Metro**
9. **COUNCIL LIAISON UPDATES AND COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for October 16, 2014 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Thursday, October 16, 5:00 p.m.</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtnv.org <i>Ph:</i> 503-288-1515 <i>Date:</i> Sunday, October 19, 7:30 p.m. <i>Date:</i> Monday, October 20, 9 a.m.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 <i>Date:</i> Monday, October 20, 2 p.m.</p>	<p>Washington County and West Linn Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Friday, October 17, 12 p.m. <i>Date:</i> Sunday, October 19, 11 p.m.</p>
<p>Oregon City and Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site 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 the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities.

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Ogeysiiska takooris la'aanta ee Metro

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានក្បួនលើសអើងសម្រាប់សេវាសេវា www.oregonmetro.gov/civilrights។
បើលោកអ្នកត្រូវការការបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

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تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإبداء شكوى ضد التمييز، يرجى زيارة الموقع الإلكتروني www.oregonmetro.gov/civilrights. إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

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Agenda Item No. 6.0

**CONSIDERATION OF COUNCIL MEETING MINUTES FOR
OCTOBER 2, 2014**

Minutes

Metro Council Meeting
Thursday, October 16, 2014
City of Oregon City, City Hall, Commission Chambers

Agenda Item No. 7.1

Ordinance No. 14-1344, For the Purpose of Amending Metro
Code Title V, Solid Waste, to Revise Chapter 5.06, Community
Enhancement Programs

Ordinances – First Read

Metro Council Meeting
Thursday, October 16, 2014
City of Oregon City, City Hall, Commission Chambers

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE TITLE V, SOLID WASTE, TO REVISE)
CHAPTER 5.06, COMMUNITY)
ENHANCEMENT PROGRAMS)
ORDINANCE NO. 14-1344
Introduced by Chief Operating Officer Martha
Bennett in concurrence with Council
President Tom Hughes

WHEREAS, the Metro Solid Waste Code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Solid Waste Code Chapter 5.06 contains the requirements for Community Enhancement Programs; and

WHEREAS, under the current version of Chapter 5.06, a solid waste enhancement fee of \$.50 is collected on waste at three transfer stations in the region – Metro Central, Metro South, and Forest Grove; and

WHEREAS, the regional solid waste system has grown and changed significantly since 1990; and

WHEREAS, the Chief Operating Officer has identified the need to update Metro’s community enhancement program to include additional eligible facilities, provide a clear process for collecting and distributing the fee, increase the fee to account for inflation, and establish an enhancement program framework for the future; and

WHEREAS, to achieve the above-referenced objectives, it is necessary to revise Metro Code Chapter 5.06, Community Enhancement Programs, to repeal the language and replace it with updated language; and

WHEREAS, the Chief Operating Officer has developed administrative procedures to provide detail on the implementation of Metro Code Chapter 5.06 as revised; and

WHEREAS, the Chief Operating Officer had prepared a draft intergovernmental agreement to use where local governments administer the solid waste community enhancement program; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The language of Metro Code Chapter 5.06 “Community Enhancement Programs” is repealed and replaced with Metro Code Chapter 5.06 “Solid Waste Community Enhancement Program” as set forth in the attached Exhibit A; and
2. The Chief Operating Officer shall issue administrative procedures in a form substantially similar to Exhibit B; and

3. Where a local government administers a community enhancement program, the Chief Operating Officer shall enter into an intergovernmental agreement substantially similar to the agreement attached as Exhibit C.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Alexandra Eldridge, Recording Secretary

Alison R. Kean, Metro Attorney

BM:bjl
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CHAPTER 5.06

SOLID WASTE COMMUNITY ENHANCEMENT PROGRAM

- 5.06.010 Policy and Purpose
- 5.06.020 Authority and Jurisdiction
- 5.06.030 Amount of Enhancement Fee
- 5.06.040 Enhancement Fee Requirements and Exemptions for Solid Waste Facilities
- 5.06.050 Establishment and Administration of a Solid Waste Community Enhancement Program
- 5.06.060 Solid Waste Community Enhancement Program Advisory Committee
- 5.06.070 Eligibility Criteria for Solid Waste Community Enhancement Projects
- 5.06.080 Goals for Solid Waste Community Enhancement Projects
- 5.06.090 Compliance and Dispute Resolution
- 5.06.100 Administrative Procedures

5.06.010 Policy and Purpose

It is the policy of Metro to establish and implement a solid waste community enhancement program at all eligible solid waste facilities in the Metro region. The purpose of the program is to rehabilitate and enhance the area around the facility from which the fees are collected.

5.06.020 Authority and Jurisdiction

Metro's solid waste authority, including the authority to collect an enhancement fee and establish and implement a solid waste community enhancement program, is established under the Oregon Constitution, ORS Chapters 268 and 459, and the Metro Charter.

5.06.030 Amount of Enhancement Fee

Solid waste facilities subject to this chapter shall collect an amount not exceeding \$1.00 on each ton of putrescible solid waste delivered to the facility and remit the funds to Metro for use as a solid waste community enhancement fee. Eligible solid waste facilities may also collect an amount not exceeding \$1.00 on each ton of non-putrescible waste delivered to the facility when the Metro Chief Operating Officer and facility owner determines it is in the public interest. Metro will set the rate of the enhancement fee under Metro Code Section 5.02.020.

5.06.040 Enhancement Fee Requirements and Exemptions for Solid Waste Facilities

- a) Solid waste facilities that operate all or in part as disposal sites, transfer stations, reload facilities, compost facilities, and energy recovery facilities, as defined by Chapter 5.00, shall collect and remit an enhancement fee under this Chapter.
- b) Where only a portion of a solid waste facility's operations qualify for collection of a fee under subsection (a), the facility shall collect and remit an enhancement fee only on the solid waste it accepts as an eligible facility.
- c) Notwithstanding section (a) above, yard debris reload and yard debris composting facilities are not subject to the requirements of this Chapter.

5.06.050 Establishment of a Solid Waste Community Enhancement Program

- a) Upon approval of a license or franchise application, the Metro Chief Operating Officer will inform a solid waste facility of the requirement to collect a solid waste community enhancement fee. The Metro Chief Operating Officer will require collection of the fee in the facility license or franchise.
- b) The Metro Chief Operating Officer will inform the local government where the facility is located that a solid waste community enhancement fee will be collected by the facility and remitted to Metro.

- c) The solid waste community enhancement program will be administered by (1) Metro directly or through a contract; or (2) the local government where the facility is located, so long as Metro and the local government agree on the terms of an intergovernmental agreement.
- d) The Metro Councilor for the district where the facility is located shall be eligible to participate in the solid waste community enhancement program, including without limitation participation as a co-chair and voting member of the community enhancement committee, regardless of whether Metro or the local government, through an intergovernmental agreement, administers the program.
- e) The Metro Chief Operating Officer will establish a timeline for implementation of a solid waste community enhancement program.
- f) The funds collected and remitted to Metro shall be used for solid waste community enhancement projects chosen by a community enhancement committee and may include administrative costs in an amount set by the Metro Chief Operating Officer.

5.06.060 Solid Waste Community Enhancement Program Advisory Committee

A solid waste community enhancement program established under this section shall have a solid waste community enhancement committee. The committee is responsible for implementation of the program, including without limitation:

- a) Establishment of the enhancement area boundary.
- b) Creation of committee bylaws.
- c) Development of a process for soliciting and selecting solid waste community enhancement projects.
- d) Compliance with the eligibility criteria set forth in Section 5.06.070 and the goals set forth in Section 5.06.080 and creation of additional criteria and goals where needed.
- e) Annually review enhancement program revenue estimates provided by Metro staff and propose how these funds will be allocated for the upcoming fiscal year or funding cycle.
- f) Presentation of an annual report to the Metro Council on all projects approved for funding.
- g) Maintenance of complete and accurate records related to the administration of the program, submitted to Metro annually.

5.06.070 Eligibility Criteria for Solid Waste Community Enhancement Projects

A solid waste community enhancement project must meet the following criteria to be eligible for funding. A solid waste community enhancement committee may apply more restrictive eligibility criteria:

- a) The project must be located in the solid waste community enhancement area boundary as specified by the solid waste community enhancement committee or the project must benefit individuals or programs located inside the solid waste community enhancement area boundary.
- b) The project applicant must be
 - (1) A non-profit organization, including without limitation a neighborhood association or charitable organization with 501(c)(3) status under the Internal Revenue Service; or
 - (2) A school or institution of higher learning; or
 - (3) A local government, local government advisory committee, department or special district provided that they include documented support from the local government executive officer.
- c) The project must not be used to replace any other readily available source of federal, state, local or regional funds.
- d) The project must not promote or inhibit religion.
- e) The project must not discriminate based on race, ethnicity, age, gender, or sexual orientation.
- f) If the project is located on private land, the project application must establish a clear public benefit and must document landowner permission.

5.06.080 Goals for Solid Waste Community Enhancement Projects

Projects shall meet one or more of the following goals and solid waste community enhancement committees shall give priority to projects that best meet with goals. A solid waste community enhancement committee may adopt additional funding goals. The project will:

- a) Improve the appearance or environmental quality of the community.
- b) Reduce the amount or toxicity of waste.
- c) Increase reuse and recycling opportunities.
- d) Result in rehabilitation or upgrade of real or personal property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code.
- e) Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forest lands and marine areas, and/or improve the public awareness and the opportunities to enjoy them.
- f) Result in improvement to, or an increase in, recreational areas and programs.
- g) Result in improvement in safety.
- h) Benefit youth, seniors, low income persons or underserved populations.

5.06.090 Compliance and Dispute Resolution

The Metro Chief Operating Office is responsible for ensuring compliance with this Chapter.

5.06.100 Administrative Procedures

- a) The Metro Chief Operating Office may issue administrative procedures to implement this chapter.
- b) The Metro Chief Operating Officer shall issue or substantially amend the administrative procedures for this chapter only after providing public notice and the opportunity to comment on the proposed language.
- c) The Metro Chief Operating Officer may hold a public hearing on any proposed new administrative procedures or on any proposed amendment to any administrative procedure if the Metro Chief Operating Officer determines that there is sufficient public interest.



