



600 NE Grand Ave.
Portland, OR 97232-2736

Council meeting agenda

Thursday, October 26, 2017

2:00 PM

Metro Regional Center, Council chamber

1. Call to Order and Roll Call

2. Citizen Communication

3. Consent Agenda

3.1 Consideration of the Council Meeting Minutes for October 19, 2017 [17-4918](#)

3.2 Resolution No. 17-4834, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to Albertsons Companies LLC for Transport of Commercial Food Waste for Processing at the Divert, Inc. Facility Located in Albany, Oregon [RES 17-4834](#)

Attachments: [Resolution No. 17-4834](#)
[Exhibit A to Resolution No. 17-4834](#)
[Staff Report](#)

3.3 Resolution No. 17-4835, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to Fred Meyer for Transport of Commercial Food Waste for Processing at the Divert, Inc. Facility Located in Albany, Oregon [RES 17-4835](#)

Attachments: [Resolution No. 17-4835](#)
[Exhibit A to Resolution No. 17-4835](#)
[Staff Report](#)

4. Resolutions

- 4.1 Resolution No. 17-4846, For the Purpose of Approving Fiscal Year 2017-18 Funding for Planning and Development Grants Funded with Construction Excise Tax [RES 17-4846](#)

Presenter(s): Martha Bennett, Metro
Elissa Gertler, Metro
Ed McNamara, 2040 Planning and Development Grants Steering Committee

Attachments: [Resolution No. 17-4846](#)
[Exhibit A to Resolution No. 17-4846](#)
[Addendum 1 to Exhibit A](#)
[Staff Report](#)
[Attach 1 to Staff Report](#)

5. Presentations

- 5.1 Elephant Lands Construction Management by General Contractor Outcomes [17-4838](#)

Presenter(s): Gabriele Schuster, Oregon Zoo
Jim Mitchell, Oregon Zoo
Heidi Rahn, Oregon Zoo

Attachments: [Memo](#)
[Post-Construction CM/GC Evaluation](#)

6. Ordinances (First Reading and Public Hearing)

- 6.1 Ordinance No. 17-1408, For the Purpose of Adopting Amendments to Title 14 of the Urban Growth Management Functional Plan to Improve the Regional Growth Management Process [ORD 17-1408](#)

Presenter(s): Ted Reid, Metro

Attachments: [Ordinance No. 17-1408](#)
[Exhibit A to Ordinance No. 17-1408](#)
[Staff Report](#)
[Attachment 1 to Staff Report](#)

- 6.1.1 Public Hearing for Ordinance No. 17-1408

7. Ordinances (Second Reading)

- 7.1 Ordinance No. 17-1410, For the Purpose of Amending Metro Code Chapter 5.00 to Add Certain Definitions [ORD 17-1410](#)

Presenter(s): Paul Slyman, Metro
Dan Blue, Metro

Attachments: [Ordinance No. 17-1410](#)
[Exhibit A to Ordinance No. 17-1410](#)
[Staff Report](#)
[Attachment 1 to Staff Report](#)

- 7.2 Ordinance No. 17-1411, For the Purpose of Amending Metro Code Chapter 5.01 to Establish Licensing Requirements for Certain Facilities that Receive and Process Source-Separated Recyclable Materials and Make Housekeeping Changes [ORD 17-1411](#)

Presenter(s): Paul Slyman, Metro
Dan Blue, Metro

Attachments: [Ordinance No. 17-1411](#)
[Exhibit A to Ordinance No. 17-1411](#)
[Staff Report](#)
[Attachment 1 to Staff Report](#)

8. Chief Operating Officer Communication

9. Councilor Communication

10. Adjourn

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Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo www.oregonmetro.gov/civilrights. Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

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

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib www.oregonmetro.gov/civilrights. Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev saww ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntwam lub rooj sib tham.

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Agenda Item No. 3.1

Consideration of the Council Meeting Minutes from October 19,
2017

Consent Agenda

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

Agenda Item No. 3.2

Resolution No. 17-4834, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to Albertsons Companies LLC for Transport of Commercial Food Waste for Processing at the Divert, Inc. Facility Located in Albany, Oregon

Consent Agenda

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO ALBERTSONS COMPANIES LLC FOR TRANSPORT OF COMMERCIAL FOOD WASTE FOR PROCESSING AT THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON	)	RESOLUTION NO. 17-4834
)	
	)	Introduced by Chief Operating
	)	Officer Martha Bennett with the
	)	concurrence of Council President
	)	Tom Hughes

WHEREAS, Metro Code Chapter 5.05 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Albertsons Companies LLC has filed a complete application seeking a non-system license to transport commercial food waste to a non-system facility for processing under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the commercial food waste authorized under the non-system license is generated at grocery stores within the Metro region and is transported to Divert, Inc. for processing; and

WHEREAS, Metro assesses its regional system fees and excise taxes on all solid waste ultimately disposed at a disposal site; and

WHEREAS, because Divert's food waste processing method results in approximately 25 percent residual waste that is ultimately disposed at a disposal site, the proposed non-system license requires Albertsons (the licensee) to pay regional system fees and excise taxes on 25 percent of the tonnage it transports to the non-system facility (Divert); and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review an application for a non-system license for putrescible waste and that the Metro Council approves or denies the application; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of Albertsons Companies LLC is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2017.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-180-17

LICENSEE:
Albertsons Companies LLC Portland Distribution Center 17505 NE San Rafael Portland, OR 97230
CONTACT PERSON:
Darrell Kidd Phone: (503) 251-9201 E-mail: darrell.kidd@albertsons.com
MAILING ADDRESS:
Albertsons Companies LLC - Portland Distribution Center 17505 NE San Rafael Portland, OR 97230

ISSUED BY METRO:

Paul Slyman,
Property and Environmental Services Director

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Commercial food waste, including unpackaged and packaged food items, that is generated at Albertsons and Safeway grocery stores within the Metro region and consolidated at its Portland Distribution Center.
2	CALENDAR YEAR TONNAGE ALLOCATION
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 5,000 tons per calendar year of the waste described in Section 1.
3	NON-SYSTEM FACILITY
	<p>The licensee is authorized to transport the waste described above in Section 1 only to the following non-system facility for processing:</p> <p style="text-align: center;">Divert, Inc. - Albany 950 SE Jackson St. Albany, OR 97322</p> <p>Metro issues this license on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10.</p>
4	TERM OF LICENSE
	The term of this license commences on October 30, 2017, and expires on June 30, 2019, unless terminated sooner under Section 9.
5	REPORTING OF ACCIDENTS AND CITATIONS
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of the solid waste on behalf of the licensee.
6	MATERIAL MANAGEMENT
	<p>The licensee is authorized to transport the waste described in Section 1 to the non-system facility listed in Section 3 under the following conditions:</p> <p>(a) The non-system facility must accept all solid waste that is transported under authority of this license for the sole purpose of processing the waste for anaerobic digestion. The licensee must not dispose of any source-separated recyclable material, except as provided in Section 7; and</p>



	<p>(b) The non-system facility must receive, manage, and process all solid waste that is transported under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.</p>
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7	REGIONAL SYSTEM FEE AND EXCISE TAX
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	<p>The licensee is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The processing residual resulting from the waste described in Section 1 that is generated at the non-system facility listed in Section 3 is subject to regional system fee and excise tax.(b) The licensee must pay to Metro regional system fee in an amount equal to 25 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility.(c) The licensee must pay to Metro excise tax in an amount equal to 25 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility.(d) In July 2018, Metro's Chief Operating Officer (the "COO") may amend this section to adjust the waste percentage amount that is subject to regional system fee and excise tax if the COO determines that a change is warranted based on the process residual data remitted by the licensee.(e) If the licensee transports waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility's acceptance criteria (for example, the material is too contaminated for processing) or the non-system facility fails to process the material as required as a condition of this license, the licensee must pay to Metro an amount equal to the:<ul style="list-style-type: none">i. Regional system fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately transported to a disposal site.ii. Excise tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately transported to a disposal site.
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8	RECORD KEEPING AND REPORTING
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	<ul style="list-style-type: none">(a) The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in <u><i>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</i></u>.(b) The license must perform the following no later than fifteen days following the end of each month:<ul style="list-style-type: none">i. Transmit to Metro the records required under Section 8(a) above
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	<p>in an electronic format prescribed by Metro;</p> <ul style="list-style-type: none">ii. Transmit to Metro records showing the weight of the residual resulting from the processing of the waste covered under this license during the preceding month.iii. Submit to Metro a regional system fee and excise tax report, that covers the preceding month;iv. Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes. <p>(c) So long as Metro provides at least three business days written notice, the licensee must make all records available to Metro (or Metro's designated agent) for inspection or copying or both. The licensee must also sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3.</p>
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9	ADDITIONAL LICENSE CONDITIONS
	<p>This license is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) The COO may amend or terminate this license in the event that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The Metro Council adopts legislation or other policy which affects food waste management practices in the region;iii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, Inc.;iv. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 be transferred to, and disposed of at, a facility other than the facility listed in Section 3;v. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; orvi. The non-system facility listed in Section 3 generates malodors that are detectable off-site.(c) In addition to subsections (b)(i) through (b)(vi) above, this license is subject to amendment, modification, suspension, or termination pursuant



	<p>to the Metro Code.</p> <p>(d) The licensee may not transfer or assign any right or interest in this license without Metro's prior written approval.</p> <p>(e) This license is subject to modification or termination by the COO upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</p> <p>(f) This license only authorizes the transport of solid waste to the facility listed in Section 3. The licensee is prohibited from transporting waste generated from within the Metro boundary to any non-system facility other than that specified in this license unless Metro authorizes such in writing.</p> <p>(g) If the licensee exceeds the calendar year limitation set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of \$500.</p>
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10	COMPLIANCE WITH LAW
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee are deemed part of this license as if specifically set forth herein.</p>

11	INDEMNIFICATION
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4834 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO ALBERTSONS COMPANIES LLC FOR TRANSPORT OF COMMERCIAL FOOD WASTE FOR PROCESSING AT THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON

October 12, 2017

Prepared by: Hila Ritter
503-797-1862

Approval of Resolution No. 17-4834 will authorize the Chief Operating Officer (COO) to issue a new non-system license (NSL), similar to the proposed license attached to this resolution as Exhibit A, to Albertsons Companies LLC. (Albertsons) to transport commercial food waste for processing at the Divert, Inc. (Divert) facility located in Albany, Oregon. The proposed NSL becomes effective October 30, 2017, and expires on June 30, 2019. This is one of two similar NSLs that Metro Council will consider at its meeting on October 26, 2017.¹

Background

Divert accepts packaged and unpackaged food waste from grocery stores for the purpose of performing data analysis on product waste, referred to as “shrink” in the grocery industry. The analysis is to help stores in identifying more effective inventory management practices. Divert uses camera equipment and data analysis software to analyze the components of the grocery store waste that it receives. Divert then mechanically processes the waste into a liquid slurry which is transported to an anaerobic digestion facility to produce biogas, such as JC Biomethane in Junction City and Stahlbush Island Farms near Corvallis. Divert reports that its residual waste is approximately 25 percent by weight of the incoming material and is comprised of packaging pieces, fibrous materials, and other residual solids. The residual waste is generally transported to Riverbend and Coffin Butte Landfills for disposal.

Albertsons is the waste generator in this instance, therefore Albertsons must apply for and obtain a Metro NSL to transport waste to Divert. The primary purposes of an NSL are to ensure that waste leaving the region is properly managed and tracked, and that the required regional system fees and excise taxes are remitted to Metro.

Dayton Facility

In February 2017, Metro learned that Albertsons and Safeway² grocery stores in the region were transporting unsold, packaged food products to Divert’s processing facility located in Dayton, Oregon (Yamhill County) without Metro authorization. At the time that Albertsons was transporting waste to Divert’s Dayton facility, the facility was operating without the required land use approval from Yamhill County, and without a solid waste permit from the Oregon Department of Environmental Quality (DEQ). Metro subsequently notified Albertsons that it must apply for and obtain a Metro non-system license to transport food waste outside of the region. Albertsons initially submitted an NSL application to Metro to transport food waste to the Dayton facility, however it later withdrew that application as explained below.

¹ Resolution No. 17-4835 for Fred Meyer to transport food waste to Divert

² Safeway merged with Albertsons in 2014 and Safeway is now a subsidiary of Albertsons. References to “Albertsons” includes Safeway stores.

In March 2017, DEQ issued a Warning Letter with Opportunity to Correct³ to Divert which required it to submit an application for a permit for the Dayton facility. DEQ allowed Divert to continue operating at the Dayton site during the permitting process. In July 2017, Yamhill County denied land use⁴ for the Dayton facility and subsequently DEQ did not approve a solid waste permit for the facility. The County determined that the food waste processing activity did not comply with the zoning designation for the site. Divert appealed the County's decision, which is still pending as of the date of this report.

Albany Facility

In July, Divert acquired a new property located at 950 SE Jackson Street in Albany, Oregon, to perform the same function as its Dayton facility. Since that time, Divert has received land use approval from the city of Albany⁵ and obtained a DEQ solid waste permit⁶ to operate the Albany facility. Divert has relocated its operations entirely from the Dayton facility to the Albany facility.

A narrative and timeline of Albertsons' applications to Metro are described later in this staff report under "The Applicant." Divert participated in an informational meeting with Metro staff on April 5, 2017 and hosted Metro and DEQ staff for an informational tour of the Dayton site on May 16, 2017.

If Council adopts Resolution No. 17-4834, it would authorize the COO to issue a new NSL to Albertsons to transport up to 5,000 tons per calendar year of Metro-area commercial food waste to Divert's Albany facility.

The Applicant

Albertsons stores located in the Metro region consolidate all of their unsold products, primarily food waste, at a central distribution center located at 17505 NE San Rafael Street in Portland, Oregon. In 2016, Albertsons began transporting its consolidated food waste to Divert's Dayton facility for data analysis, processing and disposal. In January 2017, Divert became the primary processing facility for food waste generated at these grocery stores. Divert is not a Metro designated solid waste facility and Albertsons had not obtained the required NSL to transport this waste to Divert.

On April 19, 2017, Metro issued a Noncompliance Advisory Letter⁷ to Albertsons explaining that it must cease transporting waste to Divert until such time as it had applied for and obtained an NSL. Subsequently, Albertsons submitted an NSL application on July 13, 2017, seeking authorization to transport waste to the Dayton facility. On July 18, Metro notified Albertsons that the Dayton facility could not obtain the required local and state authorizations because Yamhill County had denied its land use and had not obtained a DEQ permit. Given that Divert had not obtained the required authorizations, Metro staff notified Albertsons that it would recommend denial of its Dayton NSL application as submitted. Albertsons subsequently withdrew that application and instead submitted a new application to transport food waste to Divert's Albany facility.

Albertsons submitted a complete NSL application to Metro to transport food waste to Divert's Albany facility on July 26, 2017. In the application, Albertsons stated that food waste was currently being transported to Divert in Dayton for disposal. Metro staff contacted Albertsons to verify this information

³ 2017-WLOTC-2290

⁴ Yamhill County Department of Planning and Development Docket No. SU-01-17/SDR-13-17

⁵ City of Albany Land Use Compatibility Statement, signed on July 13, 2017

⁶ DEQ Solid Waste Disposal Site/Material Recovery Facility Permit No. 1594, issued on September 12, 2017

⁷ Noncompliance Advisory Letter No. NAL-402-17

given that Metro had previously notified Albertsons via the Noncompliance Advisory Letter in April that it must cease sending waste to Divert until such time as it had obtained Metro authorization to do so. Albertsons confirmed that it had continued sending waste to Divert in Dayton because it understood that applying for the NSL was a sufficient good faith effort. In an email dated August 11, Metro staff again notified Albertsons that Divert is not a designated facility of Metro's solid waste system and it is a violation of Metro Code to transport waste to that facility without obtaining an NSL. On August 15, Albertsons notified Metro via email that it had ceased further transport of Metro-area waste to Divert.

Analysis & Information

1. Known Opposition

There is no known opposition to the issuance of an NSL authorizing the delivery of waste to Divert in Albany. However, several local government solid waste directors have expressed some concern about the implications of Metro granting a short-term authorization that would allow the region's food waste stream to go to facilities like Divert when Metro is considering implementing long-term food waste policies, including establishing a nearby food waste processing facility. A more detailed discussion of these concerns is provided below in subsection 7 of the "Legal Antecedents."

2. Legal Antecedents

Metro Code Section 5.05.040 prohibits any person from utilizing a non-system facility without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 provides that, when determining whether or not to approve an NSL application, the Metro Council will consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed NSL authorizes the transport of food waste to Divert, a food waste processing facility located in Albany. The environmental risk from the use of this facility is presumed to be minimal because it is fully regulated and monitored by the appropriate local and state authorities. It has been Metro's practice to rely on the local land use authority and the state environmental agency to determine whether environmental or human health risks posed are known, reasonable and appropriate.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Divert's Albany facility is permitted by DEQ and has land use approval by the city of Albany. DEQ has indicated the facility is in compliance with its permit requirements.

DEQ issued a Warning Letter with Opportunity to Correct⁸ to Divert's Dayton site on March 15, 2017, because it was operating without having obtained the necessary permits. Divert has since opened its Albany facility which has obtained the necessary DEQ permit. The waste covered under the proposed NSL will be transported to the Albany facility.

⁸ Warning Letter with Opportunity to Correct 2017-WLOTC-2290

- (3) *The adequacy of the non-system facility's operational practices and management controls;*

DEQ regulates Divert. DEQ staff considers the operational practices and controls in place at this facility to be appropriate for the proper management of food waste processing and adequate for the protection of health and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed license authorizes Albertsons to transport food waste to Divert's Albany facility for processing into a liquid slurry. Divert will transport the slurry to anaerobic digestion facilities to produce biogas rather than to a disposal site. Thus, approval of the proposed NSL will support Metro's current recycling and waste reduction efforts. Metro will monitor whether the diversion of food waste to Divert has an impact on the availability of food intended for donation.

- (5) *The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The waste subject to the proposed license will be transported to a food waste processing facility rather than a general purpose landfill. Therefore, approval of the proposed license will not conflict with Metro's disposal contract.

It is likely that Metro may enter into a contract with an organics processing facility that would accept a significant portion of the region's food waste. Metro has issued a request for proposals (RFP) seeking an organics processing facility for the region and is currently evaluating the proposals with the intent to select a processor in 2017. If that selection process results in a contract, Metro may limit the amount of food waste that may be transported to other facilities under NSLs.

Divert, partnered with Recology, is one of the proposers to Metro's RFP seeking an organics processing facility for the region. If selected, Metro would work with Divert and Recology to establish a service contract. If they are not selected or if other legislation is adopted which affects how food waste is managed in the Metro region, Metro may amend or terminate this proposed NSL if it is in the public's interest.

- (6) *The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

Metro issued a Noncompliance Advisory Letter to Albertsons on April 19, 2017, for transporting food waste to Divert's Dayton facility without Metro authorization. Albertsons continued to send its waste to Divert until mid-August when Metro again informed it to cease further transport of waste to the facility. Albertsons stated that it had continued the activity because it assumed that its initial NSL application had been an adequate good faith effort to demonstrate compliance. Albertsons ceased transporting Metro-area waste to Divert's Dayton facility on August 15. The issue has been resolved.

(7) *Any other factor the Chief Operating Officer considers appropriate.*

As mentioned above, the Metro Council will consider adoption of a Business Food Waste Requirement policy at the end of 2017 that may impact how food waste generated in the Metro region is managed. Several local government solid waste directors have expressed some concern about the implications of short-term authorizations that would allow energy-rich portions of the food waste stream to go to facilities like Divert when Metro is considering long-term policy and regional infrastructure options such as the selection of a processor to handle a large portion of the region's food waste. This will also include requiring local jurisdictions within the region to adopt companion policies no later than July 2018 with implementation at the business level beginning in March 2019. Therefore, Metro staff recommends issuing a 20-month NSL to allow Albertsons to transport this food waste to Divert's Albany facility until such time as Metro has adopted a commercial food scraps policy.

Although approval of Resolution No. 17-4834 would authorize Albertsons to transport waste to Divert, the proposed NSL does not obligate Divert to accept Metro-area waste. Additionally, adoption of the proposed resolution does not limit Metro's ability to terminate the NSL if Divert is unable or unwilling to accept this waste in the future or more proximate food waste processing capacity is available earlier in 2018 or 2019.

3. Anticipated Effects

Resolution No. 17-4834 will authorize Albertsons to transport up to 5,000 tons per calendar year of packaged and unpackaged commercial food waste to Divert's Albany facility for processing and disposal. The proposed NSL would take effect October 30, 2017 and expire June 30, 2019.

4. Special Provision of the NSL Unique to Divert Processing Facility

Because Divert accepts packaged food waste, Divert reports that its process results in about 25 percent residual waste that requires disposal in a landfill. The proposed NSL includes a condition that requires Albertsons to submit monthly reports to Metro showing the amount of residual waste that results from processing at the facility. Divert will conduct a waste residual study each month and provide the data to Albertsons to report to Metro each month. Metro will track this information and use it to inform future licensing conditions. Based on information received from the facility and staff's evaluation, staff recommends that the NSL include a condition requiring Albertsons to remit fees and taxes on 25 percent of the food waste tonnage that it transports to Divert each month under the NSL. This percentage corresponds to the approximate percentage of residual waste that results from processing the waste at Divert.

The proposed NSL includes a condition which allows the COO to amend the license in July 2018 to adjust the regional system fee and excise tax percentages owed to Metro. The COO will determine whether Albertsons's payment of fees and taxes on 25 percent of the food waste tonnage (representing the residual amount) is accurate and then amend the rate as appropriate utilizing the monthly residual data remitted to Metro by Albertsons.

Staff recommends issuing a 20-month NSL to allow Albertsons to transport this food waste to Divert until such time as Metro adopts a commercial food scraps policy, and implementation of the policy has begun. Metro has issued an RFP seeking a food waste processing facility for the region and is currently evaluating the proposals with the intent to select a processor in 2017. Metro intends to implement its food waste requirements in March 2019. Accordingly, the license expiration date of June 30, 2019

allows Albertsons to transport food waste to Divert until such time as the policy and selected processing facility are in place.

The COO may amend or terminate this proposed NSL if other legislation is adopted, such as the Business Food Waste Requirement policy, which affects how food waste is managed in the Metro region.

5. Budget Impacts

It is Metro's policy to manage the region's waste according to the waste management hierarchy. Metro's regional system fee and excise tax rates are based on the amount of waste that is anticipated to be disposed, in conjunction with Metro's budget for the next fiscal year. Anytime waste is diverted from Metro transfer stations, and further diverted from disposal, there will be some impact in the current fiscal year to Metro's tonnage charge, enhancement fee, and the solid waste fee and tax revenues. In the case of Albertsons, much of the commercial food waste that will be delivered to Divert under authority of this proposed NSL will be exempt from the fee and tax because it will be recovered for biogas production instead of disposal at a landfill. The residual waste resulting from the processing of this material (about 25 percent of the total) will be disposed and is subject to remitting the fee and tax. Currently, all of this commercial food waste is being sent to landfills for disposal. Any waste that is diverted from the disposal stream, will decrease current year revenues collected under the fee and tax. The rates charged next year will be adjusted during Metro's annual rate making process. Waste diversion will also affect other disposal prices (i.e., tonnage charges) at Metro transfer stations and other private solid waste facilities due to fixed and capital costs being spread over fewer tons. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the fee and tax is universal across all ratepayers and waste disposed.

Recommended Action

Staff recommends that Council approve Resolution No. 17-4834, finding that the license application satisfies the requirements of Metro Code Chapter 5.05. Resolution No. 17-4834 will authorize the COO to issue a new NSL, similar to the one attached to the resolution as Exhibit A, to Albertsons for a 20-month period commencing October 30, 2017 and expiring on June 30, 2019.

HR
Queue

Agenda Item No. 3.3

Resolution No. 17-4835, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License to Fred Meyer for Transport of Commercial Food Waste for Processing at the Divert, Inc. Facility Located in Albany, Oregon

Consent Agenda

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO FRED MEYER FOR TRANSPORT OF COMMERCIAL FOOD WASTE FOR PROCESSING AT THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON	)	RESOLUTION NO. 17-4835
)	
	)	Introduced by Chief Operating
	)	Officer Martha Bennett with the
	)	concurrence of Council President
	)	Tom Hughes

WHEREAS, Metro Code Chapter 5.05 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Fred Meyer has filed a complete application seeking a non-system license to transport commercial food waste to a non-system facility for processing under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the commercial food waste authorized under the non-system license is generated at grocery stores within the Metro region and is transported to Divert, Inc. for processing; and

WHEREAS, Metro assesses its regional system fees and excise taxes on all solid waste ultimately disposed at a disposal site; and

WHEREAS, because Divert's food waste processing method results in approximately 25 percent residual waste that is ultimately disposed at a disposal site, the proposed non-system license requires Fred Meyer (the licensee) to pay regional system fees and excise taxes on 25 percent of the tonnage it transports to the non-system facility (Divert); and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review an application for a non-system license for putrescible waste and that the Metro Council approves or denies the application; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be issued together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL RESOLVES AS FOLLOWS:

1. The non-system license application of Fred Meyer is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2017.

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-181-17

LICENSEE:
Fred Meyer Clackamas Distribution Center 11500 SE Highway 212 Clackamas, OR 97230
CONTACT PERSON:
Paul Petillo Phone: (503) 797-3189 E-mail: paul.petillo@fredmeyer.com
MAILING ADDRESS:
Fred Meyer 3800 SE 22 nd Ave Portland, OR 97202

ISSUED BY METRO:

Paul Slyman,
Property and Environmental Services Director

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Commercial food waste, including unpackaged and packaged food items, that is generated at Fred Meyer grocery stores within the Metro region and consolidated at its Clackamas Distribution Center.
2	CALENDAR YEAR TONNAGE ALLOCATION
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 4,400 tons per calendar year of the waste described in Section 1.
3	NON-SYSTEM FACILITY
	<p>The licensee is authorized to transport the waste described above in Section 1 only to the following non-system facility for processing:</p> <p style="text-align: center;">Divert, Inc. - Albany 950 SE Jackson St. Albany, OR 97322</p> <p>Metro issues this license on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 10.</p>
4	TERM OF LICENSE
	The term of this license commences on October 30, 2017, and expires on June 30, 2019, unless terminated sooner under Section 9.
5	REPORTING OF ACCIDENTS AND CITATIONS
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of the solid waste on behalf of the licensee.
6	MATERIAL MANAGEMENT
	<p>The licensee is authorized to transport the waste described in Section 1 to the non-system facility listed in Section 3 under the following conditions:</p> <p>(a) The non-system facility must accept all solid waste that is transported under authority of this license for the sole purpose of processing the waste for anaerobic digestion. The licensee must not dispose of any source-separated recyclable material, except as provided in Section 7; and</p>



	(b) The non-system facility must receive, manage, and process all solid waste that is transported under authority of this license in accordance with all applicable local, state and federal laws, rules, regulations, ordinances, orders, and permits.
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7	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The licensee is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The processing residual resulting from the waste described in Section 1 that is generated at the non-system facility listed in Section 3 is subject to regional system fee and excise tax.(b) The licensee must pay to Metro regional system fee in an amount equal to 25 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility.(c) The licensee must pay to Metro excise tax in an amount equal to 25 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility.(d) In July 2018, Metro’s Chief Operating Officer (the “COO”) may amend this section to adjust the waste percentage amount that is subject to regional system fee and excise tax if the COO determines that a change is warranted based on the process residual data remitted by the licensee.(e) If the licensee transports waste under this license to the non-system facility listed in Section 3 but the material does not meet the facility’s acceptance criteria (for example, the material is too contaminated for processing) or the non-system facility fails to process the material as required as a condition of this license, the licensee must pay to Metro an amount equal to the:<ul style="list-style-type: none">i. Regional system fee, as provided in Metro Code Title V, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately transported to a disposal site.ii. Excise tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste delivered to the non-system facility that is ultimately transported to a disposal site.