**SOLID WASTE
ADMINISTRATIVE PROCEDURES**

Published:

**Administration of Metro Code Chapter 5.06
Solid Waste Community Enhancement Program**

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Policy and Legal Authority

- 1.1 Policy and Legal Authority.
 - 1.1.1 Metro's solid waste planning and implementing authority is established under the Metro Charter, the Constitution of the State of Oregon, and ORS Chapters 268 and 459.
 - 1.1.2 Metro's solid waste community enhancement program is established based on state law (ORS 459.280 and 459.284).
 - 1.1.3 All solid waste administrative procedure shall be subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this administrative procedure and performance standard.
 - 1.1.4 Administrative procedures are adopted, as necessary, to implement the provisions of Metro Code Chapter 5.06 Solid Waste Community Enhancement Program.
 - 1.1.5 The purpose of these administrative procedures is to protect and preserve the health, safety and welfare of the Metro residents; to protect and preserve the local environment, to implement cooperatively a solid waste community enhancement fee program; and to reduce the volume and toxicity of waste disposed through source reduction, reuse, recycling, and composting.
 - 1.1.6 These administrative procedures and performance standards are issued by the Metro Chief Operating Officer ("Metro COO") pursuant to Metro Code Section 5.06.100.



Application and Purpose of Chapter 5.06

2.1 Application of Chapter 5.06

- 2.1.1 Chapter 5.06 shall apply to all eligible solid waste facilities within Metro's jurisdictional boundary that are licensed or franchised by Metro pursuant to Metro Code Chapter 5.01.
- 2.1.2 Metro Code Chapter 5.06 shall apply to all eligible solid waste facilities within Metro's jurisdictional boundaries that are owned by Metro.

2.2 Purpose

- 2.2.1 Metro has long recognized that certain solid waste facilities may present economic, environmental, health or other impacts on local host communities.
- 2.2.2 Metro's solid waste community enhancement program provides funds that are used for community enhancement grant projects located in the vicinity of each eligible solid waste facility. Funds are to be used for the rehabilitation and enhancement of the area in and around the facility from which the fees are collected, as determined by each solid waste community enhancement committee established in accordance with Metro Code Chapter 5.06.



Program Exempt and Program Eligible Facilities

3.1 Exempt Facility Types and Ineligible Solid Waste Activities

3.1.1 The following types of facilities are not subject to Metro Code Chapter 5.06.

3.1.1.1 Reuse or recycling facilities that (A) exclusively receive non-putrescible source-separated recyclable materials and (B) reuse or recycle such materials, or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.

3.1.1.2 Material recovery facilities that (A) exclusively receive non-putrescible solid waste and conduct material recovery on such waste, and may also (B) receive non-putrescible source-separated recyclable materials and reuse or recycle such materials or transfer, transport or deliver such materials to a person or facility that will reuse or recycle them.

3.1.2 The following types of solid waste activities are not subject to Metro Code Chapter 5.06.

3.1.2.1 Yard debris reloading.

3.1.2.2 Yard debris composting.

3.1.2.1 Material recovery on non-putrescible waste, except as provided in Section 3.3.

3.1.2.2 Recycling or reuse of non-putrescible materials.

3.2 Program Eligibility by Facility Type and Solid Waste Activity

3.2.1 Eligible facility types include, but are not limited to, the following:

3.2.1.1 Disposal sites.

3.2.1.2 Transfer stations.

3.2.1.3 Reload facilities.

3.2.1.4 Energy recovery facilities.

3.2.1.5 Compost facilities.

3.2.2 Eligible solid waste activities include, but are not limited to, the following:

3.2.2.1 Processing, reloading or transfer of putrescible waste (includes food waste and yard debris mixed with food waste).

3.2.2.2 Composting or any other processing of putrescible waste (includes food waste and yard debris mixed with food waste).

3.2.2.1 Energy recovery (including anaerobic digestion of putrescible waste to include food waste and yard debris mixed with food waste).

3.2.2.2 Disposal (includes landfilling and incineration).

3.3 Special conditions related to non-putrescible waste activities at an eligible facility

3.3.1 Non-putrescible waste that is subject to material recovery and delivered to a transfer station or other eligible solid waste facility shall be subject to Metro Code Chapter 5.06 when a facility owner/operator and the Metro COO determines it to be in the public interest.

3.3.2 For the purpose of this section the public interest shall include, but is not limited to: A) the historical program relationship established between a facility and host local government or community (e.g. Metro Central Transfer Station and Metro South Transfer Station), or B) such conditions necessary to operate a new facility, or at an existing facility conducting a new solid waste activity that is subject to Metro Code Chapter 5.06 and Metro Code Chapter 5.01.



Establishing a Solid Waste Community Enhancement Program

The purpose of this section is to establish a general process for Metro and a host local government to implement and administer a solid waste community enhancement program at an eligible solid waste facility.

4.1 New Facilities Without a Solid Waste Community Enhancement Program

4.1.1. Notification to a host local government.

Upon receipt of a complete Metro license or franchise application for a new eligible solid waste facility that is subject to this chapter, or a new eligible solid waste activity at an existing facility, the Metro COO shall notify the host local government that it qualifies for the solid waste community enhancement program.

4.1.2 Coordination with Metro and the host local government.

4.1.2.1 As part of Metro's license and franchise review or renewal process, the Metro COO will notify the local government hosting an eligible solid waste facility that a solid waste community enhancement program shall be established.

4.1.2.2 The Metro COO shall provide the host local government with an opportunity to enter into an intergovernmental agreement to administer the program. As provided in Section 5.1, Metro and the local government may consider other approaches to administer the program if an intergovernmental agreement cannot be established.

4.1.2.3 A host local government shall not be excluded or limited from participating in Metro's solid waste community enhancement program for an eligible solid waste facility, nor shall Metro be limited in implementing a solid waste community enhancement program when a host local government adopts: (1) a tax or charge that imposes a fee on haulers of commercial solid waste or other users of the facility; (2) any tax duly adopted by the local government which is generally applicable for all persons doing business in boundaries of the local government; or (3) any franchise fee collected by the local government from haulers collecting solid waste within the boundaries of the local government,

4.1.2.4 Metro shall not establish a solid waste community enhancement program at a solid waste facility if the respective host local government has implemented and is actively administering a solid waste community enhancement program

for that solid waste facility under separate authority of ORS 459.284 and 459.290.

- 4.1.2.5 Prior to establishing a solid waste community enhancement program at an eligible solid waste facility, the Metro COO shall inform the Metro Council President and the Metro Councilor whose district hosts the solid waste facility of the decision to establish a solid waste community enhancement program and provide the Metro Councilor with the opportunity to chair, co-chair, or otherwise participate in the solid waste community enhancement committee at the option of the Metro Councilor.

4.2 Programs Established Prior to January 1, 2014

Solid waste community enhancement programs that were established prior to January 1, 2014 and are administered through an intergovernmental agreement with a host local government shall be updated and reissued with an effective date of July 1, 2015 to provide consistency with all applicable provisions in Metro Code Chapter 5.06 and these administrative procedures.

4.3 Existing Eligible Facility Without a Solid Waste Community Enhancement Program

The Metro COO shall notify a host local government of an existing eligible solid waste facility within its jurisdictional boundaries regarding a timeframe and process for the implementation and administration of a solid waste community enhancement program in accordance with this chapter.

4.4 Funding

- 4.4.1 Except as provided in Section 3.3, solid waste facilities subject to Metro Code Chapter 5.06 shall collect an amount not exceeding \$1.00 on each ton of putrescible solid waste delivered to the facility and remit the funds to Metro for use as a solid waste community enhancement fee.
- 4.4.2 Metro may periodically adjust the solid waste community enhancement fee based on the Consumer Price Index (CPI) up to the maximum amount set forth in ORS 459.284.
- 4.4.3 On a quarterly basis, Metro will remit the solid waste community enhancement funds to each host local government with a solid waste community enhancement program established by intergovernmental agreement with Metro in accordance with Metro Code Chapter 5.06.
- 4.4.4 Projects funded from a solid waste community enhancement fund will be made with the positive vote of a majority of the solid waste community enhancement committee created to administer such a program. Frequency of funding projects is also to be determined by the committee.



Establishing a Solid Waste Community Enhancement Committee

5.1 Establishing a Solid Waste Community Enhancement Committee

- 5.1.1 For the purpose of establishing a solid waste community enhancement committee, the Metro COO shall coordinate with the host local government and the Metro Councilor whose district hosts the eligible solid waste facility.
- 5.1.2 Metro may designate a solid waste community enhancement committee in accordance with Metro Code Chapter 2.19.
- 5.1.3 The Metro COO may enter into an intergovernmental agreement to designate the host local government as the solid waste community enhancement committee. Such a committee shall consist of at least five members and may include the Metro Councilor whose district hosts the solid waste facility (with the option to serve as co-chair to the committee), and three citizen representatives appointed by the mayor, city manager, or county administrator. In lieu of appointment of such a committee, the local government may designate itself and the Metro Council member representing the district that hosts the solid waste facility (with the option to serve as co-chair to the committee) to perform the function of such committee. The term for such intergovernmental agreements should be established to coincide with the term set forth in the subject facility's Metro license or franchise.
- 5.1.4 The Metro COO may enter into an agreement with a recognized non-profit community organization including, but not limited to, a neighborhood district coalition, neighborhood association, committee for citizen involvement or other similar community-based group having a legally constituted active board of directors. The designated solid waste community enhancement committee shall consist of at least five members, and may include the board of directors, the Metro Councilor whose district hosts the solid waste facility, and any number of citizen representatives appointed by the Metro Councilor whose district hosts the solid waste facility.
- 5.1.5 The Metro COO shall establish the terms and conditions of the agreements for the establishment and administration of a solid waste community enhancement committee as provided in Metro Code Chapter 5.06.

5.2 Administration

- 5.2.1 The administration and distribution of funds from a solid waste community enhancement program shall be subject to the approval of a solid waste community enhancement committee.

- 5.2.2 Each solid waste community enhancement committee or host local government shall promote, advertise, solicit and accept requests for proposals or projects to be funded from the solid waste community enhancement fund within its solid waste community enhancement program area boundary.
- 5.2.3 Either Metro or the host local government shall prepare and publish an annual budget for the solid waste community enhancement account. Each budget shall be subject to review and comment by the solid waste community enhancement committee and shall, at a minimum, identify the proposed allocation of grant funding and administrative costs for the upcoming fiscal year, except that a solid waste community enhancement committee may propose that there be no expenditure of funds during a fiscal year for up to a maximum of three consecutive fiscal years, or longer if approved by the Metro COO or the community enhancement committee.
- 5.2.4 Either Metro or the host local government shall segregate solid waste community enhancement funds by establishing a separate set of accounts for the revenues and expenditures of the solid waste community enhancement program to ensure that only committee-authorized plans, projects, and programs receive funding. Funds not expended during a budget year shall be carried forward to each subsequent year.
- 5.2.5 Each solid waste community enhancement committee or host local government shall publish and follow the project funding criteria in Section 6.1 and goals in Section 6.2 for selecting projects or programs to fund during the fiscal year. A solid waste community enhancement committee may request that Metro modify or change the criteria. A community enhancement committee may publish and follow more restrictive program funding criteria, and may adopt and publish additional goals and/or guidelines.
- 5.2.6 Each solid waste community enhancement committee or host local government shall, provide an annual written report to the Metro COO regarding all expenditures from the enhancement fund and shall itemize all enhancement fund expenditures including the amount of funds expended on each project under its jurisdiction including the funding balance by October 1 of each year.
- 5.2.7 Each solid waste community enhancement committee, upon request by the Metro COO, shall provide an oral presentation to the Metro Council at a time such presentation can be scheduled at a Metro Council meeting.
- 5.2.8 If administrative costs incurred by Metro or the host local government to administer the solid waste community enhancement program are reimbursed from the solid waste community enhancement funds as provided in Section 5.3. The annual report required in Section 5.2.6 shall include an accounting of the funds expended for program administration.
- 5.2.9 Each solid waste community enhancement committee will provide an open public process for project/program review and approval.

5.3 Administrative Cost Reimbursement

- 5.3.1 A solid waste community enhancement fund may be used to help defray the direct costs incurred to administer a solid waste community enhancement program by Metro or a host local government (e.g., staff time and materials necessary to set up and administer a solid waste community enhancement program).
- 5.3.2 No more than twenty percent (20%), and not more than \$50,000 of a solid waste community enhancement fund that is collected during a program funding cycle may be used to pay for costs directly associated with administering a solid waste community enhancement program. Administrative costs in excess of these amounts shall not be borne by the solid waste community enhancement fund.

5.4 Recordkeeping and Audits

- 5.4.1 Each solid waste community enhancement committee or host local government shall maintain complete and accurate records related to the administration of the program and funds expended under its jurisdiction. The committee shall make these records available to Metro for inspection, auditing, and copying.
- 5.4.2 Metro may require, at Metro's expense, that a solid waste community enhancement committee submit to an independent audit conducted by an auditor chosen by Metro. The audit shall address only those matters reasonably related to the solid waste community enhancement program fund and its administration.



METRO

**SOLID WASTE
ADMINISTRATIVE PROCEDURE**

**AP NO. 5.06
Section 6**

Eligibility Criteria and Goals

6.1 Eligibility Criteria for Funding Solid Waste Community Enhancement Projects

- 6.1.2 To qualify for funding, a proposed solid waste community enhancement project shall meet the following funding criteria. A designated solid waste community enhancement committee may adopt and publish more restrictive eligibility criteria.
- 6.1.2.1 Be within the solid waste community enhancement area boundaries specified by the designated solid waste community enhancement committee or benefit individuals or programs located inside the community enhancement area boundary.
 - 6.1.2.2 Be from non-profit organizations including, but not limited to, neighborhood associations or charitable organizations with 501(c)(3) status under the Internal Revenue Service, or
 - 6.1.2.3 Be from a school, or institution of higher learning, or
 - 6.1.2.4 Be from a local government, local government advisory committee, department or special district provided that they include documented support from the local government executive officer, and, as a guideline, the requested funding not exceed 15% of an annual solid waste community enhancement program budget or funding cycle, or more as otherwise provided in an intergovernmental agreement between Metro and a host local government.
 - 6.1.2.5 Not replace another readily available source of federal, state, regional or local funds.
 - 6.1.2.6 All applicants must go through the official application, review and approval process established by the solid waste community enhancement committee.
 - 6.1.2.7 Not promote or inhibit religion.
 - 6.1.2.8 Not fund organizations, projects or programs that discriminate based upon race, ethnicity, age, gender or sexual orientation.
 - 6.1.2.9 Be able show a clear public benefit if projects are on private land.

6.1.2.10 Have written landowner permission at the time of application.

6.2 Goals for Funding Solid Waste Community Enhancement Projects

- 6.2.1 Projects shall meet one or more of the following goals. Priority will be given to projects that best meet the goals and which offer benefits to the areas and populations most directly impacted by the solid waste facility. A designated solid waste community enhancement committee may adopt and publish additional funding goals. The order of the following listing does not imply ranking or weighting. Projects should:
- 6.2.1.1 Result in an improvement to the appearance or environmental quality of the area/neighborhood within the enhancement area boundaries.
 - 6.2.1.2 Result in the reduction in the amount or toxicity of waste, or increase reuse and recycling opportunities within the enhancement area boundaries.
 - 6.2.1.3 Result in rehabilitation, upgrading or direct increase in the real or personal property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code within the enhancement area boundaries.
 - 6.2.1.4 Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forest lands and marine areas within the enhancement area boundaries, and/or improve the public awareness and the opportunities to enjoy them.
 - 6.2.1.5 Result in improvement to, or an increase in, recreational areas and programs within the enhancement area boundaries.
 - 6.2.1.6 Result in improvement in the safety of the area within the enhancement area boundaries.
 - 6.2.1.7 Result in projects that benefit youth, seniors, low income persons or underserved populations within the enhancement area boundaries.



Dispute Resolution

- 7.1 The Metro COO shall, in good faith, attempt to negotiate resolutions to all disputes arising out of the implementation and administration of Metro Code Chapter 5.06 and these administrative procedures. Disputes arising out of or relating to the implementation or administration of Metro Code Chapter 5.06 or these administrative procedures shall be resolved as follows:
- 7.1.1 The Metro COO will review the matter or dispute to determine if there is sufficient reason or cause to take action.
 - 7.1.2 When warranted, the Metro COO will notify the host local government and the solid waste community enhancement committee, the Council President and the corresponding councilor whose district hosts the solid waste facility in writing of the dispute or alleged breach. The notice shall describe the nature of the dispute or alleged breach. The notice shall prescribe a resolution process and include a date by which the host local government or solid waste community enhancement committee must respond to the Metro COO's notice.
 - 7.1.3 Within the period specified by the Metro COO, the host local government or solid waste community enhancement committee shall respond to the notice provided by the Metro COO regarding the dispute. Such response may include information that proves that the dispute or alleged breach has been resolved, or that diligent efforts to correct the dispute or alleged violation is being made and is likely to succeed in a reasonable period of time.
 - 7.1.4 If the Metro COO determines that the dispute or alleged violation has not or cannot be resolved within the manner prescribed and in a reasonable period of time, the Metro COO may take further action, including the modification or termination of an intergovernmental agreement to ensure that the dispute or breach is resolved within a reasonable period of time.

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600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Intergovernmental Agreement

METRO CONTRACT NO. _____

DRAFT INTERGOVERNMENTAL AGREEMENT TEMPLATE

THIS AGREEMENT, entered into under the provisions of ORS Chapter 190, is between Metro, a Metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and the (*insert name of City or County*) an Oregon municipal corporation, whose address is (*insert address of City or County*).

Section 1: Purpose

The purpose of this Agreement is to implement the provisions of Metro Code Chapter 5.06 related to the establishment of a Solid Waste Community Enhancement Program (“program”) for (*name of facility*).

Section 2: Term

This Agreement begins on July 1, 2015 and terminates on June 30, XXXX. The parties may agree to terminate this Agreement earlier. Metro may terminate this Agreement under Section 8. The parties may extend the term of the Agreement by written amendment.

Section 3: Collection and Distribution of Community Enhancement Fee Funds

- A. Under the terms of Metro *License/Franchise No. XXX*, Metro requires (*insert name of facility*) (“facility”) to collect and remit to Metro a solid waste community enhancement fee of \$1.00 per ton for all putrescible solid waste, including yard debris mixed with food waste, received at the facility.
- B. Metro will send to *City/County* the solid waste community enhancement fee funds (“funds”) collected in A above on January 1, April 1, July 1, and September 1 of each year this Agreement is in effect.
- C. At the request of *City/County*, Metro will provide quarterly reports of activity at the facility, including data on (1) the gross weight of solid waste received in vehicles that are weighed as they enter the facility; (2) the number of other vehicles assessed fees on an estimated volume basis; and (3) the tonnage of solid waste transferred from the facility.
- D. At the request of *City/County*, Metro will assist with the establishment and implementation of the program.

Intergovernmental Agreement

Section 4: City/County Obligations

- A. City/County shall establish and implement a program that complies with Metro Code Chapter 5.06 (Exhibit A), and Metro Administrative Procedures (Exhibit B). Exhibits A and B are incorporated into this Agreement and are binding on City/County.
- B. City/County shall establish a solid waste community enhancement program advisory committee (“committee”) that complies with Exhibit A and Exhibit B. City/County shall ensure that the committee fulfills its duties, including without limitation establishment of a solid waste community enhancement area boundary and compliance with Exhibits A and B. The committee membership shall include the mayor or chief executive officer of the City/County, three citizens of City/County appointed by the Mayor, and the Metro Councilor whose district includes City/County. City/County may include additional members at its discretion. OR The City/County and the Metro Councilor whose district includes City/County shall perform the functions of the committee.
- C. City/County shall create a separate program account for deposit of the funds collected under Section 3. City/County shall ensure that only projects chosen by the committee receive these funds. City/County shall carry forward any funds not expended during a budget year to the following year. City/County shall not use the funds for general government purposes.
- D. City/County shall promote the program within the solid waste community enhancement program boundary area. City/County shall publish information about the program, including without limitation funding criteria, goals, application process, and timeline, on its website and in the local newspaper.
- E. City/County shall require the committee to provide an open public process for project review and selection.
- F. City/County shall require the committee to prepare an annual budget. The budget shall identify the expected distribution of funds for projects during a fiscal year. The committee may propose that there be no distribution of funds during a fiscal year, for a maximum of three consecutive years.
- G. City/County shall ensure funding decisions are made by a majority vote of the committee.
- H. City/County shall provide all necessary support to administer the program. City/County may charge the fund no more than 20% of the annual budget, not to exceed \$50,000, for

Intergovernmental Agreement

the direct costs of administering the program. Direct costs include staff time and materials.