8	RECORD KEEPING AND REPORTING
	<ul style="list-style-type: none">(a) The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in <u><i>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</i></u>.(b) The license must perform the following no later than fifteen days following the end of each month:<ul style="list-style-type: none">i. Transmit to Metro the records required under Section 8(a) above



	<p>in an electronic format prescribed by Metro;</p> <ul style="list-style-type: none">ii. Transmit to Metro records showing the weight of the residual resulting from the processing of the waste covered under this license during the preceding month.iii. Submit to Metro a regional system fee and excise tax report, that covers the preceding month;iv. Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes. <p>(c) So long as Metro provides at least three business days written notice, the licensee must make all records available to Metro (or Metro’s designated agent) for inspection or copying or both. The licensee must also sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3.</p>
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9	ADDITIONAL LICENSE CONDITIONS
	<p>This license is subject to the following conditions:</p> <ul style="list-style-type: none">(a) The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) The COO may amend or terminate this license in the event that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The Metro Council adopts legislation or other policy which affects food waste management practices in the region;iii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Oregon Waste Systems, Inc.;iv. Metro’s solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 be transferred to, and disposed of at, a facility other than the facility listed in Section 3;v. The non-system facility listed in Section 3 fails to manage the waste subject to this license in accordance with the material management requirements described in Section 6; orvi. The non-system facility listed in Section 3 generates malodors that are detectable off-site.(c) In addition to subsections (b)(i) through (b)(vi) above, this license is subject to amendment, modification, suspension, or termination pursuant



	<p>to the Metro Code.</p> <p>(d) The licensee may not transfer or assign any right or interest in this license without Metro’s prior written approval.</p> <p>(e) This license is subject to modification or termination by the COO upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</p> <p>(f) This license only authorizes the transport of solid waste to the facility listed in Section 3. The licensee is prohibited from transporting waste generated from within the Metro boundary to any non-system facility other than that specified in this license unless Metro authorizes such in writing.</p> <p>(g) If the licensee exceeds the calendar year limitation set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of \$500.</p>
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10	COMPLIANCE WITH LAW
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee’s solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee are deemed part of this license as if specifically set forth herein.</p>

11	INDEMNIFICATION
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, including all attorneys’ fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4835 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE TO FRED MEYER FOR TRANSPORT OF COMMERCIAL FOOD WASTE FOR PROCESSING AT THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON

October 12, 2017

Prepared by: Hila Ritter
503-797-1862

Approval of Resolution No. 17-4835 will authorize the Chief Operating Officer (COO) to issue a new non-system license (NSL), similar to the proposed license attached to this resolution as Exhibit A, to Fred Meyer to transport commercial food waste for processing at the Divert, Inc. (Divert) facility located in Albany, Oregon. The proposed NSL becomes effective on October 30, 2017, and expires on June 30, 2019. This is one of two similar NSLs that Metro Council will consider at its meeting on October 26, 2017.¹

BACKGROUND

Divert accepts packaged and unpackaged food waste from grocery stores for the purpose of performing data analysis on product waste, referred to as “shrink” in the grocery industry. The analysis is to help stores in identifying more effective inventory management practices. Divert uses camera equipment and data analysis software to analyze the components of the grocery store waste that it receives. Divert then mechanically processes the waste into a liquid slurry which is transported to an anaerobic digestion facility to produce biogas, such as JC Biomethane in Junction City and Stahlbush Island Farms near Corvallis. Divert reports that its residual waste is approximately 25 percent by weight of the incoming material and is comprised of packaging pieces, fibrous materials, and other residual solids. The residual waste is generally transported to Riverbend and Coffin Butte Landfills for disposal.

Fred Meyer is the waste generator in this instance, therefore Fred Meyer must apply for and obtain a Metro NSL to transport waste to Divert. The primary purposes of an NSL are to ensure that waste leaving the region is properly managed and tracked, and that the required regional system fees and excise taxes are remitted to Metro.

Dayton Facility

On June 5, 2017, Fred Meyer initially submitted an NSL application to Metro seeking authorization to transport food waste to a Divert site located in Dayton, Oregon (Yamhill County). At the time of that application, Divert’s Dayton facility was operating without the required land use approval from Yamhill County, and also without a solid waste permit from the Oregon Department of Environmental Quality (DEQ). Fred Meyer later withdrew that application as explained below.

In March 2017, DEQ issued a Warning Letter with Opportunity to Correct² to Divert which required it to submit an application for a permit for the Dayton facility. DEQ allowed Divert to continue operating at the Dayton site during the permitting process. In July 2017, Yamhill County denied land use³ for the Dayton facility and subsequently DEQ did not approve a solid waste permit for the facility. The County

¹ Resolution No. 17-4834 for Albertsons to transport food waste to Divert

² 2017-WLOT-2290

³ Yamhill County Department of Planning and Development Docket No. SU-01-17/SDR-13-17

determined that the food waste processing activity did not comply with the zoning designation for the site. Divert appealed the County's decision, which is still pending as of the date of this report.

Albany Facility

In July, Divert acquired a new property located at 950 SE Jackson Street in Albany, Oregon to perform the same function as its Dayton facility. Since that time Divert has received land use approval from city of Albany⁴ and obtained a DEQ solid waste permit⁵ to operate the Albany facility. Divert has relocated its operations entirely from the Dayton facility to the Albany facility.

A narrative and timeline of Fred Meyer's applications to Metro are described later in this staff report under "The Applicant." Divert participated in an informational meeting with Metro staff on April 5, 2017 and hosted Metro and DEQ staff for an informational tour of the Dayton site on May 16, 2017.

If Council adopts Resolution No. 17-4835, it would authorize the COO to issue a new NSL to Fred Meyer to transport up to 4,400 tons per calendar year of Metro-area commercial food waste to Divert's Albany facility.

The Applicant

Fred Meyer grocery stores located in the Metro region consolidate all of their unsold products, primarily food waste, at a central distribution center located at 11500 SE Highway 212 in Clackamas, Oregon. Fred Meyer seeks this NSL to further its company goals of reducing food waste and costs through data analysis provided by Divert.

Fred Meyer initially submitted an NSL application on June 5 seeking to transport waste to Divert's Dayton facility. On July 18, Metro notified Fred Meyer that the Dayton facility could not obtain the required local and state authorizations because Yamhill County had denied its land use and had not obtained a DEQ permit. Given that Divert had not obtained the required authorizations, Metro staff notified Fred Meyer that it would recommend denial of its Dayton NSL application as submitted. Fred Meyer subsequently withdrew that NSL application and instead submitted a new application to transport food waste to Divert's Albany facility.

ANALYSIS & INFORMATION

1. Known Opposition

There is no known opposition to the issuance of an NSL authorizing the delivery of waste to Divert in Albany. However, several local government solid waste directors have expressed some concern about the implications of Metro granting a short-term authorization that would allow the region's food waste stream to go to facilities like Divert when Metro is considering implementing long-term food waste policies, including establishing a nearby food waste processing facility. A more detailed discussion of these concerns is provided below in subsection 7 of the "Legal Antecedents."

⁴ City of Albany Land Use Compatibility Statement, signed on July 13, 2017

⁵ DEQ Solid Waste Disposal Site/Material Recovery Facility Permit No. 1594, issued on September 12, 2017

2. Legal Antecedents

Metro Code Section 5.05.040 prohibits any person from utilizing a non-system facility without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 provides that, when determining whether or not to approve an NSL application, the Metro Council will consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed NSL authorizes the transport of food waste to Divert, a food waste processing facility located in Albany. The environmental risk from the use of this facility is presumed to be minimal because it is fully regulated and monitored by the appropriate local and state authorities. It has been Metro's practice to rely on the local land use authority and the state environmental agency to determine whether environmental or human health risks posed are known, reasonable and appropriate.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Divert's Albany facility is permitted by DEQ and has land use approval by the city of Albany. DEQ has indicated the facility is in compliance with its permit requirements.

DEQ issued a Warning Letter with Opportunity to Correct⁶ to Divert's Dayton site on March 15, 2017, because it was operating without having obtained the necessary permits. Divert has since opened its Albany facility which has obtained the necessary DEQ permit. The waste covered under the proposed NSL will be transported to the Albany facility.

- (3) *The adequacy of the non-system facility's operational practices and management controls;*

DEQ regulates Divert. DEQ staff consider the operational practices and controls in place at this facility to be appropriate for the proper management of food waste processing and adequate for the protection of health and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed license authorizes Fred Meyer to transport food waste to Divert's Albany facility for processing into a liquid slurry. Divert will transport the slurry to anaerobic digestion facilities to produce biogas rather than to a disposal site. Thus, approval of the proposed NSL will support Metro's current recycling and waste reduction efforts. Metro will monitor whether the diversion of food waste to Divert has an impact on the availability of food intended for donation.

- (5) *The proposed non-system license's effect with Metro's existing contractual arrangements;*

⁶ Warning Letter with Opportunity to Correct 2017-WLOTC-2290

Through 2019, Metro has a contractual agreement to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The waste subject to the proposed license will be transported to a food waste processing facility rather than a general purpose landfill. Therefore, approval of the proposed license will not conflict with Metro's disposal contract.

It is likely that Metro may enter into a contract with an organics processing facility that would accept a significant portion of the region's food waste. Metro has issued a request for proposals (RFP) seeking an organics processing facility for the region and is currently evaluating the proposals with the intent to select a processor in 2017. If that selection process results in a contract, Metro may limit the amount of food waste that may be transported to other facilities under NSLs.

Divert, partnered with Recology, is one of the proposers to Metro's RFP seeking an organics processing facility for the region. If selected, Metro would work with Divert and Recology to establish a service contract. If they are not selected or if other legislation is adopted which affects how food waste is managed in the Metro region, Metro may amend or terminate this proposed NSL if it is in the public's interest.

- (6) *The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

Fred Meyer has a good record of compliance with Metro and has had no violations related to public health, safety or environmental regulations.

- (7) *Any other factor the Chief Operating Officer considers appropriate.*

As mentioned above, the Metro Council will consider adoption of a Business Food Waste Requirement policy at the end of 2017 that may impact how food waste generated in the Metro region is managed. Several local government solid waste directors have expressed some concern about the implications of short-term authorizations that would allow energy-rich portions of the food waste stream to go to facilities like Divert when Metro is considering long-term policy and regional infrastructure options such as the selection of a processor to handle a large portion of the region's food waste. This will also include requiring local jurisdictions within the region to adopt companion policies no later than July 2018 with implementation at the business level beginning in March 2019. Therefore, Metro staff recommends issuing a 20-month NSL to allow Fred Meyer to transport this food waste to Divert's Albany facility until such time as Metro has adopted a commercial food scraps policy.

Although approval of Resolution No. 17-4835 would authorize Fred Meyer to transport waste to Divert, the proposed NSL does not obligate Divert to accept Metro-area waste. Additionally, adoption of the proposed resolution does not limit Metro's ability to terminate the NSL if Divert is unable or unwilling to accept this waste in the future or more proximate food waste processing capacity is available earlier in 2018 or 2019.

3. Anticipated Effects

Resolution No. 17-4835 will authorize Fred Meyer to transport up to 4,400 tons per calendar year of packaged and unpackaged commercial food waste to Divert's Albany facility for processing and disposal. The proposed NSL would take effect October 30, 2017 and expire June 30, 2019.

4. Special Provision of the NSL Unique to Divert Processing Facility

Because Divert accepts packaged food waste, Divert reports that its process results in about 25 percent residual waste that requires disposal in a landfill. The proposed NSL includes a condition that requires Fred Meyer to submit monthly reports to Metro showing the amount of residual waste that results from processing at the facility. Divert will conduct a waste residual study each month and provide the data to Fred Meyer to report to Metro each month. Metro will track this information and use it to inform future licensing conditions. Based on information received from the facility and staff's evaluation, staff recommends that the NSL include a condition requiring Fred Meyer to remit fees and taxes on 25 percent of the food waste tonnage that it transports to Divert each month under the NSL. This percentage corresponds to the approximate percentage of residual waste that results from processing the waste at Divert.

The proposed NSL includes a condition which allows the COO to amend the license in July 2018 to adjust the regional system fee and excise tax percentages owed to Metro. The COO will determine whether Fred Meyer's payment of fees and taxes on 25 percent of the food waste tonnage (representing the residual amount) is accurate and then amend the rate as appropriate utilizing the monthly residual data remitted to Metro by Fred Meyer.

Staff recommends issuing a 20-month NSL to allow Fred Meyer to transport this food waste to Divert until such time as Metro adopts a commercial food scraps policy, and implementation of the policy has begun. Metro has issued an RFP seeking a food waste processing facility for the region and is currently evaluating the proposals with the intent to select a processor in 2017. Metro intends to implement its food waste requirements in March 2019. Accordingly, the license expiration date of June 30, 2019 allows Fred Meyer to transport food waste to Divert until such time as the policy and selected processing facility are in place.

The COO may amend or terminate this proposed NSL if other legislation is adopted, such as the Business Food Waste Requirement policy, which affects how food waste is managed in the Metro region.

5. Budget Impacts

It is Metro's policy to manage the region's waste according to the waste management hierarchy. Metro's regional system fee and excise tax rates are based on the amount of waste that is anticipated to be disposed, in conjunction with Metro's budget for the next fiscal year. Anytime waste is diverted from Metro transfer stations, and further diverted from disposal, there will be some impact in the current fiscal year to Metro's tonnage charge, enhancement fee, and the solid waste fee and tax revenues. In the case of Fred Meyer, much of the commercial food waste that will be delivered to Divert under authority of this proposed NSL will be exempt from the fee and tax because it will be recovered for biogas production instead of disposal at a landfill. The residual waste resulting from the processing of this material (about 25 percent of the total) will be disposed and is subject to remitting the fee and tax. Currently, all of this commercial food waste is being sent to landfills for disposal. Any waste that is diverted from the disposal stream, will decrease current year revenues collected under the fee and

tax. The rates charged next year will be adjusted during Metro's annual rate making process. Waste diversion will also affect other disposal prices (i.e., tonnage charges) at Metro transfer stations and other private solid waste facilities due to fixed and capital costs being spread over fewer tons. The effects of these individual price changes will depend on facility-specific factors. However, the effect on the fee and tax is universal across all ratepayers and waste disposed.

RECOMMENDED ACTION

Staff recommends that Council approve Resolution No. 17-4835, finding that the license application satisfies the requirements of Metro Code Chapter 5.05. Resolution No. 17-4835 will authorize the COO to issue a new NSL, similar to the one attached to the resolution as Exhibit A, to Fred Meyer for a 20-month period commencing on October 30, 2017 and expiring on June 30, 2019.

HR
Queue

Agenda Item No. 4.1

Resolution No. 17-4846, For the Purpose of Approving Fiscal
Year 2017-18 Funding for Planning and Development Grants
Funded with Construction Excise Tax

Resolutions

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING FISCAL) RESOLUTION NO. 17-4846
YEAR 2017-18 FUNDING FOR 2040 PLANNING)
AND DEVELOPMENT GRANTS FUNDED) Introduced by Chief Operating Officer Martha
WITH CONSTRUCTION EXCISE TAX) Bennett in concurrence with Council
) President Tom Hughes

WHEREAS, in 2006, Metro adopted Ordinance No. 06-1115, establishing a construction excise tax (CET) to generate revenue for providing provide grants to local governments for regional and local planning (“2006 CET Ordinance”); and

WHEREAS, the 2006 CET Ordinance contained a sunset provision based on a maximum amount collected of \$6.3 million, which amount was reached in 2009; and

WHEREAS, on recommendation of an advisory group and the Metro Chief Operating Officer (“COO”) regarding the continuing need for funding regional and local planning, on June 11, 2009 the Metro Council adopted Ordinance No. 09-1220, extending the CET for an additional five-year period, with a sunset date of September 2014; and

WHEREAS, on recommendation of an advisory group and the Metro COO, on June 19, 2014 the Metro Council adopted Ordinance No. 14-1328, extending the CET for an additional five-year period (“2014 CET Ordinance”), with a new sunset date of December 31, 2020; and

WHEREAS, the CET has successfully raised approximately \$20 million in revenue that has been distributed by Metro to local governments through the Community Planning and Development Grant (“CPDG”) and the Equitable Housing Planning and Development Grants program for planning work across the region that otherwise could not have been funded; and

WHEREAS, on March 19, 2015 the Metro Council adopted Resolution No. 15-4595, which approved the Metro COO’s proposed amendments to the Administrative Rules governing the CET program; and

WHEREAS, on April 13, 2017 the Metro Council adopted Resolution No. 17-4782, which approved additional refinements to the Administrative Rules, changed the name of the grant program to 2040 Planning and Development Grant Program, and changed the program to annual grant cycles; and

WHEREAS, Resolution No. 17-4782, also approved \$2 million of funding for the 2017 grant cycle, with 50% of the allocated funds targeted for qualified projects that have a primary emphasis on serving disadvantaged populations and/or equitable housing, 25% of the allocated funds targeted for qualified projects that facilitate infill development inside the Urban Growth Boundary, and the remaining 25% of allocated funds targeted for qualified concept planning or comprehensive planning projects for urban reserves or new urban areas; and

WHEREAS, Metro received 18 applications from nine local governments, requesting a combined total of nearly \$3.7 million in grant funds in the 2017 grant cycle; and

WHEREAS, the Metro COO established a 2040 Planning and Development Grant Screening Committee (“Grant Screening Committee”) consisting of nine members with broad expertise in planning and development to provide the COO an assessment of the strength of each grant application in

accordance with the criteria set forth in Metro Code Chapter 7.04 and the Administrative Rules, and the funding targets set forth in Resolution 17-4782; and

WHEREAS, on September 25, 2017 the Grant Screening Committee submitted its recommendations to the COO identifying the projects they believe best meet the stated program goals and evaluation criteria and therefore merit grant funding; and

WHEREAS, in accordance with Metro Code Chapter 7.04 and the Administrative Rules, the COO reviewed the recommendations of the Grant Screening Committee, and presented to the Metro Council the COO's recommendations for grant funding, attached to this Resolution as Exhibit A; and

WHEREAS, the Metro Council has reviewed the recommendations of the COO, the work done by the Grant Screening Committee, the grant applications, the grant evaluation criteria, and the public testimony of grant applicants and other interested members of the public; and

WHEREAS, the Metro Council accepts the COO's recommendation to award funds as outlined in Exhibit A and as recommended by the 2040 Planning and Development Grant Screening Committee; now therefore,

BE IT RESOLVED that the Metro Council hereby:

1. Makes the grant awards for the fiscal year 2017-2018 grant cycle totaling approximately \$1.99 million, as set forth in Exhibit A, attached hereto and incorporated herein, to those grant recipients and for those projects and in the amounts listed in Exhibit A, contingent upon receipt of adequate CET funds; and
2. Authorizes and directs the Metro COO and staff to utilize their discretion to allocate the remaining balance of \$13,254 in CET funds to provide additional technical assistance as needed to successfully implement the grant projects; and
3. Authorizes and directs the Metro COO and staff, and the Office of Metro Attorney, to negotiate Intergovernmental Agreements with the grant recipients, which shall set forth milestones and funding disbursement dates that comply with the Metro Code Construction Excise Tax Chapter 7.04, the CET Administrative Rules, this Resolution No. 17-4846 and Exhibit A attached hereto.

ADOPTED by the Metro Council this ____ day of October, 2017

Tom Hughes, Council President

Approved as to Form:

Alison R. Kean, Metro Attorney


Metro

 600 NE Grand Ave.
 Portland, OR 97232-2736

Memo

Date: Thursday, Oct. 5, 2017
 To: President Tom Hughes
 Metro Council
 From: Martha Bennett, Chief Operating Officer *MBS*
 Subject: 2040 Planning and Development Grant Awards (2017/Cycle 5)

I am pleased to present my recommendations for grant awards for the 2040 Planning and Development Grant program for 2017 (Cycle 5). Since the Metro Council established this grant program funded by the construction excise tax, it has helped many communities turn potential into vision and vision into action for local and regional plans and policies. In 2017, local governments are facing new challenges and are looking for additional resources to help them plan for the future and facilitate desired development that can provide new jobs and housing options for residents in their communities.

Earlier this year, I appointed a diverse, nine member Grant Screening Committee with varied backgrounds and planning and development expertise in the private, nonprofit and public sectors. The Committee submitted its recommendations to me on September 26, recommending that eight projects be fully funded for a total of \$1,861,746. Their recommendations are outlined in Addendum 1.

Having met with the Screening Committee Chair and given consideration to the committee's assessment of the proposals, I concur that the eight grant proposals recommended by the committee merit full funding. In addition, I recommend that the Council awarding conditional funding in the amount of \$125,000 for one additional project proposed by the City of Portland in the Equitable Development category with conditions as noted below. You will consider my recommendations in Resolution No. 17-4846 on October 26, 2017.

Equitable Development (≈\$1 million targeted, \$984,000 recommended)

City of Cornelius	\$ 315,000
Cornelius Urban Renewal Plan, Town Center Plan, and Conceptual Site Planning	
Housing Authority of Clackamas County	\$ 214,000
Hillside Master Plan for Housing Opportunity	
Clackamas County - DTD	\$ 180,000
Park Avenue Development and Design Standards	
City of Portland/Multnomah County Joint Office of Homeless Services	\$ 150,000
Tri-county Equitable Housing Strategy to Expand Permanent Supportive Housing for People Experiencing Chronic Homelessness	

City of Portland	\$ 125,000*
Expanding Opportunities for Affordable Housing in Faith Communities	

* **Conditions for Funding:** *The City of Portland will obtain letters of support from three or more Faith-based institutions willing to partner on this project and explore opportunities for construction of affordable housing on their property.*

Facilitate Infill Development within UGB (≈\$500,000 targeted, \$602,746 recommended)

City of Beaverton	\$ 150,000
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Downtown Design and Development Readiness Project

City of Tigard	\$ 340,246
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Tigard Triangle Urban Renewal Implementation Project

City of Portland	\$ 112,500
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Rossi Farms Site Specific Development Plan

New Urban Area Planning (≈\$500,000 targeted, \$400,000 recommended)

City of Happy Valley	\$ 400,000
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Pleasant Valley/North Carver Comprehensive Plan

Total Grant Awards Recommended	\$1,986,746
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All of the nine projects recommended for funding will develop and produce policies and plans which will become the foundation for public, private and nonprofit investments in our communities. These projects will help enable the creation of more equitable housing and employment options, facilitate investment in well-planned urban infill to create more thriving downtowns and station communities, and complete important comprehensive planning for new urban areas where development has thus far stalled for lack critical infrastructure. The projects will address the needs of underserved and underrepresented people in the region, and will help unlock the future development potential of urban land that is been within the region's Urban Growth Boundary for many years.

Nine projects were not recommended for funding. Generally speaking, the Grant Screening Committee found that many of these applications had a mismatch between the work proposed and the program's goals of facilitating planning or pre-development activities that remove barriers to development, are necessary to make land ready for development, and help enable existing developed sites to be ready for redevelopment. Some proposals were incomplete or were vague about the project deliverables, while others did not adequately describe how the work would be accomplished, or did not demonstrate sufficient buy-in or support from key project partners or land owners. Others failed to make a compelling case that they would significantly advance regional goals and policies, or demonstrate a best practice that could likely be meaningfully replicated in other locations. I encourage applicants of those unsuccessful proposals to follow up with Metro staff to determine how they might best strengthen their projects if they wish to resubmit the proposals for consideration in the upcoming Cycle 6 grants in 2018.

The proposed resolution before you for consideration stipulates that program staff and the Office of Metro Attorney shall negotiate inter-governmental agreements for the eight funded projects consistent with requirements set forth in Metro Code, the program's Administrative Rules, and the grant amounts itemized in this recommendation. In prior grant cycles we have attached additional specific funding conditions to each grant, to address issues such as community engagement and performance measurement. Building on staff's experience administering Community Planning and Development Grants in prior grant cycles, and the recent recommendations of the Metro Auditor, staff shall, as a matter of course in administering these nine grants, include such provisions in the IGAs as necessary to ensure that grant projects conform to Metro standards for community engagement and performance measurement. As appropriate to specific grants, IGA's will also include language to ensure that local governments consider adoption of plans, strategies or policy refinements in order to realize the proposed project outcomes. Program staff and the Office of Metro Attorney will work to ensure that the final IGA's provide a clear plan of milestones schedule of payments to ensure that promised deliverables outlined in the applications are completed and all pledges of matching funds or in-kind contributions are fulfilled.

As you will note, my recommendations leave an excess \$13,254 from the anticipated \$2 million of total funding for this cycle. I support the Screening Committee's suggestion that the Metro Council resolve to apply these remaining funds to provide additional technical assistance to facilitate successful implementation of the eight funded grant projects. As staff work further with grantees to negotiate inter-governmental agreements for the projects, they will identify where needs for technical support can best be addressed through the involvement and expertise of Metro staff, or where additional funding for professional services may be needed to refine the project scope and/or augment local capacity for project delivery.

The Screening Committee's recommendation contains additional suggestions for future program refinements, specifically to improve clarity regarding the program's equity goals and objectives, the grant evaluation criteria that relate to equity, or provide more detail regarding the types of "equitable development" project approaches that might merit funding if future grant cycles continue to have a policy and investment framework that outlines specific funding targets for equitable development projects. Program staff will be working with their DEI colleagues in the coming months to consider potential refinements and will share proposed refinements with Council prior to the initiation of the Cycle 8 grant application process.