- I. No later than October 1 of each year, **City/County** shall provide a written report to Metro on the program that includes revenues and expenditures of the program funds and the fund balance carried forward, if any. The report also shall include an accounting of any funds expended for program administration.
- J. **City/County** shall maintain complete and accurate records related to the administration of the program and all funds expended and carried forward, and shall make these records available to Metro for inspection, auditing and copying.

Section 5: Notices

Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals:

For City/County:

Office of **City/County**: Counsel

For Metro:

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

Management of this Agreement will be conducted by the following designated Project Managers:

For City/County:

For Metro:

Heather Nelson Kent
Metro
600 NE Grand Ave.
Portland, OR 97232
(503) 797-XXXX

City/County may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Manager by written notice to **City/County**.

Section 6: Indemnification

Subject to the limits of the Oregon Constitution and Oregon Tort Claims Act, **City/County** shall hold harmless Metro, its officers and employees from any claims or damages or property or injury to persons or for any penalties or fines, for **City/County**'s actions under this Agreement.

Section 7: Dispute Resolution

The parties shall attempt to negotiate resolutions to all disputes arising out of this Agreement.

Intergovernmental Agreement

Section 8: Termination

During the term of this Agreement, each party retains the right to terminate the Agreement as of any anniversary date by written notice delivered to the other party no later than 60 days prior to the anniversary date. The parties may terminate this Agreement at any time for nonperformance of any material term thereof.

Section 9: Insurance

City/County agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. **City/County** also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

Section 10: Integration and Amendment

This writing contains the entire Agreement between the parties, and may only be amended by written instrument, signed by both parties.

Section 11: Severability

If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.

Section 12: Notice of Default

If a party determines that a default exists, that party shall give thirty days' written notice to the other party, which notice shall specify the nature of the default and shall give the other party an opportunity to cure the default before taking any further action.

City/County

Metro

By: _____

By: _____

Print name and title

Print name and title

Date

Date

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 14-1344, FOR THE PURPOSE OF AMENDING METRO CODE TITLE V, SOLID WASTE, TO REVISE CHAPTER 5.06, COMMUNITY ENHANCEMENT PROGRAMS

Date: October 1, 2014

Prepared by: Bill Metzler 503-797-1666

Adoption of Ordinance No. 14-1344 will update Metro's existing solid waste community enhancement program in Metro Code Chapter 5.06, which has not been comprehensively revised since its inception in 1988. Under the *existing* program, a fee (\$0.50 per ton) is collected on solid waste at Metro Central Transfer Station (Portland), Metro South Transfer Station (Oregon City) and the Forest Grove Transfer Station. The funds are used for community enhancement projects in the vicinity of these solid waste facilities. Effective July 1, 2015, the proposed code revisions will increase the fee to the state maximum of \$1 per ton, and extend the program to all solid waste facilities in the region that qualify under Metro's updated program.

BACKGROUND

The region's solid waste system relies on many different facilities to process, transfer, and recover more value from discarded items and reduce what we send to landfills. Metro has long recognized that certain solid waste facilities may present economic, environmental, health or other impacts on local host communities. For more than 25 years, Metro's solid waste community enhancement program has reinvested millions of dollars in communities that host these important facilities.

Metro's original community enhancement program was established based on state law adopted in 1987 (ORS 459.284). Metro's community enhancement policy was adopted as part of the Regional Solid Waste Management Plan (RSWMP) in 1988 and in Metro Code Chapter 5.06 in 1990. Since the late 1980s, Metro has collected \$0.50 per ton on solid waste delivered to Metro's two public transfer stations, the private Forest Grove Transfer Station (owned by Waste Management), and at other facilities until they were closed long ago (St. Johns Landfill and Riedel Composter). The funds have been used to provide grants for projects that are identified by local communities and meet funding guidelines. The \$0.50 fee has not increased since the program's inception, nor has the fee been applied to several new facilities that were established as the region's waste system evolved (with the exception of the proposed Columbia Biogas food waste digestion facility in Northeast Portland that the Metro Council authorized in 2010 but has not yet been built).

The code revision proposal brought forward by this ordinance is the culmination of work directed by the Metro Council and conducted by Metro solid waste and grants administration staff. The process involved many stakeholders that included the Solid Waste Alternatives Advisory Committee, solid waste facility owners, local government solid waste staff, elected officials that host solid waste facilities in their jurisdictions, and community organizations near certain solid waste facilities. An internal project team was assembled to help review Metro's existing solid waste community enhancement program (established in Metro Code Chapter 5.06), and provide recommendations to Metro Council on how the program can be improved to meet current and future needs of the evolving solid waste system. The proposed program updates include issuance of administrative procedures and an intergovernmental agreement template to help guide program implementation (see Exhibits B and C to Ordinance No. 14-1344).

This project supports Metro's efforts in working toward the region's [six desired outcomes](#), specifically that future generations enjoy **clean air, water and healthy ecosystems**, that people live, work and play in **vibrant communities**, and that **equity** exists relative to the benefits and burdens of growth and change to the region's communities.

Legal Authority

Metro's existing policy related to its solid waste community enhancement program, although not explicitly stated in Metro Code, has been based on state law (ORS 459.280 and 459.284) which, in summary:

- Identifies the types of solid waste facilities that are *eligible and ineligible* from the program.
 - ✓ *Eligible* facilities include landfills, transfer stations, energy recovery and compost facilities.
 - ✓ *Ineligible* facilities are reuse, recycling and material recovery facilities.
- Specifies *not more than \$1.00 per ton* can be collected on the solid waste delivered to a facility.
- Requires the fees be used for the *rehabilitation and enhancement* of the area around the facility from where the fee is collected.
- Requires that an advisory committee ("community enhancement committee") be established to select plans and projects for funding.

While Metro has independent charter authority to develop its own program apart from the state law, staff recommended early on in the process that the program should continue to rely on state law as its legal basis going forward and state that intent explicitly in Metro Code.

Existing Metro Policy

Metro's existing solid waste community enhancement policy was originally established in the Regional Solid Waste Management Plan (RSWMP) in 1988 (and all updates) and in Metro Code Chapter 5.06 in 1990.

RSWMP Policy 11.0 - Host Community Enhancement (2008 update):

Any community hosting a solid waste "disposal site" as defined by ORS 459.280 shall be entitled to a Metro-collected fee to be used for the purpose of community enhancement.

Metro Code 5.06.010 - Policy and Purpose (1990):

It is the policy of Metro to apportion an enhancement fee of \$.50 per ton on solid waste delivered to each site within Metro and dedicate and use the monies obtained for enhancement of the area in and around the site from which the fees have been collected.

Metro's Existing Program

Solid waste community enhancement fees (\$0.50 per ton) are currently collected at each of the three active solid waste facilities listed below. Funds are used for annual community enhancement grant projects within the boundaries of the designated enhancement area of the host community. Metro's existing program has been administered in two ways: 1) directly by Metro through a Metro-administered community enhancement committee, or 2) directly by a local government through an intergovernmental agreement (IGA) between Metro and the host local government. Each program has a community enhancement committee that helps promote, solicit, select, and evaluate projects for funding¹:

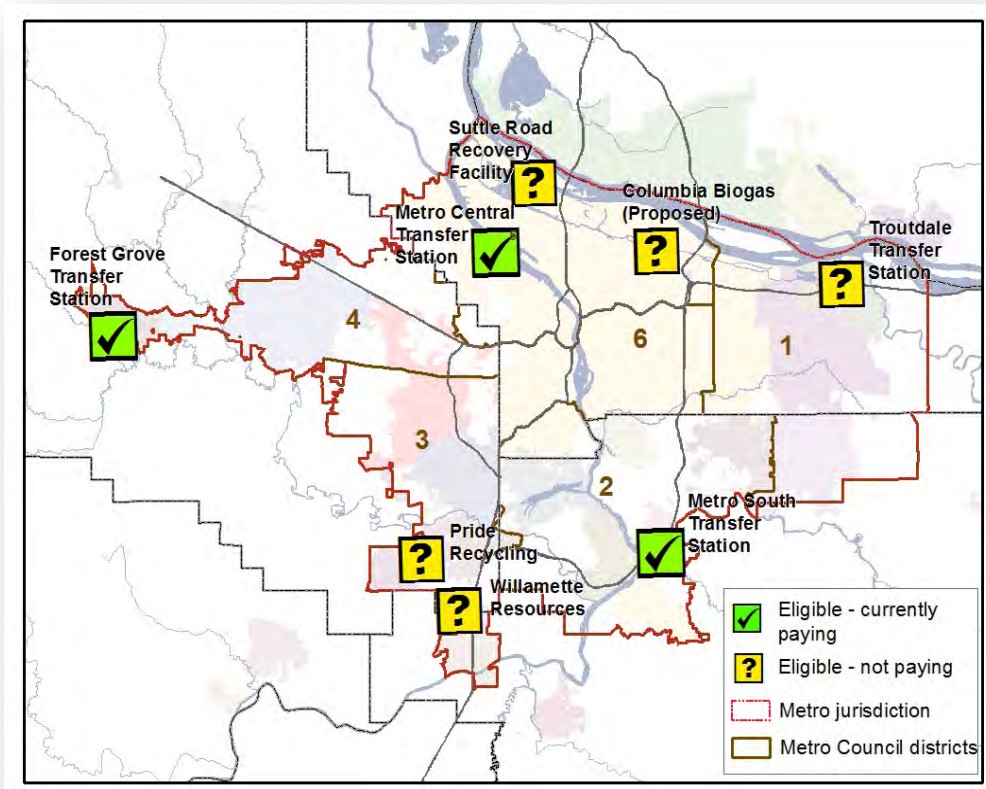
- 1) **Forest Grove Transfer Station** - administered through a Metro IGA by the city of Forest Grove.
- 2) **Metro Central Transfer Station** - administered through the Metro Central Enhancement Committee (a Metro-administered community enhancement committee).

¹ The St. Johns Landfill has long been closed and the North Portland Rehabilitation and Enhancement Committee (a Metro committee) is in the process of spending down the balance of its fund balance. The final grant cycle is now in place.

3) **Metro South Transfer Station** - administered through a Metro IGA by the city of Oregon City.

The map below illustrates the location of the three transfer stations that are currently in the program and paying fees. The map includes the location of other “program eligible” solid waste facilities located in the Metro region that are not yet participating in the program.

Facilities Eligible for Metro’s Solid Waste Community Enhancement Program



As illustrated in the map, there are five other facilities eligible to be in the program, but do not yet have an enhancement program or are not yet paying fees: 1) Troutdale Transfer Station, 2) Pride Recycling, 3) Willamette Resources, Inc., 4) Suttle Road Recovery Facility, and 5) Columbia Biogas (not built).

Summary of Existing Program Concerns

The solid waste system has grown and changed since 1990. New facilities have been added to the landscape and certain existing facilities have undertaken new solid waste activities that now make certain facilities eligible under state law. However, under the current program, Metro Code Chapter 5.06 does not provide sufficient guidance about how new programs should be initiated or whether Metro or the host local government should coordinate the enhancement program. Moreover, Chapter 5.06 does not specify what types of facilities should be brought into the program or how that should be done given the changing nature of how facilities operate. In addition, the Code does not provide a process or basis for adjusting the \$0.50 per ton fee. One of the fundamental concerns with Metro’s existing program is that it does not provide a clear framework for decision-making and program administration.

Key Provisions for Updating Metro’s Solid Waste Community Enhancement Program

The following are the key program recommendations for modifying the program. These are based on direction received from Metro Council and discussions with stakeholders.

The key elements of the updated program propose to:

1. Be based on existing state law.

- Update the community enhancement program (Metro Code Chapter 5.06) based on state law (ORS 459.284). Future program changes will be guided by the state statutory framework.

2. Specify more clearly which type of solid waste facilities and wastes are eligible and ineligible for the program.

- Eligible facilities include landfills, transfer stations, energy recovery, reloading and composting facilities.
- Ineligible facilities under state law include reuse, recycling and material recovery facilities.
- Yard debris-only reload and yard debris-only composting facilities, although eligible under state law, are not recommended for inclusion at this time pending further evaluation.

State law considers reuse, recycling and material recovery *facilities* to be exempt from the community enhancement program. In 1987, state law did not specifically address modern facilities where multiple activities and waste streams are managed within a single solid waste facility, including a facility that may process dry waste for recovery and transfer wet waste. As a matter of policy, collection of community enhancement fees at solid waste facilities should continue to be guided by the eligible and ineligible criteria established in state law. The type of waste delivered to the facility should generally be used to determine when the fee is collected. For example, fees would generally be collected on putrescible “wet” waste, but not on non-putrescible “dry” waste since dry waste is always required to undergo material recovery in the Metro region. However, the proposal provides for specific exceptions to the wastes covered (see discussion in #3 below).

Although under state law, yard debris reloads and yard debris composting facilities are eligible for the solid waste community enhancement program, staff recommends that these facilities be excluded at this time pending further evaluation. Historically, Metro has not imposed community enhancement fees, or any other fees, on yard debris facilities (e.g. reloading and composting). To do so would represent a major policy shift and expansion of the program creating administrative challenges and problems for already struggling facilities. In addition, there would likely be significant concerns with a new host fee imposed on a large number of established yard debris facilities – there are 13 such facilities currently operating in the Metro region.

3. Implement the program at all eligible facilities in the region.

- An enhancement fee will be collected at all eligible solid waste facilities.
- Enhancement fees will be collected, at minimum, on each ton of putrescible waste delivered to a facility (including commercial food waste or residential food waste mixed with yard debris).
- An enhancement program will be set up for each eligible facility. A community enhancement committee will be established to determine the enhancement boundary, and to select plans, programs and projects for the enhancement area.

Stakeholder feedback from communities and industry indicated a strong concern about the negative and unintended consequences of collecting a fee at one eligible facility but not at another. While the overall impact of the fee is minimal (about \$0.75 per year for a typical residential ratepayer), it could send unintentional price signals that could create an unlevel playing field among facilities or between host local governments. Therefore, as a regional program, it is recommended that it be implemented at all qualifying facilities to help ensure that equity exists relative to the benefits and burdens of growth and change to the region's communities and solid waste system.

Certain stakeholders also indicated that enhancement fees should continue to be collected on all wet and dry solid waste at certain facilities where a difference in the waste streams may be difficult to discern from an impact perspective or where fees have been collected historically on all waste (e.g., Metro Central Transfer Station and Metro South Transfer Station). This primarily applies to the publicly-owned facilities but may be applied at other private operations if it is determined to be in the public interest by the Metro Chief Operating Officer and the facility owner.

4. Increase the enhancement fee from \$0.50 to \$1.00 per ton.

- Increase the fees currently collected from \$0.50 to \$1.00 per ton (maximum allowed under current state law) by July 1, 2015 (Metro South Transfer Station, Metro Central Transfer Station and Forest Grove Transfer Station).
- Begin collecting fees of \$1.00 per ton at other eligible facilities on July 1, 2015 (e.g. Pride Recycling in Sherwood, Troutdale Transfer Station, Willamette Resources, Inc. in Wilsonville, and Suttle Road Recovery in Portland).
- Establish a process for making future periodic fee adjustments based on inflation if the state statutory limit is ever increased.

The enhancement fee has not been increased since the program was established 26 years ago. Based on inflation since that time, \$0.50 has the same buying power as \$0.98 in 2014 (Consumer Price Index U.S. Bureau of Labor and Statistics). Implementing a community enhancement fee of \$1.00 per ton at all eligible facilities in the region will likely result in about \$0.75 per year increase to residential ratepayers (or around \$0.06 per month at the curb) in increased disposal charges. This is based on an estimated residential disposal of 1,500 pounds per year, which is equivalent to 0.75 tons (for comparison, the city of Portland residential disposal rate is around 1,350 pounds per year). Residential ratepayers whose waste is currently delivered to a facility that collects the existing \$0.50 per ton amount could see an increase of around half that amount – \$0.03 per month or \$0.36 per year. The impact on commercial and business rates would be highly variable since it would be based on the type of business, and the type and amount of waste that a business disposes each year.

5. Provide options for program implementation and Metro coordination with the host local government.

- Establish a process to implement and administer programs at eligible facilities. Options include:
 - *Metro-administered committee.*
 - *Local government-administered committee.* Host local government to establish or serve as the community enhancement committee and administer the program via an agreement (IGA) with Metro. The host Metro councilor may be involved as the community enhancement committee co-chair or committee participant at the councilor's discretion.
 - *Metro may contract directly with a non-profit or neighborhood organization.* This approach could be used when a local or a Metro-administered community committee is not practical. The

community enhancement committee could be made up of a neighborhood association's (or a non-profit organization's) board of directors and the host Metro councilor may be involved as the community enhancement committee co-chair or committee participant at the councilor's discretion.

Historically, there were two ways for Metro to initiate a new community enhancement program: 1) the Metro Council would take action to list the solid waste facility explicitly *by name* in Metro Code Chapter 5.06, or 2) Metro entered into an IGA with the host local government to administer the program (the facility name was not listed in Chapter 5.06). Further, enhancement program provisions were set forth in a facility franchise. The last facility to have been included in Metro's program, Columbia Biogas (not yet built) in 2010, was initiated by the facility and local host community and the fee collection requirements were included as conditions in the solid waste facility franchise issued by the Metro Council.

The proposed program improvements will provide greater clarity for decision-makers, facility owners, and local communities and assure collaboration with host local governments. A process is recommended to ensure notification and collaboration with the host local government and the Metro Councilor (whose district includes the facility) when a new program is expected to be established at an eligible facility. The process will provide guidelines for when and how to initiate and administer a new program.

As provided in state law, the distribution of funds collected through the community enhancement program will be subject to the approval of an advisory committee (the community enhancement committee) that will be established for that purpose. Depending on who is administering the program, either Metro or the host local government (through an IGA), will create a separate community enhancement account for revenues and expenditures for its enhancement program to ensure that only committee-authorized projects receive funding. In addition, each community enhancement committee (or its staff) will provide an annual report to Metro regarding all expenditures from the enhancement fund including the amount of funds expended on each project from the fund, including the fund balance.

This proposal also envisions an implementation option where Metro could contract directly with a neighborhood group, non-profit or local environmental group to serve as the community enhancement committee and administer the program (with support from the host local government). The Metro Councilor whose district includes the facility would still have the option to be involved in the program administration. This option would be available when it would not be cost effective or practical for Metro or a local government to directly administer the program. Such an option retains an additional level of flexibility for future program implementation and administration.

6. Allow administrative cost reimbursement from the fund.

- The funds may be used to reimburse actual government administrative costs necessary to run a community enhancement committee and process up to 20% based on the amount of the annual program funding cycle (but no more than \$50,000 for any community enhancement committee).
- Administrative costs in excess of the cap shall not be borne by the enhancement fund.
- Administrative costs include staff time and materials necessary to set up, promote and administer a community enhancement program.

Under the existing program, there is conflicting guidance about whether or not administrative costs can be reimbursed from the program fund. These proposed provisions will make it clear that actual administrative costs incurred, up to a set amount, can be reimbursed from the program fund.

7. Allow local governments to sponsor projects from the fund.

- Funding criteria will allow use of program funds for local government projects and other publicly sponsored projects on a case-by-case basis.
- As a guideline, the total amount available to one or more local government projects should generally not exceed 15% of the funds in a funding cycle. However, the proposal does allow access to a larger percentage of the funds for worthy local government sponsored projects as established in an IGA with Metro.
- Local government-sponsored projects will be treated like all other applicants with the same application and review procedures set forth by the community enhancement committee.
- The direct transfer and use of enhancement fees to a local government general fund will not be allowed.
- Program funds cannot be used to replace other readily available federal, state, regional or local funds.