Attached to the staff report are brief summaries of each of the applications received. Copies of complete proposals submitted by local governments are also available to you in PDF format for review. After reviewing all materials, I believe you will share with me an appreciation for the high quality of local planning and development work proposed by the successful grantees, and take pride in the contribution that Metro can make by funding these efforts through the 2040 Planning and Development grant program.

Please let me or 2040 Grant Project Manager, Lisa Miles, know if you have any questions.

Thank you.

Attachments

cc: Elissa Gertler, Planning and Development Director
Brian Newman, Chair, 2040 Planning and Development Grants Screening Committee

Memo



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Date: October 4, 2017
To: Martha Bennett, Chief Operating Officer
From: Brian Newman, Chair, 2040 Planning and Development Grant Screening Committee
Subject: Grant Award Recommendations

On behalf of the 2040 Planning and Development Grant Screening Committee, I am pleased to share our recommendations for the 2017 Grant awards. Metro received a total of 18 grant proposals submitted by nine local jurisdictions requesting a combined total of nearly \$3.7 million in funding. Proposals were submitted by both large and small jurisdictions across the region, with applicants distributed throughout all three counties.

A wide variety of eligible project types were represented among the grant applications. Some of the proposed projects would support planning activities leading to short-term strategies for formal development commitments and development agreements. Others would allow for policy review and refinement or strategic planning that will eventually set the stage for redevelopment. Two proposals addressed the formation and planning of urban renewal districts. A handful of proposals proposed outreach and visioning activities for specific neighborhoods. The applications included a proposal for county-wide infrastructure planning for urban reserve areas, and comprehensive planning for a new urban area, an action plan for permanent supportive housing and an industrial area redevelopment strategy.

With only \$2 million of funds available to award this year, it was assumed from the outset of the committee's work that the process would be highly competitive. However, after careful individual review of the applications by each committee member and a robust committee discussion of the relative merits of the proposals, the committee ultimately came to a unanimous decision regarding which proposals to recommend for grant funding, resulting in a recommendation totaling less than the \$2 million of funds available. Provided below is a brief overview of the committee's review process and deliberations, a listing of the applicants and proposals in each category which the committee recommends for funding, and additional comments and recommendations of committee members regarding the implementation of these specific grants and the 2040 Planning and Development Grant program overall.

Committee Process

The nine members of the committee first convened in July to review the program guidelines, the established grant evaluation criteria, the grant requirements, and our committee's charter. Metro staff shared with the committee members the proposed policy and investment emphasis for the 2017 cycle as established by the Metro Council:

- 25% of grant funds targeted for qualified for concept planning and comprehensive planning projects in Urban Reserves or new urban areas.

Addendum 1 to Exhibit A for Reso. 17-4846

GRANT AWARD RECOMMENDATIONS

SEPTEMBER 14, 2017

- 50% of funds targeted for qualified projects that will facilitate 'equitable development' projects within the urban growth boundary – either by having a strong emphasis on development that serves historically marginalized communities and/or by promoting development of equitable housing. Metro's working definition of equitable housing is diverse, quality, physically accessible, affordable housing choices with access to opportunities, services and amenities.
- 25% of funds targeted for qualified projects that facilitate infill development in centers, corridors, station areas, and employment areas within the urban growth boundary.
- In the event of insufficient qualified applications within any one funding category, grant funds may be awarded to qualified applications in any other category.

Staff reviewed the specific evaluation criteria (see Attachment A) to be utilized by committee members in ranking the applications. In addition, staff shared their overall assessment of the strengths and weaknesses of the proposals in each funding category, and explained their reasoning for reassigning two proposals that were submitted in the 'Equitable Development' category to the 'infill development' category. All applicants were required to identify the funding category under which they wished their proposal to be considered. However, the applications submitted by the City of Tigard and by TriMet were reassigned because, in the opinion of Metro staff, equitable development was not the primary emphasis of the applications. Committee members concurred with staff's assessment and the resulting reassignment. In addition, the proposal submitted by King City did not respond to all required questions, and was therefore disqualified by staff, out of fairness to applicants who had correctly adhered to the stated requirements. The city will have the opportunity rework the proposal and resubmit in the 2018 grant cycle if desired.

Following the committee's initial meeting, members individually reviewed all of the eligible grant applications and assigned preliminary rankings within each category. When the committee reconvened in August to deliberate, members shared their reasoning for assigning specific ranks, the perceived strengths and weaknesses based on individual members' development expertise, as well as their understanding of the scope of work proposed.

The applications ultimately recommended by the committee were those that clearly aligned with the program's central mission to support planning and pre-development activities that:

- remove barriers to development
- are necessary to make land ready for development, and
- enable existing developed sites to be redeveloped.

Committee members applied their broad and deep collective expertise to consider which proposals had clear and achievable goals and would be most likely to facilitate impactful development outcomes in alignment with both local and regional goals.

Addendum 1 to Exhibit A for Reso. 17-4846

GRANT AWARD RECOMMENDATIONS

SEPTEMBER 14, 2017

Recommendations for Grant Awards

A listing of the committee’s funding recommendations for each target category is presented below. While committee members considered the option to recommend partial funding of proposals, we ultimately elected not to do so. Committee members felt that there was a clear distinction between the projects recommended for grant awards and those recommended for no funding. It should be noted that the committee deliberately decided not to award all of the available funding. Rather, we recommend that Metro utilize the remaining balance of funds (\$138,254) to provide additional technical assistance at the Council’s discretion for scope development and additional support to local staff and project managers who will be overseeing the grant work and supervising consultant teams. Especially for some of the more complex projects and for jurisdictions that have limited available staff resources, the additional expert assistance will help ensure that the proposed projects successfully achieve their stated goals.

Equitable Development (≈\$1 million targeted, \$859,000 recommended)

City of Cornelius	\$ 315,000
Cornelius Urban Renewal Plan, Town Center Plan, and Conceptual Site Planning	
Housing Authority of Clackamas County	\$ 214,000
Hillside Master Plan for Housing Opportunity	
Clackamas County - DTD	\$ 180,000
Park Avenue Development and Design Standards	
City of Portland/Multnomah County Joint Office of Homeless Services	\$ 150,000
Tri-county Equitable Housing Strategy to Expand Permanent Supportive Housing for People Experiencing Chronic Homelessness	

Facilitate Infill Development within UGB (≈\$500,000 targeted, \$602,746 recommended)

City of Beaverton	\$ 150,000
Downtown Design and Development Readiness Project	
City of Tigard	\$ 340,246
Tigard Triangle Urban Renewal Implementation Project	
City of Portland	\$ 112,500
Rossi Farms Site Specific Development Plan	

New Urban Area Planning (≈\$500,000 targeted, \$400,000 recommended)

City of Happy Valley	\$ 400,000
Pleasant Valley/North Carver Comprehensive Plan	

Total Grant Awards Recommended	\$1,861,746
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Addendum 1 to Exhibit A for Reso. 17-4846

GRANT AWARD RECOMMENDATIONS

SEPTEMBER 14, 2017

Applications Not Recommended for Funding

Equitable Development

Multnomah County Vance-Yeon Master Plan	\$ 300,000
City of Portland Brentwood Darlington Complete Community Strategy	\$ 155,000
City of Portland Expanding Opportunities for Affordable Housing in Faith Communities	\$ 125,000
City of Portland Infill Housing without Displacement: Sustainable NE Portland Strategy	\$ 150,000
City of Portland Maximizing Equitable Housing Using Climate Resilience Strategies in Johnson Creek Floodplain	\$ 104,850
City of Portland St. Johns Community Stability Project	\$ 102,500
Prosper Portland Anti-Displacement Strategies and Tools for Community Led Development	\$ 250,000

Infill Development within UGB

Tri-County Metropolitan Transportation District of Oregon Greyhound Site Feasibility Study	\$ 94,960
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New Urban Area Planning

Washington County Getting Ahead of the Curve: Proactive Planning for Urban Reserves in Washington County	\$ 420,000
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Additional Considerations

Members of the committee offered the following additional comments and recommendations to regarding their impressions of this grant cycle and potential future adjustments to the grant program and requirements:

- While some applications had been carefully prepared, succinctly described the project purpose and scope, and identified achievable development outcomes, there were a number of applications that were insufficiently thorough, and/or did not directly align to the central mission of the program to facilitate development and redevelopment in alignment with regional goals.
- Additional review, consideration, and guidance is needed regarding the program's equity objectives and the approach for emphasizing equitable development. The desired clarity and emphasis on equity could be accomplished by revising the overall evaluation criteria to

Addendum 1 to Exhibit A for Reso. 17-4846

GRANT AWARD RECOMMENDATIONS

SEPTEMBER 14, 2017

better address equity goals, or by providing clearer guidelines for applicants regarding the types of projects that could successfully merit for funding in the 'equitable development' target category.

If you so desire, I will be happy to join you in presenting the committee's recommendations to the Metro Council in October. On behalf of the members of our 2040 Planning and Development Grant Screening Committee, thank you for inviting us to participate in this process and assist Metro in funding projects across the region that advance local and regional development goals and implement our shared vision for the future.

cc: Elissa Gertler, Director of Planning and Development
Megan Gibb, Land Use and Urban Development Manager
Lisa Miles, 2040 Planning and Development Grants Program Manager

ATTACHMENT A TO GRANT AWARD RECOMMENDATIONS: GRANT EVALUATION CRITERIA

Clear development outcomes. Proposal presents a compelling project concept with specific, impactful outcomes to facilitate development. Performance measures are clearly articulated.

Advances and complements regional goals and policies. Proposed project will help to advance established regional development goals and outcomes expressed in the 2040 Growth Concept, the Urban Growth Management Functional Plan, and the following Six Desired Outcomes stated in the Regional Framework Plan, adopted by the region to guide future planning:

- People live and work in vibrant communities where their everyday needs are easily accessible;
- Current and future residents benefit from the region's sustained economic competitiveness and prosperity;
- People have safe and reliable transportation choices that enhance their quality of life;
- The region is a leader in minimizing contributions to climate change;
- Current and future generations enjoy clean air, clean water and healthy ecosystems;
- The benefits and burdens of growth and change are distributed equitably.

Aligns with local goals and/or maximizes community assets. Proposed project will help realize community plans and goals, accommodate expected population and employment growth, and/or maximize existing community assets such as public transit, parks, natural features, historic districts and employment areas.

Likelihood of implementation. Relevant key stakeholders (property owners, policy makers, jurisdictions, service providers, etc.) have committed full support for the project goals and timelines, will be meaningfully involved in guiding the project, and have the capacity and authority to implement actions/investments as needed to bring the project to fruition. Opportunities and threats to project commitments are identified.

Public involvement. Proposal incorporates best practices for public involvement with clearly articulated and well-conceived strategies for strategies for meaningfully engaging neighbors, businesses, property owners and key stakeholders including historically marginalized communities and residents with lower incomes; proposal indicates how public input will be used to strengthen the project outcomes, and/or increase the likelihood of successful implementation.

Team roles and capacity. Roles and responsibilities of the applicant county or city, as well as any additional partners have been clearly defined; proposed staff has skill sets, experience and appropriate available time needed to successfully manage all aspects of the grant project and oversee the work of the consultant team or teams on behalf of the project partners.

Addendum 1 to Exhibit A for Reso. 17-4846

GRANT AWARD RECOMMENDATIONS

SEPTEMBER 14, 2017

Jurisdiction track record. Applicant has proven capability to successfully implement community development projects, especially past CPDG or 2040 Grant projects; prior grants have fully delivered expected products and outcomes according to the approved schedule of milestones; any CPDG Grant projects still underway are on track and/or scheduled for completion prior to initiation of proposed project.

Grant leverage. Extent to which partners have committed additional in-kind or direct financial contributions to the project beyond the minimum ten percent match that is required.

Replicable best practices. Proposed project will develop best practices that could be replicated in other locations. (Note: This criterion may not be applied to all projects.)

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4846, FOR THE PURPOSE OF APPROVING FY 2017-18 FUNDING FOR 2040 PLANNING AND DEVELOPMENT GRANTS FUNDED WITH CONSTRUCTION EXCISE TAX

Date: October 9, 2017

Prepared by: Lisa Miles 503.797.1877
Roger Alfred 503.797.1532

BACKGROUND

Program History, Enabling Legislation, and Prior Grant Awards

In 2006, Metro established a construction excise tax (CET) to generate revenue for providing grants to local governments for regional and local planning. The ordinance contained a sunset provision based on a maximum amount collected of \$6.3 million, and the maximum amount was reached in 2009. In 2009 the Metro Council extended the CET for an additional five year period.

In 2014, the Metro Council adopted Ordinance No. 14-1328, which extended the CET through December 2020 and directed the Chief Operating Officer (COO) to seek direction from the Metro Council prior to revising the Administrative Rules for implementation of the CET and the Community Planning and Development Grants (CPDG). In 2015, the Metro Council adopted a resolution approving the Metro COO's amendments to the Administrative Rules.

Over the first four cycles of grants, Metro awarded approximately \$19.1 million in grant funds to support 77 planning and development projects.

As part of the resolution approving the Cycle 4 grants in 2015, the Metro Council directed the COO and staff to return to the Council with a proposal regarding possible uses of unallocated CET revenue from Cycle 4. In response to the Metro Council's directive, the COO and Metro staff developed the Equitable Housing Planning and Development Grant Program as a subset of the CPDG program. The Metro Council accepted the COO's recommendation to create the Equitable Housing Planning and Development Grant Program with an initial budget of \$500,000 for a first round of grants, consisting of the \$230,000 in unallocated Cycle 4 revenue, plus an additional \$270,000 of CET revenue. Part way through the grant application process, Multnomah County relinquished a \$75,000 grant awarded during Cycle 4, which was for the purpose of planning and developing a homeless shelter, thus increasing the potential pool of available funding. On December 1, 2016 the Metro Council adopted Resolution No. 16-4753, which awarded approximately \$575,000 in Equitable Housing Planning and Development grants.

A table summarizing the total grant dollars and number of projects funded for each of the prior grant cycles is provided below.

Grant Cycles	Project Type	Start	Total Grant Awards	Number of Projects
Cycle 1	Focused on concept planning for areas recently brought into UGB	FY 2006-2007	\$6.2 million	25
Cycle 2	Focused on community and economic development inside the UGB	FY 2009-2010	\$3.7 million	17
Cycle 3	Fund was intended for community and economic development inside the UGB with 50% for new urban areas and urban reserves.	2013	\$4.5 million	19
Cycle 4	Fund intended for community and economic development inside the UGB and 25%-30% for new urban areas and urban reserves.	2015-2016	\$4.7 million	16
Cycle 4EQH	Funds intended for equitable housing planning and development inside the UGB	FY2016-17	\$575,000	7
Approximate Total of Grant Dollars and Projects Awarded in Cycles 1-4			\$19.7 million	84

2017 Program Refinements and Policy and Investment Emphasis

In early 2017, the Metro COO and staff considered how the CPDG and Equitable Housing Planning and Development Grant programs had evolved and what revisions and approaches could help the planning and development grant program to be more effective in future cycles. In April 2017, the Metro Council approved Resolution 17-4782 which included the following program refinements for the 2017 grant cycle (Cycle 5):

- Change the CPDG program name to 2040 Planning and Development Grants to emphasize the program’s connection to implementing the region’s 2040 Growth Concept, to incorporate both the CPDG and the Equitable Housing Planning and Development Grant programs under one umbrella, and to reduce confusion with the federal government’s Community Development Block Grant (CDBG) program acronym.
- Move to annual grant cycles and one application process for all grant types
- Utilize ZoomGrants software to facilitate submission of applications and ongoing grant administration
- Revise Administrative rules to clarify the range of acceptable project types; consolidate and refine the Grant Evaluation Criteria; and adjust administrative procedures to streamline grant administration and improve project delivery.

In adopting Resolution 17-4782, the Metro Council also established the proposed policy and investment emphasis for the 2017 grant cycle is as follows:

- 25% of grant funds targeted for concept planning or comprehensive planning projects in Urban Reserves or areas brought into UGB since 2009
- 50% of funds targeted for projects to facilitate development within the Urban Growth Boundary that have a strong emphasis on serving historically marginalized communities and/or equitable housing

- 25% of funds targeted for projects to facilitate development in centers, corridors, station areas, and employment areas
- In the event that there are not sufficient strong applications in any target area, grant funds may be allocated to other types of applications.

2040 Planning and Development Grant Application Process (2017/Cycle 5)

On April 17, 2017 the Cycle 5 Grant process was initiated and Metro began to accept draft Letters of Intent. Between May 1 and May 26, 2017 Metro staff conducted pre-application conferences with each applicant to provide feedback on their Letters of Intent (LOIs), and advice on how their grant proposals and full grant applications might be strengthened.

Metro received 20 LOIs from local governments by the May 26, 2017 deadline. Of these, 19 were approved to submit full applications; one was declined by staff as it did not sufficiently meet program eligibility requirements.

Metro ultimately received a total of 18 full applications from 9 local governments by the June 30, 2017 deadline. Fourteen proposals requesting a total of \$2,486,556 applied for consideration under the Equitable Development funding category, two proposals requesting a total of \$262,500 applied for consideration under the Infill Development within the UGB category, and two proposals requesting a total of \$820,000 applied for the New Urban Areas and Urban Reserves category.

Metro staff reviewed the applications for completeness and to evaluate their appropriateness for consideration within their preferred category. The application from King City for the King City Main Street Master Plan was determined to be incomplete, and was not forwarded to the Screening Committee for further consideration. Two proposals that had applied for consideration under the Equitable Development Category were determined not to have a sufficient “primary” emphasis on equitable development to warrant consideration in that category. The proposal from the City of Tigard for the Tigard Triangle Urban Renewal Implementation project, and the proposal received from TriMet for the Greyhound Site Feasibility Study were reassigned by staff to be considered under the Infill Development within the UGB category.

2040 Planning and Development Grant Application Review and Recommendations

The nine members of the 2040 Planning and Development Grant Screening Committee appointed by the Metro Chief Operating Officer (COO) in accordance with the Administrative Rules met in July and again in August to review the program goals and grant evaluation criteria and discuss the relative merits of the various applications. At the conclusion of their August meeting, the members of the committee came to a unanimous decision regarding the eight projects to recommend to the COO awarding a combined total of \$1,861,746 in grant funding out of the \$2 million in funding available. The committee also unanimously agreed to recommend that the balance of \$138,254 in funding not be awarded to fund an additional grant, but should rather be utilized to provide additional technical assistance to the various recommended grants as needed to facilitate project success. The committee’s Chair formally submitted a summary of the committee’s recommendations to the COO on September 26, 2017, attached as Addendum 1 to Exhibit A to Resolution 17-4846.

Metro’s COO, Martha Bennett, has reviewed the Grant Screening Committee Recommendation, and has considered the committee’s guidance along with the grant evaluation criteria set forth in the Administrative Rules, the policy and investment emphasis established by the Metro Council for the 2017 grants, and the grant applications submitted. The COO has issued her recommendation to the Metro Council (Exhibit A to Resolution 17-4846) concurring that all eight of the projects recommended by the Grant Screening

Committee's be awarded full funding. COO Bennett has further recommended that one additional grant proposal from the City of Portland receive a conditional award of \$125,000 of grant funding, provided that the City identifies 3 or more community partners to participate in the project. The nine grant awards recommended by the COO total \$1,986,746. The COO also concurs with the Grant Screening Committee's suggestion that the remaining grant funds (\$13,254) be allocated by Metro staff as needed to help facilitate successful implementation of the grant projects.

The Metro Council will make the final grant decisions at the public hearing on **October 26, 2017**. After reviewing the COO's recommendations, the Grant Screening Committee recommendations, and considering the grant evaluation criteria, the grant applications submitted, and public testimony, the Metro Council may adopt by resolution all of the COO's recommendations, or may change some of them. Projects that are not funded in this cycle will have another opportunity to apply for funding in the upcoming 2018 grant cycle.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed legislation, except potentially from any or all of the grant applicants whose proposals are not recommended for funding in this grant cycle.

2. Legal Antecedents

- Metro Ordinance 06-1115 ("2006 CET Ordinance) established the construction excise tax
- Metro Ordinance 09-1220 extended the CET for an additional five-year period (through September 2014)
- Metro Ordinance 14-1328 extended the CET for an additional five-year period (through December 2020) and directed the Metro COO to propose amendments to the existing administrative rules
- Metro Resolution 15-4595 approved the Metro COO's proposed amendments to the administrative rules
- Metro Resolution 15-4640 directed the Metro COO's to propose a possible use for unallocated funds in Cycle 4
- Metro Resolution 16-4753 awarded approximately \$575,000 in Equitable Housing Planning and Development Grants
- Metro Resolution 17-4782 changed program name, approved revisions to administrative rules to allow annual grant cycles, refined grant evaluation criteria, incorporated new administrative procedures, and established policy and investment emphasis for 2017 Grants

3. Anticipated Effects

This resolution designates 2040 Planning and Development Grant Awards to be funded with Construction Excise Tax, subject to receipt of construction excise tax funds. The projects have proposed timelines of approximately 12 to 24 months.

4. Budget Impacts

The FY 2017-18 budget includes resources for staff in the Planning and Development Department to begin work in administering the proposed funds. The shift to annual grant cycles, combined with proposed process improvements, is intended to help streamline administrative aspects and operational efficiency of the program. Exact funding for any grant round is subject to the projected

excise tax revenues collected.

5. Attachments

Attachment 1: Summary of all 2040 Planning and Development Grant Applications Received for 2017

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of the resolution to approve the COO's recommendation for the 2040 Planning and Development Grant Program awards (2017/Cycle 5).

City of Beaverton Downtown Design and Development Readiness Project	
Amount of Grant Request: \$ 150,000.00	Proposed Match: \$ 59,750.00
Recommended for Funding? \$ 150,000.00	
Project Summary: The Downtown Design and Development Readiness Project is about taking concrete steps to make development happen. Past Beaverton projects, including the important and award-winning Community Vision Plan, have done the valuable work of defining what the community wants Downtown to be. This project is about allowing and encouraging that future. This project will fix the Development Code; remove obstacles to development; make sure density comes with design; and integrate thinking and actions about buildings, streets, parks, plazas and other essential urban elements to ensure a vibrant and livable Downtown. The project will implement the community’s high-level vision for a vibrant Downtown by: <ul style="list-style-type: none"> • Better defining Downtown and establishing mini-districts within it so strategies can be more fine-grained. • Removing obstacles to development and rethinking site and building design rules. • Encouraging new buildings, jobs and housing. • Working closely with our partner Tualatin Hills Park & Recreation District (THPRD) to define the role of urban public spaces. • Promoting safe, inviting streets and sidewalks that work with adjacent development and promote a variety of ways to travel – including improving connections between Old Town and Beaverton Central to unite the two parts of Downtown. • Developing implementation next steps, including identifying “quick wins.” • Conducting the project with significant and inclusive public engagement 	
Project Location: The project area is Downtown Beaverton, which includes Old Town (bordered by Beaverton High School, Fifth, Lombard and Canyon) and Beaverton Central (bordered by Cedar Hills Boulevard, Canyon, Lombard and Hall/Center). The area has significant development potential; is nestled among jobs centers in Beaverton, Hillsboro and Portland; and has excellent transportation access with Highway 217, MAX, WES and frequent bus service.	

<p>City of Cornelius Cornelius Urban Renewal Plan, Town Center Plan, and Conceptual Site Planning Project</p>	
<p>Amount of Grant Request: \$ 315,000.00</p>	<p>Proposed Match: \$ 33,500.00</p>
<p>Recommended for Funding? \$ 315,000.00</p>	
<p>Project Summary:</p> <p>This project involves a comprehensive planning effort comprised of the development of an Urban Renewal Plan, conducting conceptual site planning for two Special Employment Development Areas in the city, and a thorough analysis and master plan development for the Cornelius Conceptual Town Center. It is expected that through this effort the City will drive smart and appropriate growth in its core commercial and light industrial areas. While a Town Center Master Plan will establish guiding principles and standards for development and expansion of commercial and residential services and amenities in a mixed-use environment, a drilled-down conceptual site planning effort for two of the Special Employment Development Areas will establish community-led expectations for future development, identify infrastructure needs, and evaluate impacts to the community. Lastly, the best planning efforts in the world don't gain much traction without actual public dollars to be strategically deployed as the catalyst to private investment in the community. This will be achieved through the development and implementation of an Urban Renewal Plan. These three planning deliverables serve as a suite of complementary efforts to spur a new generation of prosperity for Cornelius.</p>	
<p>Project Location:</p> <p>The project will focus on the Cornelius Conceptual Town Center, the preliminary Urban Renewal District Boundary, and two Special Employment Development Areas as identified in the Cornelius Economic Opportunities Analysis and Strategic Action Plan. The total project area encompasses approximately 0.78 square miles, which makes up 35% of the city's 2.24 square-mile total area. More notably, however, is that the project area encompasses over 89% of the total area of commercially and industrially-zoned properties within the city. Hence, the impact of these complementary planning efforts will have a widespread impact on the functionality of our local economy and employment base. This also illustrates the cohesive nature of this multi-faceted planning approach to prepare our commercial, industrial, and mixed use properties for future growth and success.</p>	

City of Happy Valley Pleasant Valley/North Carver Comprehensive Plan	
Amount of Grant Request: \$ 400,000.00	Proposed Match: \$ 205,000.00
Recommended for Funding? \$ 400,000.00	
Project Summary: Eventual adoption of the Pleasant Valley/North Carver Comprehensive Plan (PV/NC Comp Plan). For an approximately 2,700-acre area in a portion of the former City of Damascus lands within the Urban Growth Boundary deliverables include: Integrated Land Use and Transportation Plan including all urban zoning designations and an extensive TSP Update; Parks Master Plan/SDC Methodology/Capital Improvement Plan; Sanitary/Storm Sewer Master Plans; Water Master Plan; Steep Slopes and Natural Resources Overlay Zone Plan Update (Title 3/13); Local Wetland Inventory; and, three separate school districts 10-year Capital Plans. Citywide Deliverables: Updated Comprehensive Plan Policies and Land Development Code Text Amendments directly addressing equitable development and equitable housing projects and policies (beyond significantly increasing buildable land supply); Buildable Lands Inventory; and, Housing Needs Analysis for the subject area.	
Project Location: Approximately 2,700-acre area that is made up of the western portion of the City of Damascus and the North Carver area. Extends from roughly the 177th Ave. area of the East Happy Valley Comprehensive Plan area adopted in 2009 east to roughly the 190th Drive area and from the Multnomah/Clackamas County boundary to the north to the Clackamas River to the south.	