These provisions establish funding eligibility criteria to allow use of program funds for worthy local government and other public projects or programs. However, in order to maintain compliance with state law, the transfer and use of enhancement fees to a local government general fund for directly funding general government activities will not be allowed. To help ensure that the fund is available to others in the community, the total amount available to a local government will be set at a percentage target of the funds available in a funding cycle – recommended guideline of 15% in each funding cycle. All program applicants that seek funding, including a local government applicant, must go through the application, review and approval process set forth by the community enhancement committee. Local government sponsored projects or programs will be treated the same as all other program applicants. However, it is recommended that the program be flexible enough should there be one or more worthy public sponsored project that the local funding limit guideline could be exceeded during a cycle – as determined by the community enhancement committee.

8. Establish general program funding eligibility criteria.

- Broad regional funding criteria applicable to all program applicants are recommended, based largely on time-tested criteria used in existing programs. Provide flexibility to meet the needs of different host communities.
- Allows local adoption of more narrow criteria to meet needs of the host community.
Examples of funding criteria (see proposed Section 5.06.070 for specific list of criteria):
 - Be within the boundary specified by the community enhancement committee.
 - Non-profits, neighborhood associations, charitable organization, schools are all eligible.
 - Local government access to funds for sponsored projects.
 - All applications must go through the community enhancement committee review process.

Metro councilors suggested that program funding eligibility criteria be established. The proposed criteria are derived from the time-tested provisions from Metro's existing community enhancement program (Metro Central Enhancement Committee) and incorporated provisions from other participating local government community enhancement programs (Metro South Transfer Station/Oregon City and the city of Forest Grove). These eligibility criteria are proposed as a clear and objective checklist to determine whether a potential project or applicant should be considered by a community enhancement committee. The program is intended to be flexible enough that the needs of a local community can be accommodated within the framework of Metro Code Chapter 5.06 and state

law. Local governments may wish to include other (more restrictive) funding criteria consistent with their individual approach to projects. For example, a local government may wish to include a matching requirement (either financial or sweat equity) for certain projects, focus funds on a particular impact or project area, or to provide project funding to only non-profit groups.

9. Establish general program funding goals.

- Based on existing time-tested program funding goals used by the Metro Central Enhancement Committee.
- A committee may adopt additional goals to meet needs of the host community.

Examples of funding goals (see proposed Section 5.06.080 for specific list of criteria):

- Result in improvement to appearance or environmental quality of area.
- Benefit populations most directly impacted by facility, including underserved populations.
- Broad coverage of projects e.g. reduce toxicity, increase reuse/recycling, rehabilitation of property, enhance wildlife, riparian or wetlands, or improved recreational opportunities.

Metro councilors indicated a need to include some general funding direction so that enhancement funds did not get used for projects that may be inconsistent with the intent of state law or Metro's enhancement program. The proposed funding goals are largely based on the time-tested provisions used by the Metro Central Enhancement Committee. The funding goals have been a useful guide for all three of the existing community enhancement committees (Metro Central, Oregon City and Forest Grove) in reviewing and selecting projects and should serve other community enhancement committees equally well into the future.

10. Provide a dispute resolution process.

- In case of a dispute, Metro's Chief Operating Officer will review and notify the host local government, the community enhancement committee and the host councilor about the nature of the dispute, and will set a process and timeframe in which to resolve the dispute.

While disputes are not anticipated, reality indicates that they may happen from time-to-time.

Therefore, this proposed provision makes it clear that the responsibility is embedded in Metro's Chief Operating Officer to determine when a dispute arises to a level that needs to be formally resolved.

Stakeholder Engagement

The stakeholder engagement process included written communication and discussions with Metro's Solid Waste Alternatives Advisory Committee and Metro Policy Advisory Committee, potentially affected city managers and elected officials with program eligible solid waste facilities in their jurisdictions (e.g., Oregon City, Forest Grove, Troutdale, Sherwood, Wilsonville and Portland), solid waste facility owners, and potentially impacted neighborhood associations (Cully Association of Neighbors and St. Johns Neighborhood Association). Nearly all of the stakeholders indicated that they were either generally supportive or very supportive of the program. Metro received letters of support from the cities of Wilsonville and Oregon City, and the Cully Association of Neighbors. Two owner/operators of transfer stations, Willamette Industries, Inc. (located in Wilsonville) and Pride Recycling (located in Sherwood) have verbally expressed their objection to collecting this program fee at their solid waste facilities.

Program Implementation Summary

Adoption of Ordinance No. 14-1344 will result in a comprehensive update that will substantially improve and modernize Metro Code Chapter 5.06 – Solid Waste Community Enhancement Program. These code revisions will include the broad policy directives within a flexible framework for administering the program over time. Additional program improvements will be achieved through the following companion instruments:

- **Administrative Procedures**. Administrative procedures are issued by the COO and are routinely used to help implement and administer various chapters of Metro Code Title V. Administrative procedures describe the more detailed program elements and provide the necessary clarity that guide how the program will be implemented and administered. The administrative procedures work hand-in-hand with the changes in Chapter 5.06. Administrative Procedures are attached as Exhibit B to Ordinance No. 14-1344.
- **Intergovernmental Agreement Template**. This template specifies the key provisions that would be included in an IGA between Metro and a host local government, when a host local government wishes to implement an enhancement program in their community. The template is applicable to new IGAs as well as for updating existing IGAs. The IGA template will be helpful to both Metro staff and our local government partners participating in the program. An IGA template is attached as Exhibit C to Ordinance No. 14-1344.

Once Metro Council adopts this proposal, a solid waste community enhancement program will be implemented for all existing eligible solid waste facilities. Effective July 1, 2015, the proposal recommends an increase to the fee at existing facilities to the state maximum of \$1 per ton, and expand the program to include four other eligible solid waste facilities located in the cities of Troutdale, Sherwood, Wilsonville, and Portland (see Table 1 below). Table 1 indicates the amount currently collected and the amount expected to be collected once the program is effective.

Table 1 – Solid Waste Community Enhancement Program

Solid Waste Facility	Community	Currently Collected (FY 2014-15 estimated)	To Be Collected (FY 2015-16 estimated)
Metro South	Oregon City	\$133,000	\$266,000
Metro Central	Portland	\$130,000	\$260,000
Forest Grove Transfer Station	Forest Grove	\$ 54,000	\$108,000
Willamette Resources, Inc.	Wilsonville	\$ 0	\$ 70,000
Pride Recycling	Sherwood	\$ 0	\$ 70,000
Troutdale Transfer Station	Troutdale	\$ 0	\$ 70,000
Recology Suttle Road Recovery	Portland	\$ 0	\$ 12,000

Prior to July 1, 2015, Metro staff will work with each of these communities to determine if an IGA could be established to implement and administer the program by the host local government. If so, the Metro councilor whose district hosts the solid waste facility will also have the opportunity to participate in the community enhancement committee.

The cities of Wilsonville, Troutdale and Sherwood have all expressed interest in an IGA with Metro to administer the program. However, the city of Portland, while supportive of the proposed program changes, has indicated that it is unlikely to directly enter into an IGA with Metro to implement the program. Therefore a program for the Suttle Road Recovery facility could be administered either: 1) directly by

Metro, 2) by Metro through a contract with the neighborhood association where the facility is located (St. Johns Neighborhood Association), or 3) through an IGA between Metro and the city of Portland's Office of Neighborhood Involvement (ONI).

ANALYSIS/INFORMATION

- 1. Known Opposition.** Staff is aware of two solid waste facility owner/operators (Willamette Industries, Inc. and Pride Recycling) that have verbally expressed concerns about collecting a community enhancement fee at their transfer stations.
- 2. Legal Antecedents.** Oregon Revised Statutes 459.280 and 459.284, the Metro Charter, the Regional Solid Waste Management Plan, and Metro Code Chapter 5.06.
- 3. Anticipated Effects.** The existing Metro Code Chapter 5.06-Community Enhancement Programs will be repealed and replaced with the proposed amended Metro Code Chapter 5.06-Solid Waste Community Enhancement Program. In addition, Metro's Chief Operating Officer will issue administrative procedures that help implement Chapter 5.06, and Metro will enter into new IGAs or revise existing IGAs with local governments that host eligible solid waste facilities.
- 4. Budget Impacts.** The overall impact of the existing solid waste community enhancement program has already been factored into Metro's current FY 2014-2015 budget and has been for many years. The impact of the updated solid waste community enhancement program will be fully factored into the budget and rates for FY 2015-16 and will result in a total increased collection of about \$539,000 in new revenue. It is expected that approximately 75% of the additional revenue will be allocated to community enhancement programs administered by local governments through an IGA with Metro. About 25% of the additional revenue will be allocated to the existing Metro Central Enhancement Committee for funding its community enhancement projects. There will continue to be partial funding for personnel services associated with the existing North Portland Enhancement Committee (limited duration), the existing Metro Central Enhancement Committee and any new Metro-administered community enhancement committees that may be established. Community enhancement program funds can be used to help defray some of the administrative costs incurred by either Metro or the participating host local government, thereby minimizing budget impacts.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Ordinance No. 14-1344 for the Purpose of Amending Title V, Solid Waste, to Revise Chapter 5.06, Community Enhancement Programs.