City of King City King City Main Street Master Plan	
Amount of Grant Request: \$ 100,000.00	Proposed Match: \$ 157,500.00
Recommended for Funding? No	
Project Summary: Project activities will evaluate and develop design criteria and determine the feasibility of development types. The project will include elements that will augment our master planning efforts and help shape the development characteristics of the area. The project will include the following elements: <ul style="list-style-type: none"> • A Market Analysis: The Market Analysis will test the feasibility and help develop financial tools that will be used to assist development and promote an urban main street/town center designed to service the community with jobs, commerce and residential opportunities. Deliverable = Market Analysis Used to Guide Development Types. • Engineering: The Engineering will provide design alternatives that address infrastructural shortfalls, related costs associated with the infrastructure design alternatives, which alternative would be best suited given the geography of the areas and how shortfalls may be bridged. Deliverable = Site specific engineering and analysis, Multi-modal Transportation system integration. • Master Planning: Planning efforts will provide development guidelines that ensure a robust and integrated community that addresses equitable housing types and ensure densities that will support the commercial, industrial & retail aspects of the community's Main Street/Town Center. Deliverables=Master Plan, Parks Plan, Rough Elements of a Transportation System Plan & associated Comprehensive Plan Amendments. 	
Project Location: The primary focus of the planning efforts will be on developing a new King City Main Street/Town Center SE of Roy Rogers and Beef Bend in the Western portion of the Urban Reserve with commercial, retail, hotel, tourism, and industrial development in a vibrant mixed use town center. The downtown area is expected to be surrounded and integrated with an equitable range of housing types, including Multi-Family, Townhouse, Condos, Single Story Homes, Single Family Dwellings, and Estates. Our preliminary market analysis indicates that full development is attainable within ten years. The studies we are proposing and are completing now will allow this area to be fully prepared for development by 2020.	

City of Portland Rossi Farms Site Specific Development Plan	
Amount of Grant Request: \$ 112,500.00	Proposed Match: \$ 50,000.00
Recommended for Funding? \$ 112,500.00	
Project Summary: This project would carry out pre-development feasibility and market analysis for the Rossi Four-Corners area in East Portland. The subject properties encompass more than 30 acres, with mixed-use zoning adopted with the 2035 Comprehensive Plan. Rossi Farm is a landmark in East Portland, and one of the City's largest undeveloped sites adjacent to schools and a new park. A partnership between Parkrose School District, the Rossi family and the City would help support realization of public goals, such as encouraging a more holistic master plan, integration of the site design with abutting parks, inclusion of family-friendly affordable housing, and development of more transit-supportive and walkable designs.	
Project Location: This project occurs at a 30 acre +/- site located on NE 122nd Avenue in East Portland.	

City of Portland Infill Housing Without Displacement: Sustainable NE Portland Strategy	
Amount of Grant Request: \$ 155,000.00	Proposed Match: \$ 37,900.00
Recommended for Funding? No	
Project Summary: This project will address financing and other obstacles to the (re)development process as perceived by property owners in the Cully, Sumer and Madison South neighborhoods. By creating a path for property owners and nonprofit organizations to take advantage of these development opportunities this project will stabilize and increase affordable housing in the neighborhood. The outcome will be increased densities in neighborhood centers and along corridors by (a) construction of accessory dwelling unit (ADUs) by homeowners with limited resources; and (b) securing opportunity sites for affordable multi-unit housing development.	
Project Location: This project takes place in NE Portland in the Cully, Sumner and Madison South neighborhoods.	

<p>City of Portland Maximizing equitable housing outcomes using climate resilience strategies in the Johnson Creek Floodplain.</p>	
<p>Amount of Grant Request: \$ 104,850.00</p>	<p>Proposed Match: \$ 165,221.00</p>
<p>Recommended for Funding? No</p>	
<p>Project Summary:</p> <p>The Downtown Design and Development Readiness Project is about taking concrete steps to make The Johnson Creek Housing and Resilience Project will investigate market conditions, zoning tools, and design tools to develop strategies to maintain housing supply and affordability in East Portland, while simultaneously supporting floodplain restoration to reduce local flood risks, promote job growth, and enhance stream and floodplain ecology. This project is co-led by the Portland Housing Bureau and Bureau of Environmental Services in partnership with other agencies participating in a Governor-designated Oregon Solutions project.</p> <p>The need: The City of Portland needs about 35 acres of land to mitigate the 100-year flood and prevent negative impacts on residents and industrial site development, which would require the removal of homes and the loss of additional housing capacity. This Metro grant would allow the City of Portland to research market conditions, develop land use tools, and vet housing designs to retain housing supply and affordability through infill development, while permanently reshaping the 100-year floodplain onto public property in support of the Oregon Solutions project.</p> <p>Goals:</p> <ul style="list-style-type: none"> • Offset the loss of homes and housing capacity as a result of future floodplain restoration • Maintain housing supply and housing affordability • Provide housing choices that suit the needs of local residents • Address impediments to infill development 	
<p>Project Location:</p> <p>This proposal focuses equitable housing and climate resilience issues in the Lents Town Center Urban Renewal Area, which includes residential neighborhoods, employment and industrial areas, and natural areas and open space.</p>	

City of Portland Brentwood-Darlington Complete Community Strategy	
Amount of Grant Request: \$ 155,000.00	Proposed Match: \$ 73,711.00
Recommended for Funding? No	
Project Summary: This is a community led project to set goals and identify strategies for increasing access to complete community assets in Brentwood Darlington while maintaining affordable housing and avoiding displacement. Opportunity sites will be identified for both affordable and middle housing.	
Project Location: This project is located in SE Portland roughly corresponding with the Brentwood Darlington neighborhood.	

City of Portland
Expanding Opportunities for Affordable Housing in Faith Communities

Amount of Grant Request: \$ 125,000.00

Proposed Match: \$ 40,000.00

Recommended for Funding? Metro COO recommends funding of \$125,000 on the condition that the City of Portland obtains letters of support from three or more Faith-based institutions willing to partner on this project and explore opportunities for construction of affordable housing on their property.

Project Summary:

This project will prepare models for developing affordable housing on underutilized faith-based institutional property and present these models to identified institutions for their consideration. Desired outcomes would be construction of affordable housing that helps meet the city's housing needs while being compatible with the surrounding neighborhood.

Project Location:

Citywide, specific sites will be identified through outreach efforts with the City's faith based communities.

City of Portland St Johns Community Stability Project	
Amount of Grant Request: \$ 70,000.00	Proposed Match: \$ 40,000.00
Recommended for Funding? No	
Project Summary: This project provides planning and implementation efforts that leverage the City of Portland's Affordable Housing Bond funding, building institutional capacity in community non-profit organizations, identifying opportunity sites for developing or preserving affordable housing and exploring zoning map and code changes to create more development opportunity in the St Johns Town Center.	
Project Location: This project is located generally in the St. Johns Town Center in North Portland.	

<p>City of Portland/Multnomah County Joint Office of Homeless Services Tri-county Equitable Housing Strategy to Expand Permanent Supportive Housing for People Experiencing Chronic Homelessness</p>	
<p>Amount of Grant Request: \$ 150,000.00</p>	<p>Proposed Match: \$ 29,440.00</p>
<p>Recommended for Funding? \$ 150,000.00</p>	
<p>Project Summary:</p> <p>The proposed project is a one-year, tri-county equitable housing project to develop, prioritize, and begin implementation of strategies, including coordinated investment strategies, to produce additional development of permanent supportive housing (PSH) for people experiencing chronic homelessness - some of the most vulnerable and marginalized members of our communities. PSH is a best practice to end chronic homelessness by combining deeply affordable housing with supportive services to promote housing stability. PSH development requires resource and site identification and additional strategic coordination to identify ongoing resources for operating and supportive services. This project addresses these challenges through focused planning that is both regional in scope and county-specific. It will ready Clackamas, Multnomah and Washington Counties to begin development of additional PSH sufficient to meet a minimum of 10% of assessed regional need by June 2022.</p> <p>The project will assemble a multijurisdictional steering committee and an expert consultant team to: assess existing conditions; develop and implement public engagement strategies; complete a region-wide PSH gap analysis; conduct county-specific PSH development capital and operating cost analyses; identify investment strategies to support PSH funding plans; identify opportunity sites for PSH development; and prioritize and begin implementation of specific funding plan strategies to initiate PSH development.</p>	
<p>Project Location:</p> <p>The project will support equitable housing development throughout the three-county Metro area, though anticipated permanent supportive housing development will occur almost exclusively within existing urban growth boundaries and in alignment with the Centers, Corridors, Station Communities, and Main Street areas identified in the Metro 2040 Concept Map.</p>	

<p>City of Tigard Tigard Triangle Urban Renewal Implementation Project</p>	
<p>Amount of Grant Request: \$ 340,246.00</p>	<p>Proposed Match: \$ 251,371.00</p>
<p>Recommended for Funding? \$ 340,246.00</p>	
<p>Project Summary:</p> <p>The goal of the Tigard Triangle Urban Renewal Implementation Project is to develop a plan for strategic public investment that supports and catalyzes equitable development in the Triangle that is consistent with the community's vision. This project will develop a comprehensive urban renewal investment strategy to maximize the value of urban renewal dollars, leverage private sector investment, and help achieve equitable development in the Triangle. The City proposes to assemble a collaborative interdisciplinary team to work with City staff on this project. The general timeframe for completion is 18 – 24 months. The scope of work includes the development of four interrelated tasks.</p> <p>Task 1. Equitable Development Strategy to inform the approach and outcomes of all deliverables. Task 2. Urban Renewal Finance Plan to provide a financial framework for public investment decision-making. Task 3. Property and Redevelopment Study to leverage private sector investment. Task 4. Infrastructure Investment Plan to analyze, prioritize, and advance design of key public infrastructure projects.</p> <p>This project will help implement the 2040 Growth Concept and the Urban Growth Management Functional Plan by building upon the City's recent multi-pronged efforts to transform the Triangle into an active, urban, multimodal, and mixed-use district in keeping with its Metro 2040 Town Center designation</p>	
<p>Project Location:</p> <p>The 500-acre Tigard Triangle is located just east of downtown Tigard and seven miles south of downtown Portland. This underdeveloped area is surrounded by high-volume highways on each side: I-5 to the east, Hwy 217 to the southwest, and Hwy 99W to the northwest. The Triangle is well-situated within the region for access to employment centers outside of Tigard and is located on the proposed Southwest Corridor light rail alignment. However, it lacks key infrastructure and suffers from blight and disinvestment in many areas.</p> <p>According to the 2015 Tigard Triangle Strategic Plan, the Triangle is well-positioned in the region to support more residents, businesses, and employees. This 500-acre area has only 420 residents and about 4,000 employees. Yet, the Triangle is geographically the size of downtown Portland and has about 8.5 million square feet of buildable area.</p>	

Clackamas County - DTD Park Avenue Development and Design Standards	
Amount of Grant Request: \$ 180,000.00	Proposed Match: \$ 45,000.00
Recommended for Funding? \$ 180,000.00	
Project Summary: The Park Avenue Development and Design Standards Project (the project) will employ an inclusive and extensive community engagement process to create development and design standards for the Park Avenue Station area. These standards will be crafted to implement the Community Values and Guiding Principles (including those related to economic vitality, inclusiveness, sustainability and design) of the McLoughlin Area Plan, developed and approved by the community from 2008-12, and The Five Components of the McLoughlin Area Plan, approved by the Clackamas County Board of Commissioners in 2015. The project will also include an assessment of neighborhood livability and economic diversity in the residential areas surrounding the Park Avenue Station. The intent is for the final outcomes of the project to embody the essence of equitable development and to be applicable as a flexible template for other areas along McLoughlin, as well as other auto-dominated, suburban commercial areas in the region.	
Project Location: The project will focus on the area from the Park Ave Light Rail Station on the north (the intersection of Park Ave and McLoughlin Blvd) to Courtney Ave to the south. It will include the commercial areas directly adjacent to McLoughlin in this area, as well as the surrounding neighborhoods within a 1/2 mile buffer. The Project Area map in the Uploads section displays this area. In addition, we have included a map of the entire McLoughlin Corridor that shows the area where outcomes of this grant could be replicated at specific locations in the future.	

<p>Housing Authority of Clackamas County Hillside Master Plan for Housing Opportunity</p>	
<p>Amount of Grant Request: \$ 214,000.00</p>	<p>Proposed Match: \$ 79,150.00</p>
<p>Recommended for Funding? \$ 214,000.00</p>	
<p>Project Summary:</p> <p>The Hillside Master Plan for Housing Opportunity will provide a comprehensive redevelopment strategy for a public housing community owned and operated by the Housing Authority of Clackamas County. Located in Milwaukie, OR, Hillside is home to 302 vulnerable low income residents who would face tremendous hardship finding housing in the private market.</p> <p>Hillside includes 100 units of single level, duplex homes built in the early 1940's, and a 9-story residential tower with 100 units built in the 1970s. The site is just over 22 acres and presents incredible opportunity for increased housing density in a property situated near amenities such as Providence Medical Milwaukie, TriMet Bus and Max lines, downtown Milwaukie and SE Portland.</p> <p>Over the next 2-3 years, the Housing Authority will be seeking local, state and federal funding for the redevelopment of the Hillside site. The goal is to replace the aged duplex structures originally built for temporary housing and replace them with higher quality and higher density housing on the site in a range of income levels and design typologies. The tower on the site will be rehabilitated to bring the structure up to a higher physical quality and increase its useful life.</p> <p>Completion of a Master Plan for the site will provide a physically and financially viable design concept vetted through an extensive community process and leading to complete revitalization and transformation of the community.</p>	
<p>Project Location:</p> <p>The Hillside public housing community is located in the Ardenwald neighborhood of Milwaukie, on SE 32nd ave. The 16 acre site is adjacent to Providence Milwaukie and within walking distance to TriMet routes 33 and 75.</p> <p>The current unit configuration of the site includes a 9 story residential tower with 100 1 and 2 bedroom apartments, and 100 duplex units ranging in size from 1-2 bedrooms.</p>	

Multnomah County Vance-Yeon Master Plan	
Amount of Grant Request: \$ 300,000.00	Proposed Match: \$ 161,807.00
Recommended for Funding? No	
Project Summary: Multnomah County will lead the proposed Vance-Yeon Master Plan project with a project management team that includes the Chair’s Office, Commissioner District 4, Department of Community Services, Health Department, Department of County Assets, and Department of County Management. Partners include the City of Gresham, Oregon Department of Environmental Quality, and Rockwood Community Development Corporation. Master planning for the area will take a multi-jurisdictional, community-focused approach to create a framework for delineating a set of options and recommendations for future development or disposition of the Vance-Yeon properties. There is currently pre-grant work underway focused on Vance Park, and the proposed planning process will focus on the 72 acres zoned Heavy Industrial that comprise the majority of the property. The planning process will include the input and needs of community, County, City, and other stakeholders to consider a diverse set of infrastructure, service, economic, and land use needs, as well as needs related to population and employment growth. The County will ensure the process and plan itself address historical inequities and strive to improve livability and quality of life in Rockwood.	
Project Location: The Vance-Yeon properties are approximately 86 acres of land comprised of eight individual parcels located in the Rockwood neighborhood of Gresham. The area is bounded by SE 182nd Avenue on the west, residential properties just south of SE Yamhill to the north, SE 190th to the east, and residential and general industrial properties to the south that are located north of SE Division. Currently, Vance-Yeon is comprised of several land uses including Vance Park (designated in 1974 - Tax Lot 1S3E05BC-04000); Vance Pit (stormwater treatment facilities, landfill, and inactive quarry - Tax Lots 1S3E05CB-00100, 1S3E05CA-0300, 1S3E05BD-03100); and Yeon (Multnomah County employment and storage facilities - Tax Lots 1S3E05BD-01600, 1S3E05CA-00200, 1S3E05CA-00100, 1S3E05D-00300).	

<p>Prosper Portland (formally known as the Portland Development Commission) Anti-Displacement Strategies and Tools for Community-Led Development</p>	
<p>Amount of Grant Request: \$ 250,000.00</p>	<p>Proposed Match: \$ 250,000.00</p>
<p>Recommended for Funding? No</p>	
<p>Project Summary:</p> <p>This project will be completed in collaboration with our community partners- Our 42nd Ave, Cully Boulevard Alliance (project of NAYA), Historic Parkrose, The Jade District (project of APANO), Division Midway Alliance, Rosewood Initiative and St Johns Center for Opportunity. This project will help facilitate development in priority communities by providing district partners with funds to administer site specific property feasibility analysis, complete a commercial market analysis for each district and explore the viability of expanding the Neighborhood Prosperity Initiative (NPI) micro urban renewal areas to allow for additional tax increment financing to fund community led or supported development projects. The goal of these efforts is to mitigate the displacement of business and long-time property owners in each of these commercial corridors while encouraging development that keeps the existing community fabric intact.</p> <p>Desired outcomes include: Network districts have an increased amount of financial resources or new funding sources have been identified. Communities have access to a toolkit outlining lessons learned, best practices and strategies for community led development. Communities and Prosper Portland have a deeper understanding of the market pressures impacting individual districts and the tools to mitigate displacement. Districts and private property owners better understand site specific development and design constraints and have a path toward development.</p>	
<p>Project Location:</p> <p>This project will focus on seven commercial districts located throughout the City of Portland; Our 42nd Ave, Cully Boulevard Alliance, Historic Parkrose, The Jade District, Division Midway Alliance, Rosewood Initiative and St Johns Center for Opportunity.</p>	

Tri-County Metropolitan Transportation District of Oregon Greyhound Site Feasibility Study	
Amount of Grant Request: \$ 94,960.00	Proposed Match: \$ 16,560.00
Recommended for Funding? N	
Project Summary: The City of Portland is holding a community conversation related to the Broadway Corridor (http://prosperportland.us/portfolio-items/broadway-corridor-framework-plan/) that includes the Portland Post Office, Union Station and the Greyhound site. This master planning effort will take place over the next two years and will inform the development within this area. The intent of this grant application is to provide transit and development ideas and concepts specific to the Greyhound site that would help inform the City's master planning process.	
Project Location: The Greyhound site is located in the Old Town/Chinatown neighborhood and bounded by NW 5th Avenue, NW 6th Avenue, NW Glisan Street and NW Irving Street.	

<p>Washington County Land Use & Transportation Getting Ahead of the Curve: Proactive Planning for Urban Reserves in Washington County</p>	
<p>Amount of Grant Request: \$ 420,000.00</p>	<p>Proposed Match: \$60,000.00</p>
<p>Recommended for Funding? No</p>	
<p>Project Summary:</p> <p>Through this project the County will partner with cities, Metro and ODOT to address the cumulative transportation system effects of development of the County's urban reserves, and develop a template for the financial elements of concept plans for these areas to facilitate implementation of transportation improvements to serve the mobility needs of the urban reserves and adjacent areas while preserving access for rural areas. This will facilitate a more orderly transition of the urban reserve areas from unincorporated Washington County to urbanized areas within cities.</p> <p>Elements of the scope of work include: strengthening partnerships (working with a Technical Advisory Committee and key stakeholders), assessing transportation needs (to identify needs generated by development of the urban reserves), assessing urban reserve development options (to assess land use and transportation strategies to accommodate future growth), and developing template for financial element.</p> <p>Desired outcomes include: reducing barriers to development of the urban reserves, consistent and realistic financial elements of the concept plans developed for these areas, understanding of the cumulative effects of development of the urban reserves on the existing transportation system, continued improvement in the working relationships among public agencies and between public agencies and developers, and provision of adequate transportation improvements to provide mobility needed to support development.</p>	
<p>Project Location:</p> <p>Work to be done through this project would apply throughout Washington County. The focus of the effort is on developing information and tools that would be used by cities to develop concept plans for the designated urban reserve areas that may be annexed to their cities. The urban reserve areas are adjacent to: Forest Grove, Hillsboro, Beaverton, King City, Tigard, Tualatin, Sherwood and Wilsonville.</p>	

Agenda Item No. 5.1

Elephant Lands Construction Management by General
Contractor Outcomes

Presentations

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber



Memo

Date: Thursday, Oct. 26, 2017
To: Metro Contract Review Board/Metro Council
From: Gabriele Schuster, Metro Procurement Manager
Heidi Rahn, Zoo Bond Program Director
Subject: **Elephant Lands Construction Management by General Contractor Outcomes**

PURPOSE & DESIRED OUTCOMES

- **Purpose:** Acting as the Metro Contract Review Board, the Metro Council will hear the zoo bond program's evaluation report of using Construction Management by General Contractor (CM/GC) for the Elephant Lands project. This is to fulfill the State of Oregon requirement that upon completion of and final payment for any public improvement contract in excess of \$100,000 for which Metro did not use the competitive bidding process, Metro shall prepare and deliver to the local contract review board an evaluation of the public improvement contract. (<http://www.oregonlaws.org/ors/279C.355>)
- **Outcome:** The Metro Council will recognize the positive outcomes realized by using CM/GC for the Elephant Lands project. Metro will fulfill its state reporting requirements for using CM/GC.

TOPIC BACKGROUND & FRAMING

Elephant Lands is the largest project the Oregon Zoo has ever developed and part of the \$125 million bond measure approved by voters in 2008 to enhance animal welfare, conservation education and sustainable infrastructure. The goal was to enhance the health and well-being of the elephants by encouraging activities and offering choices similar to what they would experience in their natural environment.

Metro, which owns the zoo, selected a general contractor through a competitive Request for Proposal process that resulted in a contract with Lease Crutcher Lewis for Construction Management by General Contractor services. The contract provided for preconstruction services and construction services. The CM/GC contract saved the zoo time and money that would not have been realized through a conventional low-bid procurement. The CM/GC worked with the zoo staff and design team from the beginning of schematic design through development of construction documents, providing budget assistance and solutions to unanticipated challenges throughout the process.

The state of Oregon requires that Metro provide an evaluation of CM/GC contracts. The attached report provides a narrative description of successes and challenges during the design, engineering and construction of the project. It also provides an objective assessment of the use of CM/GC contracting process as compared to the traditional low-bid process.

Elephant Lands maintained only five percent total change orders for the entire project due to the CM/GC working with the design team to fill in any gaps in the drawings prior to bid. The project team identified four distinct phases for the project, which allowed individual phases to be designed, permitted and competitively bid out to subcontracting firms early in the design process rather than waiting until the entire design was completed. The early bidding saved substantially on project costs by avoiding a very robust construction cost escalation market currently progressing at 4 percent per year.

Hiring the CM/GC early in the process gave an understanding of the Oregon Zoo's complex event schedule. The CM/GC and zoo team were able to modify certain sequences of work so visitor interactions and other revenue-generating events proceeded without construction interference, which helped the zoo maintain its visitor attraction factor and cash flow.

Keeping the elephants onsite for their health and well being was a mandatory requirement established by the zoo. The most beneficial aspect of phasing that saved money and time on the overall project was allowing the elephants into the first new habitat to test design features prior to the other habitats being constructed.

Using CM/GC on Elephant Lands proved to be good stewardship of the public's investment to make improvements at the Oregon Zoo, and helped to fulfill Metro's promises to voters.

cc: Jim Mitchell, Zoo Bond Construction Manager
Scott Robinson, Metro Deputy Chief Operating Officer



Metro

**Oregon Zoo Elephant Lands Project
Post-Construction CM/GC Evaluation
Construction Management by General Contractor**

Evaluation of public improvement projects more than \$100,000 not contracted by competitive bidding
(<http://www.oregonlaws.org/ors/279C.355>)

Date: September 21, 2017

Presented to the Metro Contract Review Board on Thursday, October 26, 2017

Project Name: Elephant Lands (Original project name: New Elephant Habitat Construction)

Solicitation: RFP 12-2015

Project Description: Provide services in a two-step process: preconstruction phase services and construction phase services to complete the New Elephant Habitat and related subprojects, including (but not limited to) related zoo infrastructure, a new perimeter service road, and rerouting the onsite zoo train.

Owner: Metro
600 NE Grand Ave.
Portland, OR 97232

Project Mgr.: Jim Mitchell, Construction Manager, Oregon Zoo

Location: Oregon Zoo
4001 SW Canyon Road
Portland, OR 97221

Contractor: Lease Crutcher Lewis
600 SW 10th Ave, #310
Portland, OR 97205

Metro contract number: 931085

Actual project (CM/GC) cost: \$48,306,866

Contract start date: 3-15-2012

Substantial completion date: 12-7-2015

Date of last contract payment to CM/GC or credit to owner: 8-25-2017

Original project (CM/GC) estimated cost (from RFP): \$35,000,000 to \$40,000,000

Guaranteed Maximum Price: \$45,801,784

Oregon Zoo Elephant Lands Post-Construction CM/GC Evaluation

September 21, 2017



Change Orders	\$2,505,082
Total cost	\$48,306,866
Difference between original estimated CM/GC cost and actual CM/GC cost:	\$2,505,082
Percentage of Change Orders against original budget:	5%

The number of project change orders issued by Metro:

- Number of Early Work Amendments and GMP Amendment: 4
- Change orders correcting contract language (\$0 change to scope of work): 1
- Number of Change Orders after GMP that changed scope of work: 18

1. Project Narrative

Elephant Lands is the largest project the Oregon Zoo has ever developed and part of the \$125 million bond measure approved by voters in 2008 to enhance animal welfare, conservation education and sustainable infrastructure. The goal was to enhance the health and well-being of the elephants by encouraging activities and offering choices similar to what they would experience in their natural environment.

The project design and construction team were challenged with keeping the elephants on site while building a new habitat and building in and around their existing habitat. The Oregon Zoo is open 364 days a year and serves more than 1.5 million visitors each year. Elephant Lands and associated projects construction activity covered approximately 35 percent of zoo grounds and had a duration of approximately three years.

Due to the unique nature of the construction, a large number of the components within the site and building were first constructed as mock-ups. Standard mock-ups included exterior wall systems, metal panels, and windows, while more elaborate systems included elephant drinkers (units that automatically provide constant drinking water for elephants), elephant feeder enclosures, pool shotcrete texture and sliding gate systems. The use of the temporary habitat allowed the keepers, designers and construction team to observe the animals using their habitat and make adjustments to the new areas of the habitat that were not yet under construction.

In order to ensure the greatest coordination and highest quality for such a large project, the team utilized Building Information Modeling (BIM) extensively for coordination of design and to inform ongoing design decisions. Lease Crutcher Lewis oversaw the development of the detailed 3D models, in close coordination with the design consultants. The design details were finalized in advance of procurement and construction, giving the Zoo and design team ample time to work through design considerations.

As part of the Elephant Lands project, the design and construction team were challenged with several projects and discoveries, including:

- Maintaining space for the elephants during construction



- Managing flow and experience for 4.5 million visitors during a three-year construction project
- Restoration and relocation of a 50-foot tall, 42-inch diameter totem pole
- Restoration and relocation of a 15-foot tall totem pole
- Salvage and transport for storage of a 50-foot-long by 16-foot-tall mosaic tile structure created in 1960 by Willard Martin
- Construction of a temporary large-group picnic area
- Managing numerous underground abandoned utilities and concrete exhibit moats
- Discovery and archeological recovery of human remains from a poor farm located at the site in the early 1900s.

2. Procurement

The Elephant Lands project General Contractor was selected through a competitive Request for Proposal process where applicants were evaluated on the following:

<u>Proposal Content</u>	<u>Percentage of Total Score</u>
Project Work Plan/Approach, Section IV and VII.D	30%
1. Demonstration of understanding of the project objectives	
2. Performance work plan and collaborative team approach	
Project Staffing Experience, Section IV and VII.C	30%
1. Staffing/Personnel assigned to project	
2. Experience with similar projects (scope and budget)	
Cost/Budget, Section VII.E	20%
1. Plan to manage costs within budget	
2. Fee for preconstruction services	
3. Hourly rates, fees and other expenses	
Diversity, Section VII.F	10%
1. Workforce Diversity	
2. Diversity in Contracting	
3. Diversity of Firm	
Sustainable Business Practices, Section VII.G	10%
1. Environmental Impact	
2. Support of local business and markets	
3. Employee compensation structure	
Total	100%

Ten well-qualified construction firms submitted proposals to manage construction of Elephant Lands. The proposals were evaluated by an evaluation committee that consisted of five zoo staff members and three external stakeholders. Nine of the proposing firms were local. The evaluation committee

completed the scoring phase and selected the top three firms for in-person interviews. The interviews were scored, and Lease Crutcher Lewis was selected to manage construction of Elephant Lands.

The contractor worked with the zoo staff and design team from the beginning of schematic design through development of construction documents. They provided budget assistance and solutions to unanticipated challenges throughout the process.

Upon completion of construction documents, the project was publicly advertised and subcontractors were invited to bid on the project. The contract Metro uses for CM/GC requires a minimum of three subcontractor bids on all bid packages. Prior to publishing the invitation to bid, the General Contractor performed extensive outreach to Minority, Women and Emerging Small Business (MWESB) firms.

The General Contractor mentored numerous minority and women individuals through apprenticeship and office intern programs. One minority subcontractor, R&R General Contractors, was mentored through the RFP response and interview process for Elephant Lands. R&R was subsequently selected to construct the zoo's temporary picnic area valued at approximately \$500,000, and through the bid process, R&R was awarded the train track relocation scope of work valued at \$1.2 million. Mentoring R&R proved to be successful in that they have responded to and have been awarded projects from other agencies through the RFP process on their own accord.

Elephant Lands succeeded in distributing more than \$4.5 million to the MWESB community and employed more than 600 trades people from the Portland, Oregon area. This represents an MWESB utilization rate of 9.7 percent of the eligible contract dollars (some specialized scopes of work that are not provided by MWESB firms were not included in the calculation).

The Oregon Zoo has used the CM/GC method of alternative procurement for three projects as part of the \$125 million Zoo Bond Program.

3. Cost Savings and Value Engineering

Prior to the Elephant Lands CM/GC being selected, the project's overall footprint was approximately eight acres, and the main building square footage exceeded 40,000 sq. ft. The CM/GC hired for the project analyzed the schematic design, site constraints, and budget, and concluded that the project as designed and the budget were not in alignment.

The team started a value engineering exercise to right-size the project to the budget by reducing the main building's square footage to 32,000 sq. ft. and reducing the site footprint to just over six acres. This process prevented a lot of unnecessary design time by redirecting the project to an affordable design early in the process. Had this procurement been a standard design/bid/build, the costs at bid would have exceeded the established budget. In that case, the project would have incurred a lengthy redesign delay and additional costs related to design and construction escalation. During the value-engineering exercises, the animals' needs were always the first priority. The design and construction team worked with the zoo to instead target other areas of the project for cost reductions.

Elephant Lands maintained only five percent total change orders for the entire project due to the CM/GC working with the design team to fill in any gaps in the drawings prior to bid.

4. Construction Phasing

The project team identified four distinct phases for the project, which allowed individual phases to be designed, permitted and competitively bid out to subcontracting firms early in the design process rather than waiting until the entire design was completed. **The early bidding saved substantially on project costs by avoiding a very robust construction cost escalation market currently progressing at 4 percent per year.**

The phasing also decreased the construction schedule duration by completing two early phases prior to the main habitat and building construction that started in the third phase. The project had a total of four phases. The early phasing allowed the construction of a new service road that enabled contractor teams to access the area without navigating trucks and construction equipment through congested visitor areas.

Hiring the CM/GC early in the process gave an understanding of the Oregon Zoo's complex event schedule. **The CM/GC and zoo team were able to modify certain sequences of work so visitor interactions and other revenue-generating events proceeded without construction interference, which helped the zoo maintain its visitor attraction factor and cash flow.** Some examples of integrating the schedule with zoo activities include keeping the train in operation through the holiday ZooLights celebration and adjusting work around the concert lawn to maximize concert visitors during construction.

Keeping the elephants onsite for their health and well being was a mandatory requirement established by the zoo. **The most beneficial aspect of phasing that saved money and time on the overall project was allowing the elephants into the first new habitat to test design features prior to the other habitats being constructed.** The team monitored animal behavior and refined the drinker design twice to better function to the animals needs, and discovered that the structural design on one of the habitat shelters required changes to the calculations from a 7,000-pound force at a height of 7.5 feet to a 10,000-pound force at a height of 10 feet. The structural design changes occurred prior to material being ordered and the additional structures being erected.

5. Competitive Bidding and Funding Source

The primary funding source for the Elephant Lands project is from general obligation bonds approved by voters as part of the Oregon Zoo's bond measure in 2008. The Oregon Zoo Foundation also contributed \$3.2 million to the project. The CM/GC alternative method of procurement has had no effect on the funding sources.

This report is also be available on the Metro website:

oregonmetro.gov/how-metro-works/contract-opportunities/doing-business-metro

For more information, please contact:

Gabriele Schuster
Procurement Manager
Metro
600 NE Grand Ave.
Portland, OR 97232

Gabriele.schuster@oregometro.gov
503-797-1577

Agenda Item No. 6.1

Ordinance No. 17-1408, For the Purpose of Adopting
Amendments to Title 14 of the Urban Growth Management
Functional Plan to Improve the Regional Growth
Management Process

Ordinances (First Reading and Public Hearing)

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING	)	ORDINANCE NO. 17-1408
AMENDMENTS TO TITLE 14 OF THE)	
URBAN GROWTH MANAGEMENT	)	Introduced by Martha J. Bennett, Chief
FUNCTIONAL PLAN TO IMPROVE THE	)	Operating Officer, with the concurrence of
REGIONAL GROWTH MANAGEMENT	)	Tom Hughes, Council President
PROCESS)	

WHEREAS, Oregon state law requires Metro to periodically determine the capacity of the urban growth boundary (UGB) to accommodate population growth in the region over the next 20 years; and

WHEREAS, the Metro Council made its most recent determination of the UGB’s growth capacity in 2015 by adopting Ordinance No. 15-1361; and

WHEREAS, as part of Ordinance No. 15-1361, the Metro Council ordained that Metro would work with its regional partners to explore possible improvements to the region’s residential growth management process; and

WHEREAS, in May of 2016 Metro convened an Urban Growth Readiness Task Force consisting of public and private sector representatives to develop recommendations for such improvements; and

WHEREAS, on February 2, 2017 the Metro Council adopted Resolution No. 17-4764, which accepted the following three key concepts adopted by the Task Force for improving the growth management process: (1) clarify expectations for cities proposing modest residential UGB expansions into concept-planned urban reserves; (2) seek greater flexibility for addressing regional housing needs, in part through changes to state law allowing for mid-cycle UGB expansions up to 1000 acres; and (3) seek greater flexibility when choosing among concept-planned urban reserves for UGB expansions; and

WHEREAS, the Task Force also recommended that Metro adopt changes in its decision-making processes to implement the three key concepts by taking an outcomes-based approach to growth management focused on specific UGB expansion proposals made by cities; and

WHEREAS, based on the Task Force directives, Metro and its regional partners successfully advocated for changes to state law via House Bill 2095, which allows Metro to make mid-cycle residential UGB expansions by amending its most recent Urban Growth Report analysis based on specific residential growth proposals brought forward by cities; and

WHEREAS, the Metro Council directed staff to work with the Metro Technical Advisory Committee (MTAC) on proposed amendments to the Urban Growth Management Functional Plan (UGMFP) that would implement the Task Force directives and House Bill 2095; and

WHEREAS, over the course of 10 meetings since July 6, 2016, Metro staff and MTAC prepared and refined proposed amendments to Title 14 of the UGMFP; and

WHEREAS, on September 6, 2017 MTAC voted unanimously to approve the proposed amendments and to forward them to the Metro Policy Advisory Committee (MPAC) for review and approval; and

WHEREAS, MPAC reviewed and discussed the proposed amendments on September 27, 2017, and at its meeting on October 11, 2017 voted unanimously to recommend that the Metro Council approve the proposed amendments with minor revisions; and

WHEREAS, the Metro Council finds that MPAC's recommended amendments to Title 14 of the UGMFP will effectively implement House Bill 2095 and the directive of the Urban Growth Readiness Task Force to create a more flexible and outcomes-based approach for future UGB expansions in the Metro region; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Chapter 3.07 of the Metro Code is hereby amended as shown on Exhibit A, attached and incorporated into this ordinance.

ADOPTED by the Metro Council this _____ day of November 2017.

Tom Hughes, Council President

Attest:

Approved as to Form:

Nellie Papsdorf, Recording Secretary

Alison R. Kean, Metro Attorney

Exhibit A to Ordinance No. 17-1408

Adding new code sections 3.07.1427 and 3.07.1428 to implement HB 2095:

3.07.1427 Mid-Cycle Amendments - Procedures

- (a) The Metro Council may consider a mid-cycle amendment to the UGB for residential needs between legislative UGB amendments, as provided in ORS 197.299(6). Cities may initiate a mid-cycle amendment to the UGB for areas adjacent to the city by filing a proposal on a form provided by Metro.
- (b) The COO will accept proposals from cities for mid-cycle UGB amendments during the period that is between 24 and 30 months after the date of the Council's adoption of its most recent analysis of the regional buildable land supply under ORS 197.296.
- (c) The COO shall provide written notice of the deadline for proposals for mid-cycle amendments not less than 90 days before the first date proposals may be accepted to each city and county within the Metro region and to anyone who has requested notification.
- (d) Proposals must indicate that they have the support of the governing body of the city making the proposal.
- (e) As part of any proposal, the city shall provide the names and addresses of property owners for notification purposes, consistent with section 3.07.1465.
- (f) The proposing city shall provide a concept plan for the urban reserve area that includes the proposed expansion area consistent with section 3.07.1110.
- (g) The proposing city shall provide written responses to the criteria listed in 3.07.1428(b).
- (h) Proposals from cities under this section shall be initially reviewed by the COO and the Metro Planning Department. No later than 60 days after the final date for receiving proposals under subsection (b) of this section, the COO shall submit a recommendation to the Metro Council regarding the merits of each proposal, including consideration of the criteria listed in Section 3.07.1428.

- (i) The Metro Council is not obligated to take action on proposals submitted by cities or on the recommendation of the COO. If the Council chooses to expand the UGB in accordance with one or more of the proposals, it may add no more than 1000 acres total.
- (j) If the Council elects to amend the UGB under this section, it shall be accomplished by ordinance in the manner prescribed for ordinances in Chapter VII of the Metro Charter. For each mid-cycle amendment, the Council shall establish a schedule of public hearings that allows for consideration of the proposed amendment by MPAC, other relevant advisory committees, and the public.
- (k) Any decision by the Council to amend the UGB under this section must be adopted not more than four years after the date of the Council's adoption of its most recent analysis of the regional buildable land supply under ORS 197.296.
- (l) Notice to the public of a proposed amendment to the UGB under this section shall be provided as prescribed in section 3.07.1465.

3.07.1428 Mid-Cycle Amendments - Criteria

- (a) In reviewing city proposals for mid-cycle UGB amendments, the Metro Council shall determine whether each proposal demonstrates a need to revise the most recent analysis of the regional buildable land supply as described in ORS 197.299(5). The Council's decision shall include consideration of:
 - (1) Need to accommodate future population, consistent with the most recently adopted 20-year population range forecast; and
 - (2) Need for land suitable to accommodate housing and supporting public facilities and services, schools, parks, open space, commercial uses, or any combination thereof.
- (b) If, after revising its most recent analysis of the buildable land supply under paragraph (a) of this subsection, the Council concludes that expansion of the UGB is warranted, the Council shall evaluate those areas that have been proposed by cities for possible addition to the UGB. Any expansion(s) under this section may not exceed a

total of 1000 acres. Cities proposing mid-cycle UGB amendments shall demonstrate that:

- (1) The city has an acknowledged housing needs analysis that was completed in the last six years and is coordinated with the Metro forecast and distribution in effect at the time the city's housing needs analysis or planning process began;
 - (2) The housing planned for the city's proposed UGB expansion area is likely to be built in fewer than 10 years. As part of any proposal, cities must provide a concept plan that is consistent with section 3.07.1110 of this chapter. Cities may also provide evidence of property owner support for the proposed UGB expansion, and/or other evidence regarding likelihood of development occurring within 10 years;
 - (3) The city has demonstrated progress toward the actions described in section 3.07.620 of this chapter in its existing urban areas;
 - (4) The city has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas. Such practices may include regulatory approaches, public investments, incentives, partnerships, and streamlining of permitting processes; and
 - (5) The city has taken actions in its existing jurisdiction as well as in the proposed expansion area that will advance Metro's six desired outcomes set forth in Chapter One of the Regional Framework Plan.
- (c) The land proposed for UGB expansion must be a designated urban reserve area.
- (d) Mid-cycle UGB amendments made under this section are exempt from the boundary location requirements described in Statewide Planning Goal 14.

Amendments to existing code sections 3.07.1425 and 3.07.1465 (new language underlined):

3.07.1425 Legislative Amendment to the UGB - Criteria

* * * * *

(c) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering the following factors:

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences;
- (4) Compatibility of proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal;
- (5) Equitable and efficient distribution of housing and employment opportunities throughout the region;
- (6) Contribution to the purposes of Centers and Corridors;
- (7) Protection of farmland that is most important for the continuation of commercial agriculture in the region;
- (8) Avoidance of conflict with regionally significant fish and wildlife habitat; and
- (9) Clear transition between urban and rural lands, using natural and built features to mark the transition.

(d) If the Council determines there is a need to amend the UGB for housing, in addition to consideration of the factors listed in subsection (c) of this section, the Council shall also consider the following factors in determining which urban reserve areas better meet the housing need:

- (1) Whether the area is adjacent to a city with an acknowledged housing needs analysis that is coordinated with the Metro forecast and distribution in effect at the time the city's housing needs analysis or planning process began;
- (2) Whether the area has been concept planned consistent with section 3.07.1110 of this chapter;
- (3) Whether the city responsible for preparing the concept plan has demonstrated progress toward the actions described in section 3.07.620 of this chapter in its existing urban areas;
- (4) Whether the city responsible for preparing the concept plan has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas; and
- (5) Whether the city responsible for preparing the concept plan has taken actions to advance Metro's six desired outcomes set forth in Chapter One of the Regional Framework Plan.

3.07.1465 Notice Requirements

- (a) For a proposed legislative amendment under section 3.07.1420, the COO shall provide notice of the public hearing in the following manner:
 - (1) In writing to the Department of Land Conservation and Development and local governments of the Metro region at least 35 days before the first public hearing on the proposal; and
 - (2) To the general public at least 35 days before the first public hearing by an advertisement no smaller than 1/8-page in a newspaper of general circulation in the Metro area and by posting notice on the Metro website.
- (b) For a proposed mid-cycle amendment under section 3.07.1427, the COO shall provide notice of the first public hearing on the proposal in the following manner:

- (1) In writing at least 35 days before the first public hearing on the proposal to:
 - (A) The Department of Land Conservation and Development;
 - (B) The owners of property that is being proposed for addition to the UGB;
 - (C) The owners of property within 250 feet of property that is being considered for addition to the UGB, or within 500 feet of the property if it is designated for agriculture or forestry pursuant to a statewide planning goal;
- (2) In writing at least 30 days before the first public hearing on the proposal to:
 - (A) The local governments of the Metro area;
 - (B) A neighborhood association, community planning organization, or other organization for citizen involvement whose geographic area of interest includes or is adjacent to the subject property and which is officially recognized as entitled to participate in land use decisions by the cities and counties whose jurisdictional boundaries include or are adjacent to the site;
 - (C) Any other person who requests notice of amendments to the UGB; and
- (3) To the general public by posting notice on the Metro website at least 30 days before the first public hearing on the proposal.

(~~b~~c) For a proposed major amendment under sections 3.07.1430 or 3.07.1435, the COO shall provide notice of the hearing in the following manner:

* * * * *

(~~e~~d) The notice required by subsection (a), and (b), and (c) of this section shall include:

* * * * *

(9) For the owners of property described in subsection
(~~b~~c) (1) (C) of this section, the information required
by ORS 268.393(3).

(~~e~~e) For a proposed minor adjustment under section 3.07.1445,
the COO shall provide notice in the following manner:

* * * * *

(~~e~~f) The notice required by subsection (~~e~~e) of this section
shall include:

* * * * *

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1408 FOR THE PURPOSE OF ADOPTING AMENDMENTS TO TITLE 14 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN TO IMPROVE THE REGIONAL GROWTH MANAGEMENT PROCESS

Date: October 12, 2017

Prepared by: Ted Reid
ted.reid@oregonmetro.gov

BACKGROUND

An outcomes-based approach to growth management

When the Metro Council made an urban growth management decision in November 2015, the Council indicated its intent to convene partners to discuss possible improvements to the region's process for managing residential growth. The desire for a new approach springs from lessons learned from past urban growth boundary (UGB) expansions, some of which have been slow to develop because of governance and infrastructure funding challenges. Likewise, the Metro Council, cities, counties, and stakeholders have expressed frustration with past decision processes that were characterized by theoretical debates that felt detached from viable growth options.

The proposed code amendments that the Council is considering in Ordinance No. 17-1408 represent a step towards improving how the region manages residential growth, with the goal of facilitating more transparent discussions of the merits of the actual growth options that may produce needed housing and jobs. These amendments build on past improvements that include:

- The Council has adopted numerous policies, including the 2040 Growth Concept, which emphasize existing urban areas as the region's growth priorities. In the last two decades, market demand for housing in urban areas has increased around the country. With plans in place, the greater Portland region has been uniquely ready to capitalize on that market demand for urban living.
- In 2010 and again in 2017, the Council adopted urban and rural reserves. These designations describe where the region may expand its urban footprint over the next five decades and which areas will be off limits to urbanization. Metro, Clackamas County, and Multnomah County are currently seeking state acknowledgement of these designations. In 2014, the state legislature codified urban and rural reserves in Washington County in state law.
- In 2010, the Council adopted a requirement that a concept plan must be completed by a local jurisdiction before the Council will expand the UGB there. This policy is intended to ensure that issues of governance, infrastructure funding, environmental protection, and planned uses are sorted out by a city before the land is added to the UGB.
- Since 2006, Metro has offered grant funding to assist cities and counties in removing barriers to development ("2040 Planning and Development Grants," formerly known as "Community Planning and Development Grants")
- In 2010, the Council adopted six desired outcomes into the Regional Framework Plan, expressing an intent to have them guide growth management decision making.

Urban Growth Readiness Task Force recommendations

Beginning in the spring of 2016, Metro convened the Urban Growth Readiness Task Force to provide recommendations on how to continue to improve the region's growth management process. The Task Force included mayors, county commissioners, and representatives from 1000 Friends of Oregon, the Home Builders Association of Metropolitan Portland, and the Oregon Department of Land Conservation and Development. Council President Hughes served as Chair and Councilors Collette and Chase also served as liaisons.

The Task Force met five times and made consensus recommendations. Those recommendations can be generally described as:

- The Metro Council should exercise greater flexibility when considering city proposals for residential urban growth boundary (UGB) proposals into concept planned urban reserves.
- The Metro Council should clarify expectations for cities proposing residential UGB expansions into concept planned urban reserves. The Task Force identified topics of interest that cities should address and suggested that Metro staff work with the Metro Technical Advisory Committee (MTAC) to incorporate those topics into proposed code. The Task Force recommended that those expectations should strike a balance between providing flexibility and certainty.

The Metro Council accepted the Task Force's recommendations when it adopted Resolution No. 17-4764. Those recommendations guide the proposed code amendments that the Council is now considering under Ordinance No. 17-1408. The Task Force's recommendations and their relationship to Ordinance No. 17-1408 are further summarized as follows:

Exercise greater flexibility when considering city proposals for residential UGB expansions into concept planned urban reserves:

The general theme of the Task Force's recommendations was that the Council should exercise greater flexibility to respond to city proposals for residential UGB expansions into concept planned urban reserves. This will be achieved through recent changes to state law that facilitate the Metro Council's ability to make "mid-cycle" growth management decisions as well as by exercising flexibility that is already allowed under the law in standard "legislative" growth management decisions that the Council makes at least every six years.

Based on Task Force recommendations, Metro and its partners successfully advocated for changes to state law that facilitate the Metro Council's consideration of city proposals for mid-cycle residential expansions. House Bill 2095, signed into law in 2017, allows Metro to make mid-cycle residential UGB amendments by amending its most recent Urban Growth Report analysis. The law limits each of these mid-cycle expansions to a total of 1,000 acres. The legislation also exempts mid-cycle decisions from the boundary location requirements described in Statewide Planning Goal 14 (Urbanization). In other words, Metro is not obligated to analyze all urban reserves in mid-cycle decisions and may focus only on those that are proposed by cities. The first mid-cycle decision process is anticipated in 2021. Proposed Ordinance No. 17-1408 describes Metro procedures for mid-cycle decisions.

Under state law, the Metro Council must assess regional housing needs at least every six years. Exercising greater flexibility in this standard legislative growth management process (including the 2018 decision) means that decision making will focus on the merits of city proposals for UGB expansions. This new approach recognizes that there is not one correct answer to whether expansions are needed, just different tradeoffs to consider. Informed by peer-reviewed analysis in the 2018 Urban Growth Report, the Council will decide whether city-proposed UGB expansions are warranted to achieve desired outcomes and produce needed housing.

Clarify expectations for cities proposing residential UGB expansions:

The Task Force recommended that, along with exercising greater flexibility in responding to city proposals, the Metro Council should have high standards for cities proposing residential UGB expansions into concept planned urban reserves. Fundamentally, the Task Force indicated that cities should demonstrate that an expansion area is likely to develop as planned and that they are implementing best practices for providing needed housing and achieving desired outcomes in their existing urban areas. The Task Force recommended that Metro should make those expectations clear to cities while also providing enough flexibility to accommodate proposals from cities with differing circumstances.

To advance the Task Force's recommendations, the Metro Council asked staff to work with MTAC to propose amendments to the Metro code that would provide that clarification. Ordinance No. 17-1408 includes amendments to Metro code to achieve that end. As written, these expectations would apply to legislative and mid-cycle UGB amendments. These expectations are similar for both types of decisions, but are somewhat more rigorous for mid-cycle decisions since that process was designed to address more immediate opportunities presented by cities. The expectations for legislative decisions, such as the 2018 growth management decision, are presented as factors that the Council will consider.

MTAC recommendations

MTAC began providing conceptual feedback to the Task Force in July 2016 and began discussing possible code amendments shortly thereafter. In total, MTAC discussed background concepts or proposed code amendments at 10 meetings, including:

July 6, 2016
July 13, 2016
August 3, 2016
September 7, 2016
October 19, 2016
December 7, 2016
February 1, 2017
April 5, 2017
August 2, 2017
September 6, 2017

MTAC's discussions centered on how to achieve an appropriate balance of flexibility and certainty in the proposed code amendments. At its September 6, 2017 meeting, MTAC made a unanimous recommendation to MPAC on proposed code amendments. MTAC's proposed code amendments are intended to provide flexibility to cities and the Metro Council. Recognizing that flexibility also may create ambiguity, MTAC recommended that Metro staff develop administrative guidance that further clarifies how a city might make a compelling residential UGB expansion proposal that meets the intent of the proposed code. That administrative guidance is not intended for formal adoption by the Council. Staff expects that the administrative guidance will be edited for future growth management decisions based on lessons learned in the 2018 decision or to reflect contemporary policy interests. Draft administrative guidance is included as Attachment 1 to this staff report.

Council work session discussion

The Metro Council discussed the proposed code amendments (version recommended by MTAC) at its September 14 work session. The Metro Council suggested one change to the mid-cycle UGB amendment criteria described in proposed code section 3.07.1428(b)2. That criterion references a timeframe during which the proposed housing is likely to be developed. MTAC recommended that this be a 20-year time

horizon. The Metro Council requested that this be changed to 10 years to recognize that mid-cycle decisions are intended to respond to more immediate opportunities to provide needed housing.¹

The Council also discussed an initial draft of administrative guidance at the September 14 work session and suggested a couple of revisions. Staff has made those and a few other minor revisions to provide clarity. Those revisions include:

- Cities should substantiate any assertions that UGB expansions would reduce commute distances.
- Affordable housing is defined in the guidance as both market rate and subsidized housing that is affordable to households with incomes equal to or less than 80 percent of the median family income for the county. This definition was developed in consultation with Metro staff that specialize in housing development and affordability.
- The document provides additional guidance on how cities may demonstrate efforts relating to the region's sixth desired outcome (equity). Metro Planning and Development staff worked with Metro Diversity, Equity and Inclusion staff to make those clarifications.

The administrative guidance is not intended to be formally adopted, however it is included as Attachment 1 to this report for reference. If the Council chooses to adopt code that differs from what is proposed, staff will work to reconcile the administrative code with adopted code. Staff also anticipates that the administrative guidance will be revised in future decisions based on lessons learned in the 2018 growth management decision as well as contemporary policy interests.

MPAC recommendations

The Metro Policy Advisory Committee (MPAC) had an initial discussion of the proposed code amendments at its September 27, 2017 meeting. After MPAC's September 27 discussion, Metro staff became aware of two concerns from local jurisdiction staff regarding the proposed code amendments. Those concerns included:

- A desire for Metro code to reiterate a state law that requires that any mid-cycle UGB expansion must be adjacent to the city proposing the expansion.
- A concern that the cities that are likely to propose residential expansions in the 2018 legislative decision haven't based their housing needs analyses on the current² Metro forecast as would be required under the code recommended by MTAC. The concern was that cities would not be able to revise their analyses in time to make an expansion proposal for the 2018 decision (proposals are due by the end of May 2018).