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Agenda Item No. 7.2

Ordinance No. 14-1345, For the Purpose of Amending Metro
Code Chapter 2.04 to Update Metro Contract Policies and
Procedures

Ordinances – First Read

Metro Council Meeting
Thursday, October 16, 2014
City of Oregon City, City Hall, Commission Chambers

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 14-3567
CODE CHAPTER 2.04 TO UPDATE METRO)	
CONTRACT POLICIES AND PROCEDURES)	Chief Operating Officer Martha Bennett in concurrence with Council President Tom Hughes

WHEREAS, Metro Code Chapter 2.04 establishes Metro policies for the procurement of personal services contracts and public contracts, and for special procurements;

WHEREAS, the Chief Operating Officer has proposed revisions to Metro Code Chapter 2.04 to align the procurement of personal services and public contracts with the State of Oregon’s contracting code and to approve a class of special procurements for personal services and public contracts that will further Metro’s policy goals and promote the public interest; and

WHEREAS the Metro Council finds that the proposed revisions to Metro Code Chapter 2.04 will help Metro achieve efficiencies in contracting and better meet its program objectives; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 2.04.042 is amended as set forth in Exhibit A attached to this Ordinance.
2. Metro Code Section 2.04.052(d) is amended as set forth in Exhibit B attached to this Ordinance.
3. Metro Code Section 2.04.053(a) is amended to delete one class special procurement and to add an additional class special procurement as set forth in Exhibit C attached to this Ordinance.
4. Metro Code Section 2.04.056 is amended as set forth in Exhibit D attached to this Ordinance.
5. Metro Code Section 2.04.070 is amended as set forth in Exhibit E attached to this Ordinance.
6. Metro Code Section 2.04.120 is amended as set forth in Exhibit F attached to this Ordinance.
7. Metro Code Section 2.04.150 is amended as set forth in Exhibit G attached to this Ordinance.
8. Pursuant to Metro Charter Section 39(1), as necessary for the health, safety, or welfare of the Metro area, an emergency is declared to exist. This Ordinance shall take effect immediately in order to allow contracts under the new class special procurement set forth in Exhibit C for work required to implement the Natural Areas levy to proceed in time for the 2015 spring planting season.

ADOPTED by the Metro Council this [insert date] day of [insert month] 2014.

Tom Hughes, Council President

Attest:

Approved as to Form:

Craig P. Gifford, Recording Secretary

Alison R. Kean, Metro Attorney

Exhibit A to Ordinance No. 14-3567

2.04.042 Procurement of Personal Services Contracts

(a) Any procurement of personal services not exceeding ~~\$5,000.00~~\$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of personal services exceeding ~~\$5,000.00~~\$10,000.00 but not exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the Procurement Officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of personal services exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.060.

Exhibit B to Ordinance No. 14-3567

2.04.052 Public Contracts -- Public Improvement Contracts

[...]

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$100,000.00~~ \$150,000.00 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over ~~\$100,000.00~~ \$150,000.00.
- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

Exhibit C to Ordinance No. 14-3567

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065, ORS 279B.070:

- ~~(1)~~ ~~All contracts estimated to be not more than \$100,000.00 provided that the procedures required by Metro Code Section 2.04.056 are followed.~~
- ~~(2)~~ Food for zoo animals, the purchase and sale of zoo animals, and the purchase of zoo gift shop retail inventory and resale items.
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at facilities owned or operated by Metro.
- (6) Contracts for warranties, including but not limited to computer software warranties, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.

- (~~76~~) Contracts for computer hardware, or computer software.
- (~~87~~) Contracts under which Metro is to receive revenue by providing a service.
- (~~98~~) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (~~109~~) Public contracts by the Metro Exposition-Recreation Commission in an amount less than \$100,000.00, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (~~1110~~) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (~~1211~~) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (~~1312~~) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.
- (~~1413~~) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- (~~1514~~) Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- (~~1615~~) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

- (~~17~~16) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.
- (~~18~~17) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.
- (~~19~~18) Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(n) in which a contractor provides a material and substantial portion of the funding for such project.
- (~~20~~19) Contracts with any media outlet for the purchase of classified advertising, display advertising or the placement of public notices to publicize legal notices of public meetings and procurements.
- (20) Contracts not exceeding \$150,000 for personal services or for trade services (and not required as part of a public improvement project) when the provider of the procured services is a not-for-profit organization, and the purpose of the services is to implement Metro programs and projects, provided the Metro Council has approved by resolution a process for awarding such contracts.
- (21) Any contract exempt from competitive bidding under any statute of the state of Oregon.

Exhibit D to Ordinance No. 14-3567

2.04.056 Procurement of Public Contracts

(a) Any procurement of a public contract not exceeding ~~\$5,000.00~~\$10,000.00 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

(b) Any procurement of a public contract exceeding ~~\$5,000.00~~\$10,000.00 but not exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the Procurement Officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

(c) Any procurement of a public contract exceeding ~~\$100,000.00~~\$150,000.00 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

Exhibit E to Ordinance No. 14-3567

2.04.070 Notice of Award and Appeals

(a) At least seven (7) days prior to the execution of any public contract over ~~\$100,000.00~~\$150,000.00 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above ~~\$100,000.00~~\$150,000.00. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

Exhibit F to Ordinance No. 14-3567

2.04.120 Program Activities

The Procurement Officer shall develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

[...]

(g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than ~~\$5,000.00~~ \$10,000.00 and less than ~~\$50,000.00~~ \$150,000.00. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(h) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than ~~\$5,000.00~~ \$10,000.00 and less than \$50,000.00 to be bid only by qualified ESBs, MBEs and WBEs. The Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(i) Additional Activities. The Procurement Officer may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

Exhibit G to Ordinance No. 14-3567

2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The Procurement Officer shall establish procedures relating to good faith opportunities for formal construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE subcontracting opportunities shall be required for construction contracts over ~~\$100,000.00~~\$150,000.00.

(b) At the discretion of the Procurement Officer, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids or proposals for such contract.

(c) When construction projects using a proposal process are approved by Council, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts during the bidding process is required. Contractors failing to comply will be considered non-responsive.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 14-1345, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 TO UPDATE METRO CONTRACT POLICIES AND PROCEDURES

Date: October 23, 2014

Prepared by: Tim Collier
503-797-1913

BACKGROUND

The Metro Contract Policies (Metro Code Chapter 2.04) direct the processes by which Metro contracts for goods and services. The last significant changes to Chapter 2.04 were adopted by the Metro Council in October 2010 and implemented Metro's Sustainable Procurement Program. Staff is currently working on a significant review of the contracting code, but does not anticipate bringing any changes to the Council until Fall 2015. However, staff has identified two areas in the contracting code that would benefit from updates during this interim period.

The first change involves updating the dollar thresholds for methods of source selection in the Metro contracting code. The Metro contracting code closely follows Oregon Revised Statute (ORS) Chapter 279 which guides procurement for all public entities in the State. In many cases the Metro Code references applicable State statutes and generally follows the State process to simplify and clarify procurement processes, instill public confidence, and maximize the economic investment in public contracting within the state.

In the case of dollar thresholds for source selection, the Oregon Legislature updated the dollar amounts in the last major update to ORS Chapter 279. However, the Metro Code has not been updated to follow that change. The current Metro thresholds are as follows:

Type	Threshold	Metro Process
Small Procurement	Up to \$5,000	May be awarded in any manner deemed practical or convenient by the COO.
Intermediate Procurement	Up to \$100,000	Generally require informal Request for Proposals/Bids and notification of three MWESB firms.
Competitive Sealed Bids/Proposals	Over \$100,000	Formal, sealed Request for Proposals/Bids

The current thresholds in ORS Chapter 279 are:

- Small Procurement – Up to \$10,000
- Intermediate Procurement – Up to \$150,000
- Competitive Sealed Bids/Proposals – Over \$150,000

Staff is recommending changing the thresholds to match the limits in ORS 279 for the following reasons:

- Maintaining consistency with ORS 279 eases administrative burdens and provides greater predictability to vendors that work with multiple public entities.

- In the Metro program (Chapter 2.04) for Minority Business Enterprises (MBE), Women Owned Business Enterprises (WBE), and/or Emerging Small Businesses (ESB), current Metro Code (2.04.120) only requires notification of three MWESB firms (One WBE, one MBE, and one ESB) for contracts between \$5,000 and \$50,000. Current practice requires notification for contracts up to \$100,000, but that requirement is not in code. This change would formalize that current practice and require notification of three MWESB firms for all intermediate procurements.
- Increasing the threshold for small procurements has the potential to allow staff to award more contracts directly to MWESB firms without requiring them to go through procurement processes. Often, even informal request for proposal processes are intimidating and/or technically challenging for smaller firms and do not yield the desired responses from MWESB firms.

The second change is to create a new class of special procurement in Metro Code 2.04.053. Special procurements are defined as exceptions to the standard procurement rules defined in ORS 279B. Special procurements may authorize exemptions to competitive procurement rules or specify alternative procurement processes for awarding of contracts. Special procurements are authorized by ORS 279B.085 for contracts where awarding them is unlikely to encourage favoritism or substantially diminish competition for public contracts and where the contract results in either substantial cost savings or substantial promotion of the public interest in a manner that could not be realized by complying with the requirements for competitive procurements.

The new class of special procurement is designed to facilitate Metro's work with not-for-profit organizations, particularly in the areas of equity and community outreach. This need was initially identified as part of the Parks and Natural Areas Levy equity and outreach work. In identifying organizations to partner with in developing programs to reach underserved communities, staff determined that typical grant or request for proposal (RFP) processes would not be effective.

There were several barriers in the current processes available to staff that were identified:

- Grant programs and RFP processes typically involve staff developing specifications independently and then asking external groups to independently develop and submit proposals back to Metro. For these types of programs staff believes better outcomes would be achieved if programs were designed collaboratively, rather than in the traditional arms-length transaction as is currently required by the Metro Code.
- Many of the groups that Metro could partner with do not typically work as contractors for public agencies. They are often advocacy or service organizations that may be unfamiliar with and/or unequipped to respond to requests for proposals.
- Through these programs, Metro may be seeking to work with specific underserved populations or geographic areas, and a traditional RFP process is unlikely to result in responses that help achieve the program's goals.
- Staff has handled some of these program partnerships through sole source contracts. However, that process is typically handled individually for each contract and requires Council approval of each contract. That is inefficient, and will be very burdensome as equity and community outreach work increases in the Parks and Natural Areas programs as well as in other areas of Metro.

This new special procurement class would require up-front Council approval of the process for awarding the contracts and limits the contracts to not-for-profit organizations where the purpose of the services must be to implement Metro programs and projects. The objective is to create a flexible and collaborative method for working with community partners on improving or developing new Metro programs and projects.

ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Oregon Revised Statutes Chapter 279B, Metro Code Chapter 2.04
3. **Anticipated Effects** Revises Metro Code Chapter 2.04 to align the procurement of personal services and public contracts with the State of Oregon's contracting code and approves a class of special procurements for personal services and public contracts.
4. **Budget Impacts** None.