To address those concerns, Metro staff suggested slight revisions to the proposed code that went to MPAC for a recommendation on October 11, 2017. MPAC members agreed with those proposed changes.

MPAC moved to make one further revision to the proposed code being considered for their recommendation, seeking to clarify that coordinating a city's housing needs analysis with the Metro forecast means coordinating it with an adopted "distributed" forecast. This refers to a forecast that distributes regional growth at smaller geographies. Metro, the counties, and cities periodically undertake a coordinated approach to producing a distributed forecast that the Metro Council considers for adoption.

¹ Legislative UGB amendments, which must be considered by the Council at least every six years, respond to a 20-year time horizon.

² The current forecast is the 2040 Distributed Forecast, which was adopted by the Metro Council in 2016 (Ordinance No. 16-1371) after coordinating with cities and counties.

Typically, Metro and local jurisdictions go through this process within a year or two of the Metro Council making a regional urban growth management decision.

MPAC unanimously recommends that the Council adopt the proposed Title 14 code amendments that are Exhibit A to Ordinance No. 17-1408.

ANALYSIS/INFORMATION

1. Known Opposition

Staff is not aware of any opposition to this ordinance.

2. Legal Antecedents

- Statewide Planning Goals 10 (Housing) and 14 (Urbanization)
- Oregon Administrative Rules, Division 24 (Urban Growth Boundaries)
- Metro Regional Framework Plan, Chapter 1 (Land Use)
- Metro Urban Growth Management Functional Plan
- Council Ordinance No. 10-1238A, which adopted urban and rural reserves and made changes to the Urban Growth Management Functional Plan that require cities to complete concept plans for urban reserves before the area will be included in the UGB. The ordinance also included amendments to the Functional Plan that provide guidance for the contents of concept plans.
- Council Ordinance No. 10-1244, which adopted changes to the Regional Framework Plan, calling for an outcomes-based approach to urban growth management.
- Council Ordinance No. 15-1361, which expressed Council's intent to convene partners to discuss possible improvements to the region's process for managing residential growth.
- Council Resolution No. 17-4764, by which the Council accepted the recommendations of the Urban Growth Readiness Task Force, including its recommendation to clarify expectations for cities proposing residential UGB expansions.

3. Anticipated Effects

Future residential growth management decisions, including the Metro Council's 2018 decision, would be subject to the code requirements proposed in this ordinance. This will mean that cities will need to address these new code provisions when proposing residential UGB expansions. The proposed code amendments would also establish procedures for mid-cycle residential growth management decisions.

4. Budget Impacts

No additional budget impacts are expected as a consequence of Council adoption of this ordinance. Staff anticipates devoting time to assisting cities that wish to propose residential UGB expansion. Likewise, some amount of staff time will be incurred reviewing city proposals. However, staff believes that this can be achieved with existing resources since this effort is anticipated in the 2018 growth management decision work program.

RECOMMENDED ACTION

Staff recommends that Council adopt Ordinance No. 17-1408.

ATTACHMENTS

Attachment 1: Draft administrative guidance for cities proposing residential UGB expansions in the 2018 urban growth management decision.

Administrative guidance for cities proposing residential urban growth boundary expansions in the 2018 urban growth management decision

The factors found in section 3.07.1425 (d) 1-5 were drafted with the intent of providing flexibility for cities that are proposing residential urban growth boundary (UGB) expansions. This is in recognition of the fact that cities have differing circumstances. With that flexibility comes some ambiguity. Acknowledging that ambiguity, this document is intended as guidance for cities making proposals. It seeks to further explain the Metro Council's policy interests in order to help cities make the strongest proposal possible. In addressing these expectations, cities should make their best case for their proposed expansion, highlighting not only the merits of the proposed expansion area, but also demonstrating a commitment to implementing best practices in existing urban areas.

All code sections 3.07.1425 (d) 1 – 5 should be addressed in a city's proposal narrative. Please limit the proposal narrative (not including attachments or cover pages) to 15 pages. To be considered in the 2018 growth management decision, cities must submit all required proposal materials to Metro's Chief Operating Officer by close of business on May 31, 2018. The Metro Council will not consider proposals that are incomplete or late. Please contact Metro staff with any questions about how to address these code sections.

Cities proposing expansions primarily for employment purposes do not need to address these code sections as they are chiefly focused on residential considerations, but must still submit a proposal letter and a concept plan for the urban reserve by May 31, 2018.

Relevant Metro code sections are in **bold**. Administrative guidance is in *italics*.

- 1. Whether the area is adjacent to a city with an acknowledged housing needs analysis that is coordinated with the Metro forecast and distribution in effect at the time the city's housing needs analysis or planning process began.**

The State Department of Land Conservation and Development (DLCD) – not Metro – is responsible for acknowledging city housing needs analyses if they determine that the city's analysis is consistent with [Statewide Planning Goal 10 \(Housing\)](#). Cities are encouraged to coordinate with DLCD early to ensure that deadlines and requirements can be met. Cities should request from DLCD, and provide to Metro, written state acknowledgement of their housing needs analysis.

Cities should coordinate their housing needs analyses with a distributed forecast that was adopted by the Metro Council. The 2040 distributed forecast is the most recent forecast and was adopted via Ordinance No. 16-1371. The 2035 and 2040 distributed forecasts are [available on Metro's website](#). When feasible, cities are encouraged to rely on the most current forecast (the 2035 distributed forecast is older). Cities that are planning for more household growth than depicted in the Metro forecast should explain their rationale and how their plans, investments and the proposed expansion will address that growth.

In addressing this code section in the proposal narrative, the Metro Council expects cities to demonstrate that, consistent with [Statewide Planning Goal 10 \(Housing\)](#), they are planning for a variety of housing types that can address the needs of diverse household sizes and incomes.

This demonstration should be made for the city as a whole, while also describing the role of the proposed expansion area in addressing those needs.

2. Whether the area has been concept planned consistent with section 3.07.1110 of this chapter.

The Metro Council only wants to expand the UGB in locations that are likely to develop within the 20-year planning horizon. This is one of the reasons that the Council requires – in the [Urban Growth Management Functional Plan](#) – a concept plan before expanding the UGB. The concept plan must be consistent with Title 11 (Planning for New Urban Areas) of the Functional Plan. Cities should summarize their concept plan’s relevant components – such as infrastructure funding strategies and agreements with the county and special districts – in their proposal narrative. Cities should also demonstrate that the concept plan is consistent with the requirements of Title 11.

The Metro Council will only consider proposals for expansions in designated urban reserves. A concept plan may include a larger urban reserve area than what a city is proposing for expansion. Cities should clearly indicate in their proposal which areas are being proposed for expansion.

Concept plans should be formally adopted or accepted by a city’s governing body and a city should submit evidence of that formal action and the plan itself with its proposal. Cities should also submit a resolution from their governing body that expresses support for the proposed expansion. If desired, one resolution (or appropriate legislation) may be used for both purposes. Plans and proposals that lack formal endorsement by the city’s governing body will not be considered by the Metro Council.

To demonstrate the likelihood of development in the proposed expansion area, cities may submit additional information such as market studies, evidence of the city’s past track record in producing housing, and letters of support from or agreements with property owners in the proposed expansion area.

If a city has planning or governance responsibility for past UGB expansion areas, the Metro Council will want to know whether and how those areas have been annexed and developed. If past expansion areas have not been annexed or developed, the Metro Council will want a city to explain why that is and how the proposed expansion would be different.

Please note that Metro administers [2040 Planning and Development Grants](#) that can be used to fund concept plans for urban reserves.

3. Whether the city responsible for preparing the concept plan has demonstrated progress toward the actions described in section 3.07.620 of this chapter in its existing urban areas.

The Metro Council is committed to encouraging most growth in existing centers, corridors, main streets, and station communities. Development of UGB expansion areas should not be at the expense of existing urban areas. The Metro Council expects cities proposing residential expansions to make the case that they are making meaningful efforts to encourage the success of these existing urban areas.

Please refer to Title 6 (Centers, Corridors, Station Communities, and Main Streets) of the [Functional Plan](#) for specific actions that are encouraged. Generally, proposals from cities that have taken more of those actions and had positive results will be regarded more favorably. If cities have not taken these actions, they should explain the reasons why they have not.

If the proposed expansion would somehow reinforce an existing urban center or corridor, please describe how. If a city wishes to assert that the proposed expansion would reduce commute distances, the Metro Council will expect the city to provide evidence since people make complex decisions about where to live and work and this region, like other metropolitan areas, has a regional commute shed.

The region's [State of the Centers Atlas](#) is available as an online resource for describing current conditions in centers. Please also note that Metro administers [2040 Planning and Development Grants](#) that can be used to conduct work recommended under Title 6.

4. Whether the city responsible for preparing the concept plan has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas.

The Metro Council seeks to preserve and increase the supply and diversity of affordable housing. This includes both market rate and subsidized housing that is affordable to households with incomes equal to or less than 80 percent of the median family income for the county. Cities should describe the actions and investments they have taken to accomplish this in their existing urban areas. Please refer to the region's [Equitable Housing Initiative](#) for examples that could be cited. Cities should also describe the effectiveness of actions that they have taken. The [Regional Inventory of Regulated Affordable Housing](#) is available as a resource. Generally, proposals from cities that have taken more actions to improve or preserve affordability (and have achieved results) will be regarded more favorably.

Please note that Metro administers [2040 Planning and Development Grants](#) that can be used to conduct work to help ensure equitable housing. If a city has received an Equitable Housing Grant, please summarize the status of that work.

5. Whether the city responsible for preparing the concept plan has taken actions to advance Metro's six desired outcomes set forth in Chapter One of the Regional Framework Plan.

The Metro Council seeks to make urban growth management decisions that advance the region's six desired outcome (described in the [Regional Framework Plan](#)).

- 1. People live, work and play in vibrant communities where their everyday needs are easily accessible.*
- 2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.*
- 3. People have safe and reliable transportation choices that enhance their quality of life.*
- 4. The region is a leader in minimizing contributions to global warming.*
- 5. Current and future generations enjoy clean air, clean water and healthy ecosystems.*
- 6. The benefits and burdens of growth and change are distributed equitably.*

Cities should address each of the six desired outcomes, referencing the actions that they have taken (and results achieved) in existing urban areas as well as how the proposed expansion may advance these outcomes. For several of the outcomes (particularly outcomes one, two, three, four, and six), cities may wish to summarize relevant portions of their responses to code section 3.07.1425(d)3, which requires that a city describe actions it has taken to enhance its centers, corridors, main streets or station communities. If these design types are proposed in the expansion area, the city should describe relevant aspects of the concept plan.

For outcome number four, cities should also reference any other policies or investments that specifically aim to reduce housing and transportation related carbon emissions. Cities may wish to describe how the housing planned for the proposed expansion addresses residential demand that could otherwise spillover outside the Metro UGB (thereby enlarging the regional commute-shed). In particular, cities may wish to note how the type and cost of housing that is being proposed could reduce spillover growth. If a city wishes to assert that the proposed expansion would reduce commute distances, the Metro Council will expect the city to provide evidence.

For outcome number five, cities may note their compliance with Titles 3 (Water Quality and Flood Management) and Title 13 (Nature in Neighborhoods) of the Functional Plan. Cities may also document additional policies or strategies that go beyond regional requirements, including parks and natural area acquisition programs. Cities should also summarize the relevant portions of their concept plans for proposed expansion areas.

Outcome six is of central interest to the Metro Council. To help achieve this ambitious goal, in June 2016 Metro adopted the [Strategic Plan to Advance Racial Equity, Diversity and Inclusion](#). The strategic plan focuses on removing barriers and improving equity outcomes for people of color by improving how Metro works internally and with partners around the Portland region. While individual UGB expansions may have few direct impacts on region-wide racial equity, the cumulative impacts of how communities, cities, the region and the nation have grown have often adversely impacted people of color. Though the best course of action may not always be clear, Metro seeks to encourage a more intentional process for acknowledging and addressing these inequities in growth management decisions with the hopes that cities can help to develop best practices.

Cities making residential expansion proposals should describe whether any of the following social outcomes are worse for communities of color in their jurisdiction than their white counterparts: transportation, housing, jobs, and parks (for a more complete description of these outcomes, please reference the [2015 Equity Baseline Report](#)). Cities should also describe how they meaningfully engage diverse communities in their planning processes (not exclusively for the urban reserve concept plan), how the identified disproportionate outcomes and engagement practices influence plans and community outcomes and how they measure or track the distribution of benefits and burdens of plans and policies across populations.

Cities submitting proposals for residential UGB expansions should include the following in their proposals (due on May 31, 2018 for consideration in the 2018 decision):

- A proposal narrative addressing the Title 14 code sections (3.07.1425 (d) 1-5) that are described

in this guidance document (limit to 15 pages, not including the attachments listed below)

- An adopted resolution from the city's governing body in support of the expansion proposal
- A resolution or other formal action from the city's governing body adopting or accepting a concept plan for the proposed UGB expansion area
- The adopted or accepted concept plan for the urban reserve area
- Findings of fact and conclusions of law that demonstrate that the concept plan for the urban reserve complies with Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan.
- A map of the proposed expansion area (if smaller than the area described in the concept plan)
- Agreements with the county and service districts for the concept plan area as required in Metro Code Title 11 (Planning for New Urban Areas)
- Written confirmation from DLCD that the state has acknowledged the city's housing needs analysis
- Any other supporting materials that demonstrate the city's commitment to facilitating the development of needed housing or achieving regional desired outcomes

Agenda Item No. 7.1

Ordinance No. 17-1410, For the Purpose of Amending Metro
Code Chapter 5.00 to Add Certain Definitions

Ordinances (Second Hearing)

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.00 TO ADD CERTAIN)
DEFINITIONS)
)
)
)

ORDINANCE NO. 17-1410
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 5.00 contains the definitions for Title V of the Metro Code; and

WHEREAS, Metro has previously exempted from regulation those material recovery facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; and

WHEREAS, via companion Ordinance No. 17-1411, Metro Council adopted code amendments that require source-separated material recovery facilities to obtain a license, while explicitly exempting those facilities that receive and process a single type of non-putrescible recyclable material; and

WHEREAS, the Code changes adopted in Ordinance No. 17-1411 require that new definitions defining a “conversion technology facility” and “specific material recycler” be added to Metro Code Section 5.00.010; and

WHEREAS, staff engaged in extensive public outreach regarding these proposed Code definitions, including presentations to the Solid Waste Alternatives Advisory Committee (SWAAC) on multiple occasions and a 60-day public comment period that closed on July 14, 2017; and

WHEREAS, on August 9, 2017, staff presented to SWAAC both the public’s comments and staff’s responses to those comments, whereupon SWAAC recommended presenting the proposed Code changes to the Metro Council for consideration; and

WHEREAS, the Metro Council finds that adding these new definitions to Metro Code Section 5.00.010 is necessary to implement the amendments made by Ordinance No. 17-1411; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 5.00.010 is amended to add the new terms and definitions as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this ____ day of October 2017.

Tom Hughes, Council President

Attest:

Approved as to Form:

Nellie Papsdorf, Recording Secretary

Alison R. Kean, Metro Attorney

CHAPTER 5.00

SOLID WASTE DEFINITIONS

5.00.010 Definitions

Conversion technology facility means a facility that uses primarily chemical or thermal processes other than melting (changing from solid to liquid through heating without changing chemical composition) to produce fuels, chemicals, or other useful products from solid waste. These chemical or thermal processes include, but are not limited to, distillation, gasification, hydrolysis, pyrolysis, thermal depolymerization, transesterification and animal rendering, but do not include direct combustion, composting, anaerobic digestion, melting, or mechanical recycling. Mills that primarily use mechanical recycling or melting to recycle materials back into similar materials are not considered to be conversion technology facilities, even if they use some chemical or thermal processes in the recycling process.

Specific material recycler means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. This term does not include a facility that processes commingled source-separated recyclables collected through curbside residential or commercial collection programs.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1410 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.00 TO ADD CERTAIN DEFINITIONS

September 22, 2017

Prepared by: Dan Blue
503-797-1863

Adoption of Ordinance No. 17-1410 will amend Metro Code Chapter 5.00 (Solid Waste Definitions) to add new terms and definitions for “conversion technology facility” and “specific material recycler.” The purpose of these proposed definitions is to provide greater clarity in how Metro authorizes and implements its licensing requirements at solid waste facilities.

This ordinance is a companion to Ordinance No. 17-1411 which proposes related amendments to Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials. The Metro Council will consider both of these ordinances collectively at its meetings on October 5 and October 26, 2017.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improve sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region’s solid waste system for the next several years. Concurrently with this effort, staff seeks to provide a more consistent, transparent, and equitable regulatory framework for the regional solid waste system. Metro will further support this effort by developing the Regional Solid Waste Management Plan during 2017 and 2018.

In August 2015, Metro staff proposed a wide range of changes to Metro’s solid waste code (Metro Code Title V). Metro received feedback from the public requesting a more thorough and transparent process for considering the proposed code changes. In October 2015, Metro Council directed staff to implement an improved and more rigorous process for developing and soliciting feedback on proposed changes to Metro’s solid waste code. As directed by Metro Council, staff implemented a thorough public engagement process for soliciting input on the proposed code changes.

Because Metro is the agency tasked with planning, management, and oversight of the region’s solid waste system, it has an obligation to the public to ensure the waste intended for reuse, recycling and other purposes is handled properly and sent to appropriate markets and that all other waste is safely managed and disposed.

Metro Code currently exempts from licensing certain material recovery and conversion technology facilities that exclusively receive non-putrescible source-separated recyclable

materials that are collected through a curbside residential or commercial collection program. However, collection methods, material composition, and market conditions for source-separated recyclable materials have changed significantly since Metro initially established that regulatory exemption. These significant changes over the years have resulted in greater potential for material degradation at recovery facilities and adverse impacts on neighboring communities.

In December 2015, Metro's Solid Waste Alternatives Advisory Committee (SWAAC) commissioned a subcommittee to consider whether material recovery and conversion technology facilities that receive source-separated recyclable materials should be subject to Metro's licensing and inspection requirements similar to that of other solid waste facilities. Also, if so, the subcommittee was with charged identifying which licensing requirements were appropriate for such material recovery and conversion technology facilities.

The 15-member subcommittee, comprised of industry, local government, nonprofit, and general public representatives, held a series of meetings throughout 2016 and recommended that Metro establish regulatory requirements for certain material recovery and conversion technology facilities that receive and process source-separated recyclable materials. The subcommittee's recommendation was subsequently endorsed by SWAAC. The proposed code amendments described in this ordinance, as well as the companion Ordinance No. 17-1411, reflect SWAAC and the subcommittee's recommendations.

On May 10, 2017, SWAAC recommended that Metro solicit input from the public on the proposed changes and open a 60-day review and comment period. A formal public comment period was open from May 12 through July 14, 2017. The comments received and staff's response to those comments is provided as Attachment 1.

Staff presented the comments received and responses to those comments to SWAAC at its meeting on August 9, 2017. Staff then reviewed the proposed code changes with Metro Council at its work session meeting on September 19 and Council directed staff to bring the proposed code changes forward for formal consideration.

PUBLIC OUTREACH AND ENGAGEMENT:

As directed by Metro Council in October 2015, staff conducted extensive public outreach and solicited input on the proposed changes to Chapter 5.00. The public outreach for the proposed code changes included:

1. SWAAC review and SWAAC Subcommittee review :
 - (a) December 2015 – SWAAC commissioned a 15-member subcommittee to consider regulation of material recovery and conversion technology facilities. The subcommittee held seven meetings (between January and October 2016) and

recommended that Metro establish authorization requirements for material recovery and conversion technology facilities.

- (b) October 2016 – SWAAC endorsed the subcommittee’s recommendations.
 - (c) May 2017- SWAAC endorsed staff’s draft code changes and the opening of a 60- public review period.
 - (d) August 2017– SWAAC reviewed the public comments received by Metro, staff’s responses, and proposed revisions. SWAAC endorsed presenting the final proposal to Metro Council.
2. Public review and comment period:
- (a) Metro opened a 60-day public review and comment period from May 15 through July 14, 2017.
 - (b) Metro also held two public workshops on May 31 and June 13, 2017 to review the proposal and answer questions.
 - (c) Metro received three written comments related to the proposed code changes (see Attachment 1).
 - (d) Staff prepared a detailed response to the written comments received during the public review period (see Attachment 1).
3. Other outreach:
- (a) Metro established a dedicated web page that was used to post the proposed code change information and related documents at <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>
 - (b) Staff sent routine status updates and other correspondence to interested parties via email.

PROPOSED AMENDMENTS TO CHAPTER 5.00

If adopted, this ordinance would add two new terms and definitions to Metro Code Section 5.00.010 as shown in Exhibit A. These proposed definitions are necessary to clarify which types of material recovery and conversion technology facilities will be subject to Metro licensing requirements under proposed companion Ordinance No. 17-1411. The Chief Operating Officer recommends adding the following terms to Metro Code Section 5.00.010:

- 1) **Conversion technology facility** – Add this new term to clearly define what constitutes conversion technology for purposes of Metro Code. The proposed term uses the same definition of *conversion technology* as defined by the state.¹
- 2) **Specific material recycler** Add this new term in order to clarify which types of facilities are exempt from licensing requirements as proposed under companion Ordinance No. 17-1411.

¹ Oregon Administrative Rules (OAR) 340-093-0030 (28)

ANALYSIS / INFORMATION

1. Known Opposition

One operator of a material recovery facility within the region is known to oppose the proposed code amendments and licensing requirements for material recovery facilities that receive and process source-separated recyclable material (see Attachment 1). A representative of the facility operator participated on the SWAAC subcommittee which considered this issue and the operator also had the opportunity to provide further input throughout the subsequent public engagement process.

The SWAAC subcommittee and SWAAC subsequently endorsed the proposed code amendments to establish additional regulatory oversight for material recovery and conversion technology facilities that receive and process source-separated recyclable materials.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 states that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Section 5.00.010 to add two new defined terms as provided in Exhibit A. The new definitions would take effect 90 days after adoption. If Council also adopts companion Ordinance No. 17-1411, material recovery and conversion technology facilities that receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program would be required to apply for and obtain a solid waste license by January 1, 2019.

4. Budget Impacts

There are no expected budget impacts associated with the adoption of this ordinance.

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 17-1410.

**Material Recovery Facility & Conversion Technology Facility Project (MRF/CT)
Compilation of Feedback Received, Metro Response, and Actions Taken
Topic: Proposed Changes to Title V, Chapters 5.00 and 5.01
August 1, 2017**

On May 12 2017, Metro opened a 60-day public review and comment period to solicit input on proposed changes to Metro Code Chapters 5.00 and 5.01 related to the regulation of certain material recovery facilities (MRFs) and conversion technology (CT) facilities. The public comment period closed on July 14, 2017. At that time, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. If Metro Council were to adopt amendments to Metro Code, then Metro would subsequently open a formal public review and comment period for the proposed administrative rules as provided in Metro Code Section 5.01.280.

The following is a summary of the written comments that Metro received during the public comment period and Metro's responses to those comments related specifically to the proposed changes to Metro Code. All comments were received in writing by email. A copy of each comment received is also attached to this document.

All documents related to this project are located on Metro's website here:

<http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

For questions or concerns regarding the project please contact Dan Blue at 503-797-1863 or dan.blue@oregonmetro.gov.

NOTE: Due to the length and varied nature of the comments received and for clarity, pertinent sections of the comments are italicized. Responses to those comments are in *bold and are italicized*. Copies of all comments received are attached to the end of this document.

Scott Farling (SF) representing Agilyx, by email on July 13, 2017:

Comment 1. *5.01.030 (b) should include "conversion to petrochemical products" along with reuse and recycling as accepted means of disposal for source-separated recyclable materials. (Note: 5.01.040 (b) refers back to 5.01.030 (a), (b), (d), and (f).)*

Metro Response: This suggested change is outside the scope of the current proposed changes to 5.00 and 5.01. No change made.

Comment 2. *5.01.040(a)(4) should include the information under the heading "Characteristics of CT Facilities Exempt from Obtaining a Metro License" from page 10 of the MRF-CT Recommendations for SWAAC Final.*

CT facilities that receive feedstocks that have already been extracted from mixed solid waste and otherwise processed to conform to prescribed specifications and largely resemble commodity feedstocks (material streams) for direct introduction into a conversion technology process may have the following characteristics:

- The facility does not accept unprocessed, mixed solid waste from collection trucks/containers, reload facilities, or other solid waste generators.
- A majority of feedstock material is used productively in conversion process.
- Feedstock specifications are prescribed to conform to the specific conversion technology industrial process requirements.

- Shredding, mixing, right-sizing or other similar treatment of already sorted and processed feedstocks typical in a manufacturing process does not constitute “processing of solid waste”.
- The facility’s receipt and processing of the feedstock presents low potential risk to the environment, or to neighboring businesses and residential communities (e.g., odors, dust, noise, vectors, litter, fire safety etc.).

Metro Response: The “Characteristics of CT Facilities Exempt from Obtaining a Metro License” were developed to inform the discussion and deliberation of the MRF/CT Subcommittee which led to the Subcommittee’s subsequent recommendations to Metro’s Solid Waste Alternatives Advisory Committee (SWAAC). While this language helps to clarify what types of facilities would be exempt under the proposed code changes, Metro staff does not concur that this level of specificity is needed in the Code and recommends that the proposed code language is sufficient. Metro staff will consider including this level of detail in the draft administrative rules should Council elect to modify the Code as proposed. No change made.

Matt Cusma, Representing Schnitzer Steel, by letter sent by email July 14, 2017:

Schnitzer Steel Industries appreciates the opportunity to submit these comments on the proposed amendments to Metro Code Chapters 5.00 and 5.01 dated May 12, 2017. The proposed amendments are the result of many months of effort by the Solid Waste Alternatives Advisory Committee’s MRF/CT Subcommittee, other stakeholders, and Metro staff. Schnitzer believes this collaborative approach and deliberate effort to involve stakeholders in the Metro Solid Waste Code revision process improved on the code revisions originally proposed in 2015. Schnitzer commends Metro on this renewed commitment to collaboration and stakeholder engagement at the outset of any discussions regarding whether changes to Metro’s Solid Waste Code are necessary and, if so, what those changes should be.

One purpose of the proposed amendments is to clarify that recyclers that receive and process non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets (e.g., scrap metal, plastic, paper, and similar commodities) will remain exempt from Metro’s solid waste license and franchise requirements. See Proposed Sec. 5.01.040(a)(5). This exemption appropriately recognizes that these types of recyclable materials are managed as valuable commodities, not waste, and present little risk of harm to human health or the environment. Much of this recyclable material never enters the solid waste stream because of its recycling value. Based on these considerations and others, Metro has long recognized facilities that process such materials as a unique type of commercial recycling facility and has exempted them from solid waste facility licensing requirements. The proposed amendments appropriately codify a specific exemption that covers these types of facilities: the “Specific Material Recycler” exemption.

Schnitzer fully supports the clarification of the Specific Material Recycler exemption, but believes the proposed language is unnecessarily narrow. As drafted, the exemption applies to: “Specific material recyclers that receive and process a single type of nonputrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or other similar commodities.” But for recyclers that receive recyclable materials with intrinsic value and manage those materials as valuable commodities, it should not matter whether the recycler receives and processes only a single type of material. That is, eligibility for the exemption should depend on the type of material accepted by the recycler (i.e., recyclable materials that hold intrinsic value in established markets), not whether the recycler accepts more than one type of such material.

Comment 1. To address this issue, Schnitzer urges Metro to remove the phrase “a single type of” from the exemption, so that the exemption would apply to specific material recyclers that receive and process “nonputrescible recyclable materials that hold intrinsic value in established reuse and recycling markets, such as scrap metal, paper, or other similar commodities.” The phrase “a single type of” would also need to be removed from the definition of “specific material recycler,” which Metro is proposing to add to Section 5.00.010.

This limited expansion of the Specific Material Recycler exemption would be consistent with the purposes of Metro's solid waste facility regulations. See Sec. 5.01.010(a). Because Schnitzer's proposed changes would not expand or change the types of materials that would fall within the exemption, the proposed changes would not undermine Metro's ability to protect and preserve the health, safety, and welfare of its residents. See Sec. 5.01.010(a)(1). Moreover, the proposed changes would create additional incentive for facilities that receive and process recyclable materials with intrinsic value to reduce the volume of solid waste disposal. See Sec. 5.01.010(a)(4). Schnitzer would welcome the opportunity to discuss this proposed revision to the Specific Material Recycler exemption with Metro staff.

Metro Response: *Use of the phrase "a single type of" is intended to distinguish between a facility that predominately receives multiple homogeneous types of source-separated recyclable materials from a facility that receives commingled source-separated recyclables from curbside commercial and residential collection programs. Staff finds that removing the phrase "a single type of" from the definition of Specific Material Recycler may cause confusion for facility operators as to which types of facilities would be exempted, and which would not. Staff has revised the proposed definition of Specific Material Recycler to include the following statement for additional clarification: "The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs." Staff will also consider providing further clarification of this distinction as part of administrative rule.*

As such, the proposed definition in Metro Code Section 5.00.010 has been revised to read: "Specific material recycler" means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs.

Jeff Murray, Representing EFI, by letter send by email July 14, 2017:

EFI has an interest in and would be effected by the Proposed Ordinances because EFI is located within the Metro Region and receives significant volumes of Commercial Commingled Recyclables collected by EFI trucks and licensed refuse haulers from businesses located inside and outside the Metro Region. A majority of the recycling that EFI processes at its facility on Swan Island is source segregated recyclables (ie OCC, Office Paper and other various grades of recyclables separated by the generator by grade). *Competitors that only receive and process source segregated recyclables will not be subject to licensing by Metro and the requirements associated with licensing, placing EFI in a competitive disadvantage with these facilities.*

Comment 1. *EFI opposes the Proposed Ordinances because it is a dramatic change in Metro Code that violates a stated policy in the Metro RSWMP and is in violation of Oregon State Statute (ORS 459A.075).*

Metro Response: *Metro has thoroughly discussed and evaluated the need for this ordinance with a stakeholder subcommittee, SWAAC, the public and Metro Council over the last two years. While EFI states its opposition to this ordinance, Metro staff finds that the proposed amendments to Metro Code are in the public interest. Metro staff has found that many in the solid waste industry, local government officials, and the public are in support of these changes. The 2008 Metro Regional Solid Waste Management Plan (RSWMP) states that certain facilities including those that exclusively handle source-separated recyclable materials "are not required to obtain authorization from Metro to operate." That statement is found in the section of the*

RSWMP entitled “Current System,” which is intended to simply describe Metro’s current solid waste system. It is a factual statement and not intended to be a policy statement or a prohibition on future regulation.

The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. Finally, Metro’s definition of solid waste includes source-separated recyclables. No change made.

Comment 2. Past reports by staff have downplayed the potential negative impacts of the Proposed Ordinances and we have deep concerns that licensing can place facilities, such as EFI, that handle commingled recyclables and that are located within the Metro Region at a strong disadvantage to those outside the Region.

Metro Response: Metro is responsible for and has broad regulatory authority over all solid waste within the region and, in particular, has identified concerns about potential nuisance, odor, litter and dust generated by some facilities. Metro currently issues licenses or franchises to over 30 solid waste facilities within the region to ensure that the region’s solid waste is managed appropriately and that nearby residents and business are not adversely impacted. Currently some MRFs inside the region are subject to Metro authorization while others are not. The proposed legislation would establish similar and consistent requirements for solid waste facilities performing similar functions. No change necessary.

Comment 3. The Proposed Ordinances would, through licensing, allow Metro to impose unnecessary requirements on source separated recycling facilities, including design requirements, operating requirements, performance standards and reporting of detailed, confidential account information.

Metro Response: No performance standards are being proposed at this time. Operating, design and reporting requirements are being proposed with the full and unanimous support of the MRF/CT Subcommittee and SWAAC and are contained within the draft administrative rules that accompany the proposed Code amendments. No change necessary.

Comment 4. To this point there has only been discussion related to already existing administrative rules.

Metro Response: Metro does not currently have administrative rules related to the operation or regulation of MRFs that receive source-separated recyclables (SSR). The preliminary administrative rules that staff posted for public review are proposed in draft form for information only.

Metro will not adopt an administrative rule related to regulation of SSR MRFs unless the Metro Council first adopts Code amendments that authorizes regulation of SSR MRFs. To date Metro staff has engaged with stakeholders in a variety of ways to solicit input on potential operating requirements for SSR MRFs including initiating an “informal” public comment process related to proposed administrative rules.

As part of the public engagement process, the proposed amendments to Code, and preliminary drafts of administrative rules, were provided to SWAAC, MRF/CT Subcommittee members and interested parties on May 2, 2017 and discussed at the May 10, 2017 SWAAC meeting. A stakeholder workshop was held on May 31, 2017 to discuss proposed changes to Code chapters 5.00 and 5.01 as well as draft administrative rules. A second public workshop was also held on June 12, 2017.

If the Metro Council adopts the proposed Code changes and requires that SSR MRFs obtain authorization from Metro, then Metro will subsequently open a formal public comment process and hold a public hearing for any proposed administrative rules as provided in Metro Code Chapter 5.01. No change necessary.

Comment 5. *We have two specific concerns related to the administrative rules: 1) Are there more administrative rules to come specifically related to source separated commingle facilities?*

Metro Response: *Much useful input was received on the draft administrative rules for both CT and for SSR MRFs during the two stakeholder workshops on May 31 and June 12, 2017 as well as the initial “informal” public comment period on the rules that closed July 14, 2017. If the Metro Council adopts the proposed Code amendments, then staff will revise the draft administrative rules based on the preliminary stakeholder input that has already been provided and will open another public comment period on a revised set of administrative rules as provided in Metro Code Chapter 5.01. No change necessary.*

Comment 6. *2) If there are more administrative rules, will there be a committee established to help developed these rules before Metro Council votes on the Proposed Ordinances? Without finalized Administrative Rules, we do not yet know what the full implication of licensing will mean to our business.*

Metro Response: *The proposed administrative rules that will accompany the Code amendment package will be open to a formal public review period and hearing process if the proposed Code changes are adopted by Metro Council. Adoption of any subsequent amendments or new administrative rules would be considered as provided in Metro Code Section 5.01.280. No change necessary.*

EFI may be harmed and the regional refuse / recycling system as a whole may suffer unintended consequences by the Proposed Ordinances for the following reasons:

- 1) Within the City of Portland, recycling facilities in the appropriate zones have outright use. Solid waste facilities are not allowed within some of the zones and need conditional use in the limited number of zones that they are allowed.

Comment 7. *In the event that EFI became a licensed solid waste facility, we may need conditional use to make any significant changes to our facility. This is particularly troubling if Metro were to require the changes.*

Metro Response: *Metro staff has researched this issue, which was raised and discussed in the MRF/CT Subcommittee and with city of Portland officials. Metro has not received any evidence suggesting that local land use decisions would, or have been, influenced by the issuance of a Metro solid waste license. The actual “use” of EFI’s property remains unchanged regardless of Metro’s proposed licensing requirements. Because land use regulations are based on “use” of the property, then a Metro requirement to license a facility should not automatically change any land use decisions affecting that property if the use remains the same. As indicated in the referenced “attachment A” Table 140-1 (a City of Portland planning document) “Industrial Service (Includes Recycling)” is an outright approved use. No change made.*

- 2) Currently, most of the commingled recyclables collected in the state of Oregon are received and sorted at facilities within the Metro region. In the event that Metro were to license commingle recycling facilities within the region the following may happen:

Comment 8.

- a. *Commingled recyclables collected outside the region that are currently delivered to facilities within the region may travel to facilities currently outside the region. This would raise the cost per ton to receive and sort the material that continues to be delivered to the facilities*

within the Metro region. Fewer commingle tons also raises the per ton cost to handle source segregated recyclables (separated by type), placing EFI at a competitive disadvantage on our segregated portion of our business.

- b. Commingled recyclables collected in the region may be delivered, or reloaded and delivered to facilities outside the region. There is a commingled recycling facility located in Salem, OR that may draw commingle material from the south end of the region and there are a number of facilities in the Puget Sound area that are currently running under capacity. The facilities in the Puget Sound market are much closer to the port. A few dollars difference in pricing and more stringent controls on the commingled material may be enough to send the material north to facilities owned by haulers that also provide collection service in the metro area.*
- c. Licensing of commingle recycling facilities in the Metro region may cause recyclers currently in the region to relocate outside the region.*

Metro Response: The concerns outlined in a – c above are speculative. Metro’s intent in this Code change package is to ensure that nuisance, odor, vector, dust and litter impacts for residents and businesses located nearby MRFs and CT facilities are minimized. There is no evidence to suggest that the proposed changes to Code are likely to result in any of the impacts outlined above (comments a. – c.) for facilities that are already meeting the minimum standards proposed in the rules. No change necessary.

Comment 9. *The result of Metro licensing facilities that handle commingled recycling may result in giving Metro and local governments less information about and control over the source separated commingled recyclables collected in the region.*

Metro Response: This is both speculative and contrary to the expected outcome of the proposed changes. Staff believes that adoption of these changes will result in a much better understanding of the regional solid waste system and that many information gaps will be filled in that will better inform future policy choices and planning efforts. No change made.

Metro’s Authority to Regulate Solid Waste

Comment 10. *EFI does not question Metro’s authority to regulate solid waste; however, we do not agree that source separated recycling and / or source separated commingled recycling are solid waste, therefore Metro does not have the authority to license source separated recycling facilities. The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.*

459A.075 Exemptions. *Nothing in ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665 applies to recyclable material which is: (1) Source separated by the generator; and (2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. [Formerly 459.192]. The source separated recycling described above is exempted from all pertinent sections of 459 and 459A.*

Metro Response: Metro staff recommends the following passage of the Oregon Recycling Opportunity Act in 1983 as a point of reference. In 1984, the Oregon Department of Environmental Quality (DEQ) sought legal advice from the Oregon Attorney General as to whether recyclable material was still considered “solid waste” for regulatory purposes under state law. The specific question was whether facilities “that receive only source separated recyclable materials [were] now exempt by definition, from the Department’s solid waste management rules?” (See Oregon Department of Justice letter to William Dana, DEQ, dated June 21, 1984.) The Oregon Department of Justice unequivocally stated that “recyclable material” is considered “solid waste” for regulatory purposes. The Attorney General’s Office further explained:

“The overall policy of the Act, the expressed concerns of individual legislators, and the specific language of particular sections all indicate that the Legislative Assembly intended that ‘recyclable material’ continue to be a sub-category of ‘solid waste,’ and that facilities for collecting and sorting recyclable materials continue to be regulated as ‘disposal sites.’

** * **

[I]t appears to be the intent that DEQ continue to have power to regulate materials which meet the definition of ‘solid waste,’ whether such materials are recyclable or not.”

For similar Oregon Department of Justice interpretations, see Memorandum from Assistant Attorney General Larry Edelman to DEQ, dated February 27, 1996, and Letter from Assistant Attorney General Larry Edelman to Mark Morford, dated November 4, 2002.

In addition, ORS 268.317(8) gives Metro explicit statutory authority to “Receive, accept, process, recycle, reuse and transport solid and liquid wastes.” This statute indicates that the legislature considers “recyclable materials” as a sub-category of “solid waste.” Further, the definition of “Solid Waste Management” in ORS 459.005 (25) references “recycling” from “solid waste.”

Finally, it is not entirely clear what is meant by the comment: “The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.” Metro’s sources of solid waste legal authority are its home rule Charter, the Metro Code, the RSWMP, Oregon Revised Statutes (ORS) Chapters 268, 459 and 459A.

NOTE: The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. No change made.

Why Regulate Commingle Recycling Facilities?

The answers that we have been given by staff were primarily related to storage of recycling and “house-keeping”. Local regulators had concerns that certain recycling facilities were stock-piling large volumes recyclable materials outside. In a few cases, for extended period. This caused a concern that the facilities were becoming nuisances and that the material would degrade and become unmarketable. There was also a general concern related to the house-keeping at these same facilities. Before the MRF / CT Subcommittee held its last meeting, the electronics recycler in Washington County was cited by DEQ and closed its doors shortly thereafter, and a commingle facility that was of concern shuttered its business.

Comment 11. *Metro has stated in the 2008 RSWMP: “Certain facilities, such as those exclusively handling inert wastes or source-separated recyclable materials, are not required to obtain authorization from Metro to operate. However, Metro retains the authority to inspect and audit these operations to periodically confirm compliance with Metro Code.” Similar language also existed in the 1995 RSWMP. EFI asks the following questions: 1) When and how often has Metro exercised this Authority?*

Metro Response: *Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3) i.e. exclusively accepting source-separated recyclable materials. However, under current Code requirements, such visits are typically pre-scheduled with the operator and performed for the purpose of determining whether the facility exclusively receives source-separated recyclable materials for reuse or recycling. Currently, SSR MRFs are not subject to licensing or franchising requirements and Metro does not have any authorization mechanisms in place to establish and enforce operating conditions at these types of facilities.*

Comment 12. *2) What has the response been by facilities that handle commingled recyclables when Metro has informed the facility operators that the facility is out of compliance?*

Metro Response: *As explained in Metro's response above, SSR MRFs are not subject to licensing or franchising requirements under current Metro Code. Metro does not have any authorization mechanisms in place at this time to establish and enforce operating conditions at these types of facilities. As stated earlier, Metro's intent with these proposed changes is to minimize nuisance, odor, vector, litter and dust from these operations, and to avoid material degradation due to improper handling. Given that local, national and global commodity markets ebb and flow, it is critical that periodic unannounced, random site visits are conducted to reduce undue impacts on communities.*

Comment 13. *3) Has any facility that handles source separated commingled recyclables turned down a request by Metro to enter the property or to respond in a positive manner when metro staff has recommended / requested a change to improve their operation?*

Metro Response: *As explained in Metro's response above, Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3). Currently, such visits are typically pre-scheduled, limited in scope, and subject to approval by the operator. Metro staff has found that SSR MRF operators have generally accommodated Metro's requests to allow site access over the years. However, Metro does not have any authorization mechanisms in place to require site access or other operating conditions at these types of facilities.*

Comment 14. *Regulation of commingle facilities will have little if any positive impact on the quality of the outgoing product from commingle facilities.*

Metro Response: *Improving the quality of outgoing materials is not an objective of this proposed Code change. However, the proposed regulations will likely have a positive impact in those cases in which source-separated recyclable materials are either stored or mishandled in such a way as to lead to significant degradation of that material (as Metro staff has observed at one MRF in the region) making that material unmarketable. Additionally, the proposed regulations will likely have a positive impact on the people living and working nearby these types of facilities in that it will result in establishing operating requirements that will help minimize nuisance conditions such as litter, dust, and vectors.*

Material recovery facility (MRF) and conversion technology (CT) Subcommittee

EFI has several concerns regarding the process followed in developing the final draft recommendations. A primary concern is that the end product is no different than what was presented at the end of summer, 2015.

Comment 15. *The committee process did not address the initial concerns of the recycling community and local governments that brought about their initial support for oversight / regulation of these facilities.*

Metro Response: *The MRF/CT Subcommittee was charged with considering whether MRFs that process source-separated recyclable materials and facilities that convert waste to energy, fuel, or other products should be subject to authorization and inspection similar to other facilities and if so to identify which requirements were appropriate. The MRF/CT Subcommittee deliberated over the course of seven meetings*

with the result being unanimous support for a set of recommendations that included authorizing material recovery facilities processing source-separated recyclables and establishing operating standards for those facilities. The MRF/CT Subcommittee, SWAAC, and Metro Council were clear that the scope of the subcommittee did not include performance standards (material quality) and that consideration of performance standards should be addressed through the upcoming regional waste planning process. No change made.

Comment 16. *Further, I brought forward a motion to recommend Certification of Commingle Recycling Facilities as an alternative to licensing and staff interrupted the motion and later made their own. (Attachment B)*

Metro Response: *The MRF/CT subcommittee did receive a copy of Mr. Murray’s certification proposal, and did discuss third-party certification as well as a Metro-issued certificate, license, or franchise. Through deliberation, the subcommittee elected to focus on a broader statement recommending that such facilities be subject to a Metro “authorization.” Metro Code provides for two types of facility authorizations - solid waste license or franchise. Rather than creating a third type of authorization and developing an additional apparatus in Code, staff recommended removing the current licensing exemption for this type of facility. Therefore, Metro staff recommends using a solid waste license as the form of authorization for this particular class of facility. This approach is consistent with current Code, and Metro’s current regulatory oversight of the region’s solid waste system.*

Comment 17. *Why didn't Metro staff tell members at this second meeting that their list of issues would NOT be addressed in the sub-committee?*

Metro Response: *The deliberation of the Subcommittee, taken in whole, addressed many of the issues included in Mr. Murray’s comment letter attached to this document. Those issues not specifically addressed in the subcommittee were identified to be better suited to the upcoming regional waste planning process.*

This information was clearly articulated, as mentioned in these public comments, at the Subcommittee’s March 17 meeting (Meeting No. 3). The summary notes for the above-mentioned meeting are available on the Metro website at: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>.

Mr. Murray began his presentation indicating that it had been mentioned many times in the Subcommittee that so called “clean mrf’s” and “dirty mrf’s” were similar now, and that his presentation was to show that they are still very different. Mr. Murray then showed a series of slides from both types of facilities indicating that dry waste facilities and SSR MRFs were indeed different in terms of the mixes of materials they receive and the composition of materials leaving the facilities (both to markets and to landfill). Mr. Murray showed a short video from a dry waste MRF and clarified that the outgoing residuals from the two different types of facilities were quite different with far more residuals going to landfill from the dry waste facilities that what comes out of the SSR MRF’s.

During the same meeting Jeff made a motion to consider Certification as an option. The motion was interrupted by staff and staff asked if they could first give their presentation.

Comment 18. *Jeff was not given another opportunity to present his motion.*

Metro Response: *At the May 20 meeting the various available options for “authorization” of these types of facilities was discussed. The Subcommittee discussed the certification option, and coalesced around the suggested language that ultimately became the key recommendation contained in the*

MRF/CT Recommendation Memo. Mr. Murray's (and EFIs) focus on the certification is acknowledged and was well-represented in Subcommittee discussions, however the rest of the MRF/CT Subcommittee seemed comfortable with the broader term "authorization" for its recommendations going forward and reliance on staff to recommend the exact type of appropriate authorization. This position is further evidenced by the thorough review, editing, and subsequent adoption of the final MRF/CT Recommendation Memo dated October 5, 2016. Finally, it is Metro staff's recommendation that licenses are the appropriate legal form of authorization for this class of facility. Metro licenses can be developed to address conditions specific to a class of facilities. A Metro-issued certificate would only be a different name for a Metro-issued authorization – and it would not be any more restrictive or expansive than a license.

Has Metro Council and / or staff discussed the possibility of:

Comment 19. 1) *Building or utilizing an existing facility the purpose of sorting source separated commingled recycling collected within the Metro region?*

2) *Bidding out the processing of source separated commingled recycling collected within the Metro region?*

3) *Flow controlling source separated commingled recycling collected within the Metro region to either a publicly or privately-owned facility?*

Metro Response: *The three questions above are not relevant to the proposed changes to Metro Code Chapters 5.00 and 5.01 for which Metro has sought public comment. Metro entering into any of the activities described above would be the result of a policy decision. Policy direction comes from Metro Council. Metro Council has not directed staff to explore any of the three activities described in the questions above.*

Comment 20. *EFI requests that Metro re-instate the policy stated in Objective 4.3 of the Metro 1995 RSWMP in the RSWMP currently under development.*

Metro Response: *Thank you for this comment. It is, however, not related to the proposed changes to Metro Code. Please be sure to provide these comments through the Regional Waste Plan process. Information is available here: <http://www.oregonmetro.gov/public-projects/future-garbage-and-recycling>. No change made.*

Conclusion

In summary, EFI appreciates the opportunity to comment on the Proposed Ordinances. We request that Metro staff and Council give serious consideration to the concept of certification of source separated commingled recycling facilities. We continue to ask the question:

Comment 21. *Why does Metro need to license source separated commingled recycling facilities when they have not fully exercised their "authority to inspect and audit these operations to periodically confirm compliance with Metro Code."*

Metro Response: *While code provides "authority to inspect and audit these operations to periodically confirm compliance with Metro Code" the Code does not include sufficient details or operating requirements related to the operation of these types of facilities. The MRF/CT Subcommittee and SWAAC, have endorsed additional regulatory oversight including establishing design and operating standards as well as reporting for SSR MRFs. The proposed removal of the licensing exemption for*

this class of facilities accomplishes the recommendations of the Subcommittee and SWAAC. No change made.

Administrative Rule Process:

The comments received and responded to in this document were focused entirely on the proposed changes to Metro Code Chapters 5.00 and 5.01. When the proposed code changes were put out for public comment, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. Staff received comments on the draft administrative rules from the following:

- Keith Ristau, Far West Recycling
- Andy Kahut, KB Recycling
- Dave Claugus, Pioneer Recycling
- Chris McCabe, Northwest Pulp and Paper Association

If Metro Council adopts the proposed changes to Metro Code Chapters 5.00 and 5.01, Metro will subsequently adopt administrative rules as provided in Metro Code Section 5.01.280. Specifically, staff will post revised, draft administrative rules for public review and comment which will take into consideration the preliminary input that Metro received during the informal comment period that ended on July 14, 2017. At the conclusion of the next public comment period for the proposed rules, Metro staff will provide written responses to all comments received during the formal public comment period.

All project materials are located on Metro's website here: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

Questions or concerns regarding the project can be directed to Dan Blue at 5023-797-1863 or dan.blue@oregonmetro.gov.

Agenda Item No. 7.2

Ordinance No. 17-1411, For the Purpose of Amending Metro Code Chapter 5.01 to Establish Licensing Requirements for Certain Facilities that Receive and Process Source-Separated Recyclable Materials and Make Housekeeping Changes

Ordinances (Second Reading)

Metro Council Meeting
Thursday, October 26, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 5.01 TO ESTABLISH)
LICENSING REQUIREMENTS FOR CERTAIN)
FACILITIES THAT RECEIVE AND PROCESS)
SOURCE-SEPARATED RECYCLABLE)
MATERIALS AND MAKE HOUSEKEEPING)
CHANGES)

ORDINANCE NO. 17-1411
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 5.01 contains the requirements for Solid Waste Facility Regulation, including regulation of material recovery facilities; and

WHEREAS, Metro has previously exempted from regulation those material recovery facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; and

WHEREAS, collection methods, material composition, and market conditions for non-putrescible source-separated recyclable materials have changed significantly since Metro established the previous regulatory exemption; and

WHEREAS, these significant changes have increased the potential for material degradation, as well as the potential for adverse impacts from the facilities on neighboring communities; and

WHEREAS, the various amendments to Chapter 5.01 include removing licensing exemptions for certain material recovery facilities that receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program; and

WHEREAS, staff engaged in extensive public outreach regarding these proposed Code changes, including presentations to the Solid Waste Alternatives Advisory Committee (SWAAC) on multiple occasions and a 60-day public comment period that closed on July 14, 2017; and

WHEREAS, on August 9, 2017, staff presented to SWAAC both the public's comments and staff's responses to those comments, whereupon SWAAC recommended presenting the proposed Code changes to the Metro Council for consideration; and

WHEREAS, the proposed amendments to Chapter 5.01 also include non-substantive housekeeping changes to delete references to requirements that are no longer effective, correct misnumbered cross-references, and clarify when certain documents and payments are due; and

WHEREAS, the Metro Council finds that these amendments to Metro Code Chapter 5.01 will further the goals of the agency and better protect the environment and the public's health; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.01 is amended as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this ____ day of October 2017.

Tom Hughes, Council President

Attest:

Approved as to Form:

Nellie Papsdorf, Recording Secretary

Alison R. Kean, Metro Attorney

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

Section Title

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(Repealed Ord. 03-1018A Sec. 23)

GENERAL PROVISIONS

5.01.010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to:
 - (1) Protect and preserve the health, safety and welfare of Metro's residents;
 - (2) Implement the Regional Solid Waste Management Plan cooperatively with federal, state and local agencies;
 - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all citizens of Metro; and
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter shall be liberally construed to accomplish these purposes. [Ord. 81-111, Sec. 3; Ord. 95-621A, Sec. 2; Ord. 98-762C, Secs. 2-3; Ord. 02-974; Ord. 16-1387.]

5.01.020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is derived from the Oregon Constitution, ORS Chapter 268 for solid waste and the Metro Charter. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. [Ord. 98-762C, Secs. 4-5; Ord. 02-974; Ord. 16-1387.]

5.01.030 Prohibited Activities

Except as otherwise provided in this chapter, or in Metro Code Chapter 5.05, it is unlawful for:

- (a) Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) Any person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.

- (c) A licensee or franchisee to receive, process or dispose of any solid waste unless authorized by the license or franchise.
- (d) Any person to transport any solid waste to or to dispose of any solid waste at any place other than a solid waste facility or disposal site that is operated by a licensee or franchisee or is otherwise exempt under Section 5.01.040.
- (e) A licensee or franchisee to violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to Section 5.01.280.
- (f) Any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.
- (g) Any person to store electronic device waste uncovered and outside of a roofed structure. [Ord. 81-111, Sec. 4; Ord. 87-217, Sec. 1; Ord. 95-621A, Sec. 3; Ord. 98-762C, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 2; Ord. 06-1102, Sec. 1; Ord. 16-1387.]