RECOMMENDED ACTION

Staff recommends the adoption of Ordinance 14-1345

Materials following this page were distributed at the meeting.



METRO COUNCIL MEETING

Meeting Minutes

Oct. 2, 2014

Metro, Council Chamber

Councilors Present: Council President Tom Hughes, and Councilors Shirley Craddick, Sam Chase, Kathryn Harrington, Bob Stacey, Carlotta Collette and Craig Dirksen

Councilors Excused: None

Council President Tom Hughes called the regular council meeting to order at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Art Lewellan, Portland: Mr. Lewellan shared materials on the Columbia River Crossing project and his concern for the bore tunnel in Seattle, Washington.

Mars Green, Portland: Ms. Green discussed the elephants at the Oregon Zoo and tuberculosis testing. She also expressed concern about where the zoo bond money was going.

Sandy Miller, Portland: Ms. Miller addressed the Metro Council on the elephants at the Oregon Zoo and captive breeding programs in other zoos. She requested that the elephants, including Packy, be released as soon as possible to an elephant sanctuary.

Courtney Scott, Portland: Ms. Scott inquired about the elephants at the Oregon Zoo and current practices relating to tuberculosis. She requested that the Metro Council hold a public hearing regarding moving the elephants to sanctuaries and consider instead moving the giraffes to the current elephant habitat.

3. AUDITOR ANNUAL REPORT PRESENTATION

Council President Hughes introduced Auditor Suzanne Flynn to present the Office of the Auditor Annual Report for FY 2013-14. Ms. Flynn discussed the history of performance auditing at Metro and extensive process behind the annual report. She stated that the audit process is good for Metro because it gives a sense about how well we're doing and whether we're hitting the mark. She also mentioned that the Auditor's Office recently received a Bronze Award from National Association of Local Government Auditors for their recent Transportations Outcomes Audit. Ms. Flynn described the measures used each year including average hours per audit, the number of audits per year, number of audits per department, audits per full-time equivalent (FTE), and the ethics line. She

explained that the Auditor's Office will also look at implementation rate, send out surveys to the department directors to ask for progress made based on the audit's recommendations, and that results of an audit usually visible by the fifth year.

Councilors commented that they appreciated the performance audit process and program and Auditor Flynn and her staff's quality work.

4. RECYCLING HOTLINE AUDIT PRESENTATION

Auditor Suzanne Flynn presented a report on the Recycling Hotline audit. She discussed the two levels of analysis in this audit, which were effectiveness of the program and efficiency of the program. Ms. Flynn stated that their analysis showed that the reach of the program was limited and that the program could be reassessed due to changing preferences for accessing information as well as looking at options for increasing the reach of getting this information out. She thanked the department and staff for being helpful during the audit and noted that the auditors were very impressed with staff and their degree of knowledge of recycling.

Council President Hughes introduced Jim Desmond, Director of Sustainability, to provide the Management Response to the audit. Mr. Desmond thanked Auditor Flynn and her staff for their exemplary work and discussed the value that the audit provides. He also discussed the value of the Recycling Hotline as a public resource and important tool, especially for those that do not have internet access.

Mr. Desmond introduced Matt Korot, Metro Resource Conservation and Recycling Program Manager, to further discuss details of the program and the audit results. Mr. Korot spoke to the history of the program, which includes the Recycling Hotline, and explained that the hotline serves not only residents, but also Metro Transfer Stations, the Household Hazardous Waste Collection Program and Metro Paint. He agreed that the analysis shows the changing trends within the Recycling Information Center and the need to adapt to meet customers' needs, as well as look at other efficiencies that could be addressed based on the audit's recommendations.

Council discussion

Councilors thanked Auditor Flynn and staff for their work on this audit. Councilors discussed personal experiences with recycling and composting, using the hotline, and ways that Metro could continually improve service and education in order to meet the public's needs.

5. CONSIDERATION OF COUNCIL MEETING MINUTES FOR SEPTEMBER 18, 2014

Motion:	Councilor Bob Stacey moved to adopt Council Meeting Minutes for September 18, 2014.
Second:	Councilor Shirley Craddick seconded the motion.

Vote:

Council President Hughes, and Councilors Craddick, Harrington, Chase, Dirksen, Collette and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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6. RESOLUTIONS

6.1 Resolution No. 14-4558, For the Purpose of Denying a Request for a Transfer Station Tonnage Limit Increase at Willamette Resources, Inc.

Motion:	Councilor Shirley Craddick moved to approve Resolution No. 14-4558.
Second:	Councilor Carlotta Collette seconded the motion.

Council President Hughes introduced Mr. Roy Brower, Solid Waste Compliance Manager, to provide the staff report. Mr. Brower discussed a series of ordinances adopted in August 2013 on the Solid Waste Transfer System which were intended to keep the system stable and predictable until the end of 2015 and included tonnage caps. He stated that two requests were received by private transfer stations to increase these tonnage caps during this two-year moratorium, one of which has been withdrawn. The current request still open and under consideration today came from Republic Services on behalf of Willamette Resources, Inc. (WRI), which requested either an increase of 15,000 or 55,000 tons. Mr. Brower highlighted a few of the reasons that staff is recommending a denial of the WRI request:

- The tonnage increase requested is large (either a 21% or 79% increase) and a significant change would be disruptive and affect all parties in the regional solid waste system
- The written application from WRI did not provide any specific evidence that the increase was necessary or justified
- The applicant did not indicate that the tonnage increase would provide a significant benefit or sustainability improvement
- Wet waste tonnage, regionally, still has not rebounded to the pre-recession levels that existed at the time that the tonnage caps were last set.

He stated that staff understand the importance and necessity of reconsidering the role of tonnage caps, their relevancy and purpose for the future of the Region's solid waste, but that the evaluation of caps and transfer stations in general is all being considered as part of the larger Solid Waste Road Map which concludes late next year. Mr. Brower explained that the results of that effort will be available to all, will seek to assure a level playing field and minimize system disruption in the future. He concluded that staff cannot recommend that the Council make any major policy decision based on an individual facility's request without considering impacts on the total regional solid waste system including all of the other transfer stations, haulers and full range of considerations.

Council President Hughes introduced Derek Ruckman, General Manager for Republic Services (owner and operator of WRI), to provide public testimony. Mr. Ruckman introduced and presented new information, not previously part of their application. He thanked the Council and Metro staff for the opportunity to openly discuss the application and for the entire process. Mr. Ruckman listed several of the reasons and justifications for the increase including:

- Hitting the tonnage cap and needing to redirect traffic across the region has significant economic and environmental impact for our rate payers; to accommodate the increases that we are seeing, many trucks will be diverted to Oregon City, which could mean an additional 1,700 trips between mid-October and December (in addition to 1,700 return trips)
- The additional trips (and further out) mean an increase in operating costs passed on to the rate payers
- We have the acreage, the land, the building for an increase but no cap to accommodate the increases in tons that we're already accommodating

- Metro staff accurately stated that we did not contest the moratorium in 2013, as we did not foresee that we could be dealing with 85,000 tons in 2014, but we've seen a significant increase especially in Washington County
- Republic Services has also recently acquired a new customer, Aloha Garbage, as we had room at the time

Mr. Ruckman concluded his presentation and Council President Hughes opened the floor for questions from councilors.

Council discussion

In response to Councilor Craddick's questions, Mr. Ruckman confirmed that the increase request is specifically in regards to the challenges that they are expecting for October through the end of December, as the tonnage cap resets in January. He also confirmed that they did not acquire Aloha Garbage until October and did not see any issues with the current cap until then, and that the bulk of the additional need for extra tonnage is coming from Aloha Garbage. Councilors discussed alternatives for Aloha Garbage's tonnage, including other transfer stations with room and impacts to the entire regional system.

Council President Hughes introduced Steve Larrance, Aloha Garbage, to provide additional public testimony and answer questions from the councilors. Mr. Larrance addressed the Council on the economic issues faced by Aloha Garbage and their need for this cap increase, including higher costs within the system, recent road construction and increasing tipping fees charged by area facilities.

Councilor Stacey spoke, as Council Liaison for the Solid Waste Road Map, to the questions considered in looking at the regional system including locations, geographical distribution, where waste is collected/disposed, hazardous waste, transfer station functions, wet waste, operational hours of a facility and more, all through careful thought and deliberation. Councilors discussed the need to ensure fair tipping fees at all transfer stations and continue to be looking at solid waste in whole regional system versus a case-by-case basis. In response to councilors' inquiry, Mr. Brower confirmed that based on the new materials provided by Republic Services, he did not see anything in the application that would change the staff recommendation.

Vote:

Council President Hughes, and Councilors Craddick, Harrington, Chase, Dirksen, Collette and Stacey voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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7. CHIEF OPERATING OFFICER COMMUNICATION

Ms. Martha Bennett provided an update on the free admission day on Saturday, October 4th at the Oregon Zoo, as a thank you to the community for a great summer.

8. COUNCILOR COMMUNICATION

Councilors provided updates on the following meetings or events: MERC Commission meeting on the Convention Center Hotel design process, unveiling of the new green wall at the Expo Center, Willamette Falls Friends Group meeting, and Climate Smart Communities community leaders group meeting.

9. ADJOURN

There being no further business, Council President Hughes adjourned the regular meeting at 4:23 p.m. The Metro Council will convene the next regular council meeting on Thursday, October 16 at 5 p.m. at the City of Oregon City, City Hall, Commission Chambers. The Metro Council recessed to the Council annex for an executive session held pursuant to ORS 192.660(2)(i), to review and evaluate the performance of an officer, employee or staff member if the person does not request an open meeting.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alexandra Eldridge".

Alexandra Eldridge, Regional Engagement & Legislative Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF OCT. 2, 2014

Item	Topic	Doc. Date	Document Description	Doc. Number
2.0	Testimony; Handout	10/2/2014	From Art Lewellan	10214c-01
2.0	Testimony	10/2/2014	From Courtney Scott	10214c-02
6.1	Testimony; Handout	10/2/2014	Willamette Resources, Inc. Tonnage Increase Request Presentation Slides	10214c-03