5.01.040 Exemptions to Prohibited Activities

- (a) The provisions of this chapter do not apply to:
 - (1) Municipal or industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
 - (2) Disposal sites, transfer stations, or solid waste facilities owned or operated by Metro, except that Metro must pay regional system fees per Section 5.01.300.
 - ~~(3) — Facilities that (A) exclusively receive non-putrescible source-separated recyclable materials, and (B) reuse or recycle those materials, or transfer, transport or deliver those materials to a person or facility that will reuse or recycle them.~~
 - ~~(3) Conversion technology facilities that exclusively receive non-putrescible waste for use as feedstock that has been:
 - ~~(A) Extracted from other solid waste: and~~
 - ~~(B) Processed to meet prescribed specifications for direct introduction into a conversion technology process.~~~~
 - ~~(4) Specific material recyclers that receive and process a single type of non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or similar commodities.~~
 - ~~(4)(5) Facilities that exclusively receive, process, transfer or dispose of inert waste.~~
 - ~~(5)(6) Persons who generate and maintain residential compost piles for residential garden or landscaping purposes.~~
 - ~~(6)(7) Residences, parks, community gardens and homeowner associations.~~

~~(7)~~(8) Universities, schools, hospitals, golf courses, industrial parks, and other similar facilities, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.

~~(8)~~(9) An operation or facility that processes wood wastes, unless:

(A) The wood wastes are processed for composting; or

(B) The operation or facility is other-wise regulated under this chapter.

~~(9)~~(10) Temporary transfer stations or processing centers established and operated by a government for 60 days or less to temporarily receive, store or process solid waste, provided that Metro finds an emergency situation exists.

~~(10)~~(11) Persons who own or operate a mobile facility that processes petroleum contaminated soil at the site of origin and retains any treated petroleum contaminated soil on the site of origin.

- (b) Notwithstanding Section 5.01.040(a), all persons must comply with Sections 5.01.030(a), (b), (d) and (f).
- (c) The provisions of Section 5.01.290 apply to the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(~~10~~11). [Ord. 81-111, Sec. 5; Ord. 82-136, Sec. 1; Ord. 91-422B, Sec. 2; Ord. 95-621A, Sec. 4; Ord. 98-762C, Sec. 7; Ord. 00-866, Sec. 2; Ord. 02-933, Sec. 1; Ord. 02-974; Ord. 03-1018A, Sec. 3; Ord. 06-1102, Sec. 2; Ord. 07-1147B, Sec. 2; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees

- (a) A Metro solid waste license is required of any person owning or controlling a facility at which the person performs any of the following activities:
 - (1) Processing non-putrescible waste.
 - (2) Processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.
 - (3) Processing of yard debris or yard debris mixed with residential food waste.
 - (4) Reloading solid waste.
 - (5) Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under this chapter.
- (b) The annual fee for a solid waste license may not exceed \$300.00.
- (c) The application fee for a new or renewal license is \$300.00. The application fee is due at the time of filing.
- (d) The annual solid waste license fee is in addition to any other fee, tax or charge imposed upon a licensee.

- (e) The licensee must pay the license fee in the manner and at the time required by the Chief Operating Officer. [Ord. 81-111, Sec. 15; Ord. 98-762C, Secs. 8-9; Ord. 98-762C, Sec. 40; Ord. 98-767, Sec. 5; Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 02-974; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.060 Pre-Application Conference for Licenses

- (a) An applicant for a new license must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing another application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.070 Applications for Licenses

- (a) An applicant for a new or renewal license must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) A license application must also include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal

sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (6) Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.080 License Issuance

- (a) The Chief Operating Officer may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer considers appropriate.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officers considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Before approving or denying a license application, the Chief Operating Officer must provide public notice and an opportunity for public comment on the license application.
- (d) The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:
 - (1) Submitted application,
 - (2) Chief Operating Officer's investigation regarding the application information, and
 - (3) Public comments.
- (e) If the Chief Operating Officer does not approve or deny a new license application within 180 days after the applicant files a complete application, the license is deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then the license will contain the standard terms and conditions included in other comparable licenses issued by Metro.

- (f) At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:
 - (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or
 - (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (g) An applicant may withdraw its application at any time before the Chief Operating Officer's decision and may submit a new application at any time thereafter.
- (h) If the Chief Operating Officer denies a license request, the applicant may not file a new application for the same or substantially similar license for at least six months from the denial date. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.090 License Contents

- (a) A license will specify authorized activities, the types and amounts of wastes the solid waste facility may accept, and any other conditions the Chief Operating Officer imposes.
- (b) In addition to this section's requirements, if a license authorizes the licensee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading, the license is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to Section 5.01.2680.
- (c) The license must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.

- (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) Record-keeping. A licensee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes.
- (d) A license term may not exceed five years, except that the Chief Operating Officer may extend the license term for up to one year. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.100 Record-keeping and Reporting for Licenses

- (a) A licensee must maintain accurate records of the information that the Chief Operating Officer requires. A licensee must report the required information on the forms, in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. The licensee or its authorized representative must sign the report and certify it as accurate.
- (b) A licensee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A licensee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the licensee received the complaint, and any response by the licensee to the complaint.
- (d) A licensee must retain all records required by this chapter for three years (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.
- (e) Any information the licensee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the licensee requests exception from disclosure consistent with Oregon Law. [Ord. 98-762C, Secs. 38-39; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.110 License Renewal

- (a) The Chief Operating Officer is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.
- (b) A licensee seeking renewal of a license must submit a request as required by this section a renewal license not less than 120 days before the license's expiration date.

~~The licensee must: The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.~~

~~(c) A licensee requesting a license renewal must:~~

- (1) File a completed application for renewal;
- (2) Pay a \$300.00 application fee; and
- (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.

~~(c)~~ The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed renewal is not in the public interest. The Chief Operating Officer may attach conditions to any renewed license.

~~(d)~~ The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387.]

5.01.120 Transfer of Ownership or Control of Licenses

- (a) A licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfers control of the license to another person, whether whole or in part. The transferee of a license must meet the requirements of this chapter.
- (b) The term for any transferred license is for the remainder of the original term unless the Chief Operating Officer establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.130 Change of Authorizations for Licenses

- (a) A licensee must submit an application pursuant to Section 5.01.070 when the licensee requests authority to:
 - (1) Accept wastes other than those the license authorizes, or
 - (2) Perform activities other than those the license authorizes, or
 - (3) Modify other limiting conditions of the applicant's license.
- (b) The licensee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations or limits to the applicant's license does not substitute for an application that Metro would otherwise require under Section 5.01.050.

- (d) A licensee must notify Metro in writing when the licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.140 Variances for Licenses

- (a) The Chief Operating Officer may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees to protect public health, safety and welfare.
- (b) In order to grant a variance, the Chief Operating Officer must find that the licensee or applicant can achieve the purpose and intent of the particular license requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or licensee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A licensee or applicant must request a variance in writing and must concisely state why the Chief Operating Officer should grant the variance. The Chief Operating Officer may investigate the request as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must approve or deny the variance request within 60 days.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (f) If the Chief Operating Officer denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.
- (g) If the Chief Operating Officer denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the date of denial. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.150 Franchise Requirements and Fees

- (a) A Metro solid waste franchise is required of any person owning or controlling a facility at which the person performs any of the following activities:

- (1) Processing putrescible waste other than yard debris and yard debris mixed with residential food waste.
 - (2) Operating a transfer station.
 - (3) Operating a disposal site or an energy recovery facility.
 - (4) Any process using chemical or biological methods whose primary purpose is reduction of solid waste weight or volumes.
 - (5) Any other activity not listed in this section or exempted by Metro Code Section 5.01.040.
- (b) The annual fee for a solid waste franchise is \$500.00.
- (c) The franchise fee is in addition to any other fee, tax or charge imposed upon a franchisee.
- (d) The franchisee must pay the franchise fee in the manner and at the time required by the Chief Operating Officer.
- (e) The application fee for a new or renewal franchise is \$500.00. The application fee is due at the time of filing. [Ord. 98-762C, Secs. 8-9. Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.160 Pre-Application Conference for Franchises

- (a) An applicant for a new franchise must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing any application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.170 Applications for Franchises

- (a) An applicant for a new or renewal franchise must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) An application for a franchise must include the following information:
- (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the franchise term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;

- (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the franchise or refuses any franchise renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and
 - (6) Any current permit and a list of anticipated permits that any other governmental agency may require. If the applicant has previously applied for other permits, the applicant must provide a copy of the permit application and any permit that another governmental agency granted as a result.
- (d) An analysis of the factors described in Section 5.01.180(f) must accompany an application for a franchise. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.180 Franchise Issuance

- (a) The Chief Operating Officer will review franchise applications filed under Section 5.01.170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officer considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer will make a recommendation regarding whether the:

- (1) Applicant is qualified;
 - (2) Proposed franchise complies with the Regional Solid Waste Management Plan;
 - (3) Proposed franchise meets the requirements of Section 5.01.170; and
 - (4) Applicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer will provide the recommendations required by subsection (c) to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application. If the Chief Operating Officer recommends that Council grant the application, the Chief Operating Officer may also recommend specific conditions of the franchise.
- (e) After Council receives the Chief Operating Officer's recommendation, the Council will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, the order is effective immediately.
- (f) The Council will consider the following factors when determining whether to issue a franchise:
- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Solid Waste Management Plan;
 - (2) The effect that granting a franchise will have on the cost of solid waste disposal and recycling services for the citizens of the region;
 - (3) Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
 - (4) Whether granting a franchise is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
 - (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.280 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.
- (g) If the Council does not approve or deny a new franchise application within 180 days after the applicant files a complete application the franchise is deemed granted for the solid waste facility or disposal site requested in the application. The deadline for the Council to approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will

contain the standard terms and conditions included in other comparable franchises issued by Metro.

- (h) At any time after an applicant files a complete franchise application, the deadline for the Council to approve or deny the application is extended if:
 - (1) The Council extends the deadline for up to an additional 60 days, which the Council may do only once for any single application;
 - (2) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Council to act is restarted as of the date Metro receives the applicant's modifications; or
 - (3) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (i) An applicant may withdraw its application at any time before the Council's decision and may submit a new application at any time thereafter.
- (j) If the Council denies a franchise request, the applicant may not file a new application for the same or substantially similar franchise for at least six months from the denial date.
- (k) A franchise term may not exceed five years, except that the Chief Operating Officer may extend the term of a franchise for up to one year. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.190 Franchise Contents

- (a) The franchise is the Council's grant of authority to accept the waste and perform the activity or activities described in the franchise, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority.
- (b) Franchises must be in writing and include:
 - (1) The term of the franchise;
 - (2) The specific activities the franchisee may perform and the types and amounts of waste the franchisee may accept at the solid waste facility;
 - (3) Any other conditions the Council considers necessary to ensure the franchisee complies with the intent and purpose of this chapter; and
 - (4) Indemnification of Metro in a form acceptable to the Metro Attorney.
- (c) A franchise that authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to Section 5.01.280. The franchise must require that the facility operate in a manner that meets the following general performance goals:

- (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
- (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
- (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
- (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
- (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
- (6) Record-keeping. A franchisee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.200 Record-keeping and Reporting for Franchises

- (a) A franchisee must maintain accurate records of the information the Chief Operating Officer requires and report that information on the forms or in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. A franchisee's authorized representative must sign the report and certify it as accurate.
- (b) A franchisee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A franchisee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the franchisee received the complaint, and any response by the franchisee to the complaint.
- (d) A franchisee must retain all records required by this chapter (except for the complaint records in subsection (c)) for three years and allow the Chief Operating Officer to inspect them.

- (e) All information that the franchisee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the franchisee requests exception from disclosure consistent with Oregon Law. [Ord. 14-1332; Ord. 16-1387.]

5.01.210 Franchise Renewal

- (a) The Council approves or denies a solid waste facility franchise renewals. A franchisee seeking renewal of a franchise must submit a request as required by this section not less than 120 days before the franchise's expiration date. The franchisee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$500.00 application fee; ~~not less than 120 days before the franchise term expires;~~ and
 - (3) Provide a statement of proposed material changes from ~~its initial~~ the previous franchise application ~~for the franchise,~~ along with any other information the Chief Operating Officer or the Council requires.
- (b) The Chief Operating Officer will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.180. The Council must approve renewal of a solid waste facility franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria outlined in Section 5.01.180. The Council may attach conditions or limitations to the renewed franchise.
- (c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387.]

5.01.220 Transfer of Ownership or Control of Franchises

- (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise transfers control of the franchise to another person, whether whole or in part. The transferee of a franchise must meet the requirements of this chapter.
- (b) The term for any transferred franchise is for the remainder of the original term unless the Council establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.230 Change of Authorizations for Franchises

- (a) A franchisee must submit an application pursuant to Section 5.01.170 when the franchisee requests authority to:
 - (1) Accept wastes other than those the franchise authorizes, or
 - (2) Perform activities other than those the franchise authorizes, or

- (3) Modify other limiting conditions of the applicant's franchise.
- (b) The franchisee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorization or limits to the applicant's franchise does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (d) A franchisee must notify Metro in writing when the franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.240 Variances for Franchises

- (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon conditions the Council considers necessary to protect public health, safety and welfare.
- (b) In order to grant a variance, the Council must find that the franchisee can achieve the purpose and intent of the particular franchise requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or franchisee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A franchisee or applicant must request a variance in writing and must concisely state why Council should grant the variance. The Chief Operating Officer may make an investigation as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must recommend to the Council whether to approve or deny the variance within 120 days after Metro receives the variance request.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (f) If the Council denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.
- (g) If the Council denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the denial date. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.250 General Obligations of All Regulated Parties

All persons regulated by this chapter must:

- (a) Allow the Chief Operating Officer reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the license or franchise, and the performance standards and administrative rules adopted pursuant to Section 5.01.280.
- (b) Ensure that solid waste transferred from the facility goes to the appropriate destination under ~~Section 5.01.280~~this chapter, ~~under~~ Metro Code Chapter 5.05, and ~~other~~under applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- (c) Maintain insurance during the license or franchise term in the amounts specified in the license or franchise or any other amounts as state law may require for public contracts, and to give 30 days' written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (d) Indemnify and save harmless Metro, the Council, the Chief Operating Officer, Metro employees and Metro agents from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the licensee's or franchisee's performance of or failure to perform any of its obligations under the license or franchise or this chapter.
- (e) Agree to no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:
 - (1) Any provision or requirement of the license or franchise;
 - (2) Metro's enforcement of the license or franchise; or
 - (3) Any determination that a license or franchise or any part thereof is invalid. [Ord. 81-111, Sec. 13; Ord. 98-762C, Sec. 28; Ord. 02-974; Ord. 03-1018A, Sec. 15; Ord. 16-1387.]

5.01.260 Obligations and Limits for Selected Types of Activities

- (a) ~~A solid waste facility that receives non-putrescible waste and is subject to licensing or franchising under this chapter must: A material recovery facility licensee or transfer station franchisee must perform material recovery from non-putrescible waste that it accepts at the facility as specified in this section or as otherwise specified in its license or franchise, or it must deliver the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.~~
 - (1) Perform material recovery from non-putrescible waste that it receives at the facility as specified in this section or as otherwise specified in its license or franchise, or

- ~~(2) Transport the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.~~
- ~~(b) Notwithstanding subsection (a) above, a facility that exclusively receives non-putrescible source-separated recyclable material is not subject to the requirements of this section.~~
- ~~(b) A licensee or franchisee subject to subsection (a) must recover at least 25 percent by weight of non-putrescible waste accepted at the facility and waste delivered by public customers. For the purposes of calculating the amount of recovery required by this subsection, recovered waste excludes both waste from industrial processes and ash, inert rock, concrete, concrete block, foundry brick, asphalt, dirt, and sand. Failure to maintain the minimum recovery rate specified in this section is a violation enforceable under Metro Code Sections 5.01.320 and 5.01.330. After December 31, 2008, the requirements of this subsection are not applicable to licensees or franchisees unless the Council determines that this standard should be reinstated to replace the processing residual standard established in 5.01.260(c).~~
- (c) ~~Effective January 1, 2009, a~~ A licensee or franchisee subject to subsection (a) must:
- (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. The processing residual may not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension.
 - (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of the sampling to Metro in the monthly report due the month following the end of that quarter.
- (d) Based on observation, audits, inspections and reports, Metro inspectors will conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.290(c). Failure to maintain the recovery level specified in Section 5.01.260(c)(1) is a violation enforceable under Metro Code. Metro will not impose a civil penalty on the first two violations of this subsection by a single licensee or franchisee.
- (e) Failure to meet the reporting requirements in subsection (c)(2) is a violation enforceable under Metro Code.
- (f) A transfer station franchisee:
- (1) Must accept putrescible waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
 - (2) Must not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.

- (3) Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the Council in approving the transfer station franchise application.
- (4) Must provide an area for collecting source-separated recyclable materials without charge at the franchised solid waste facility, or at another location more convenient to the population being served by the franchised solid waste facility.
- (g) A reload facility licensee must ~~deliver-transport~~ all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (h) A solid waste facility licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste unless the:
 - (1) Size reduction is a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations; and
 - (2) Licensee or franchisee described the size reduction in a Metro-approved operating plan. [Ord. 98-762C, Secs. 30-31; Ord. 00-866, Sec. 5; Ord. 01-916C, Sec. 4; Ord. 02-952A, Sec. 1; Ord. 03-1018A, Sec. 16; Ord. 07-1147B, Sec. 3; Ord. 12-1272, Sec. 3; Ord. 13-1306, Sec. 3; Ord. 16-1387.]

5.01.270 Direct Haul of Putrescible Waste

A franchisee authorized by Metro to deliver putrescible waste directly to a disposal site must:

- (a) ~~Deliver-Transport~~ the putrescible waste to Metro's contract operator for disposal of putrescible waste;
- (b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to Section 5.01.280; and
- (c) Provide transportation or arrange for transportation by a transportation service provider that complies with the following performance standards for long-haul transportation by highway:
 - (1) All solid waste transported through the city limits of Arlington, Oregon, is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
 - (2) All equipment satisfies all federal, state, and local regulations. In addition, the use of exhaust brakes is prohibited.
 - (3) All solid waste is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and is capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers

using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.

- (4) The average weight of solid waste payloads transported during each calendar month is not less than 25 tons.
- (5) Any staging areas used is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- (7) Use of rest areas, turnouts, scenic vista points, and state parks is limited to cases of emergency.
- (8) Transportation is prohibited in the Columbia River Gorge NSA during the following times:
 - (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - (B) Daylight hours on Saturdays in June, July, August, and September.
 - (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste is transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste is transported by use of vehicles and equipment that is suitably painted and presents an acceptable appearance.
- (11) A franchisee representative and its transportation carrier must annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The franchisee must report to Metro any accidents, citations, and vehicle inspections involving vehicles of the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A franchisee representative and its transportation carrier must meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee must immediately report any violations of this subsection to Metro. [Ord. 98-762C, Secs. 32-33; Ord. 02-974; Ord. 16-1387.]

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms

- (a) The Chief Operating Officer may adopt or amend rules, performance standards, and forms to implement any provision of this chapter. Any rule, performance standard, or form adopted or amended under this section has the same force and effect as any other chapter provision.
- (b) Before the Chief Operating Officer adopts or amends a rule or performance standard under this section, the Chief Operating Officer will provide an opportunity for public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule or performance standard; the location at which a person may obtain a copy of the full text of the proposed rule or performance standard; the method for submitting public comments; and the deadline for submitting public comments.
- (c) In addition to public comments, the Chief Operating Officer will also hold a public hearing on any proposed rule or performance standard or amendment to an existing rule or performance standard. The public hearing will take place not less than 14 days from the deadline for submitting public comments. The Chief Operating Officer will give public notice of the hearing not less than 10 days nor more than 30 days before the hearing. The notice will include the time, place, and purpose of the public hearing, a brief description of the proposed rule or performance standard, and the location at which a person may obtain copies of the full text of the proposed rule or performance standard.
- (d) During the public hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, including any written comments received during the public comment period.
- (e) After the public hearing is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule. If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must mail a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has either submitted written comments on the proposal, testified at the public hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the mailing date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.
- (f) Any rule or performance standard adopted under this section takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.

- (g) Notwithstanding subsections (b) and (c), the Chief Operating Officer may adopt an interim rule or performance standard without prior public notice, comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule or performance standard adopted pursuant to this subsection expires no later than 180 days from its effective date.
- (h) If the Metro Council enacts an ordinance establishing rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures. However, the procedures set forth in this chapter will still apply to the adoption or amendment of performance standards and forms.
- (i) Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is in effect on the date of this ordinance’s adoption remains in effect unless otherwise repealed or amended.
- (j) For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this section is considered a final decision. [Ord. 98-762C, Secs. 34-35; Ord. 01-916C, Sec. 5; Ord. 02-974; Ord. 07-1138, Sec. 3; Ord. 12-1272, Sec. 5; Ord. 16-1387.]

5.01.290 Inspections, Audits, and other Investigations of Solid Waste Facilities

- (a) The Chief Operating Officer is authorized to make such inspection, audit, or other investigation as the Chief Operating Officer considers appropriate to ensure compliance with this chapter, the Code, the franchise or license, and administrative rules and performance standards adopted pursuant to Section 5.01.280. Licensed or franchised facilities must allow access to the facility premises, and all other solid waste facilities, at all reasonable times during business hours with or without notice, and during non-business hours with 24 hours notice.
- (b) Inspections, audits, or other investigations authorized under subsection (a) will occur regularly and as the Chief Operating Officer determines necessary. The Chief Operating Officer will report the results of each inspection, audit, or other investigation in the format approved by the Chief Operating Officer.
- (c) The Chief Operating Officer may access and examine any records during the inspections, audits, or other investigations if the Chief Operating Officer considers the records pertinent to the license or franchise, or to the provisions of this chapter. These records include but are not limited to the licensee’s, franchisee’s or solid waste facility operator’s books, papers, records, equipment, blueprints, operation and maintenance records, logs and operating rules and procedures. As part of the inspections, audits, or other investigations, the Chief Operating Officer may take samples and conduct analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer will coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to avoid redundant requirements on operations.

- (d) Any violation discovered by an inspection, audit, or other investigation is subject to the penalties provided in Section 5.01.330. [Ord. 98-762C, Secs. 36-37; Ord. 02-974; Ord. 03-1018A, Sec. 18; Ord. 07-1147B, Sec. 4; Ord. 16-1387.]

5.01.300 Regional System Fees

- (a) Pursuant to Chapter 5.02, regional system fees apply to solid waste facilities and disposal sites that Metro owns, operates, licenses or franchises, or which are liable for payment of the fees pursuant to a special agreement with Metro.
- (b) Regional system fees are in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.
- (c) Regional system fees must be separately stated upon records of the solid waste facility or disposal site.
- (d) Regional system fees and finance charges on those fees must be paid as specified in Metro Code Chapter 5.02. [Ord. 81-111, Sec. 16; Ord. 86-214, Sec. 1; Ord. 91-422B, Sec. 4; Ord. 93-509, Sec. 2; Ord. 95-621A, Sec. 7; Ord. 98-762C, Sec. 41; Ord. 00-866, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 19; Ord. 14-1332; Ord. 16-1387.]

5.01.310 Determination of Rates

- (a) The Council may establish facility rates if it finds that setting facility rates is in the public interest as a matter of metropolitan concern.
- (b) Notwithstanding any other provision of this section:
 - (1) Licensees are exempt from all rate setting; and
 - (2) Franchisees are exempt from rate setting unless Metro requires rate setting as a franchise condition. [Ord. 81-111, Sec. 19; Ord. 82-136, Sec. 4; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 43-44; Ord. 03-1018A, Sec. 20; Ord. 16-1387.]

ENFORCEMENT AND APPEALS

5.01.320 Enforcement Provisions

- (a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.
- (b) The Chief Operating Officer may investigate whether there is sufficient cause to suspend, modify or revoke a franchise or license. If there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Chief Operating Officer will notify the franchisee or licensee in writing of the alleged violation, and the necessary steps the violator must take to correct the violation. If the franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after Metro sends notice, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.330 or that Metro will suspend, modify or revoke the franchise or license.

- (c) The Chief Operating Officer will send the notice upon finding that the franchisee or licensee has:
- (1) Violated the franchise or license, the administrative rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated there under or any other applicable law or regulation;
 - (2) Misrepresented material facts or information in the franchise or license application, or other information that Metro requires the licensee or franchisee to submit;
 - (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides written notification and reasonable opportunity to do so;
 - (4) Misrepresented the gross receipts from the operation of the licensed or franchised site, facility or station;
 - (5) Failed to pay when due the fees required under this chapter; or
 - (6) Violated a city or county ordinance if the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.
- (d) Except as provided in subsection (e), if the Chief Operating Officer revokes, modifies or suspends a license or franchise, it does not become effective until Metro gives the licensee or franchisee an opportunity to request a contested case hearing under Metro Code 2.05.
- (e) If Metro finds a serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee, the Chief Operating Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the Chief Operating Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If Metro immediately suspends a franchise, the franchisee has 30 days from the suspension date to request a contested case hearing under Code Chapter 2.05.
- (f) If Metro revokes a franchise or license, all franchisee or licensee rights in the franchise or license become void. [Ord. 81-111, Sec. 20; Ord. 82-136, Sec. 5; Ord. 95-621A, Sec. 8; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 45; Ord. 02-974; Ord. 03-1018A, Sec. 21; Ord. 14-1332; Ord. 16-1387.]

5.01.330 Penalties

- (a) Each violation of this chapter is punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. Metro may join separate offenses in one Notice of Violation in several counts.

- (b) If the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise, or the administrative rules or performance standards adopted pursuant to Section 5.01.280, the Chief Operating Officer will provide written notice to the violator describing the violation and requiring the violator to correct the violation within the time specified in the notice.
- (c) If a licensee or franchisee fails to correct the violation within the specified time period, the Chief Operating Officer will issue a Notice of Violation, indicating the continuing violation, the date of re-inspection and the fine imposed as specified in subsection (a).
- (d) If after re-inspection, the Chief Operating Officer finds the licensee or franchisee has failed to correct the violation, the violation is punishable by a fine as specified in subsection (a). Metro will give notice of a final deadline for correcting the violation at the time of re-inspection.
- (e) If the licensee or franchisee fails to correct the violation after the final deadline, the licensee or franchisee must cease the activity resulting in the violation.
- (f) Metro will conduct further inspections to ensure that the licensee or franchisee suspends the offending activity. If the licensee or franchisee fails to suspend the offending activity, the Chief Operating Officer may:
 - (1) Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
 - (2) Suspend all solid waste activities on site;
 - (3) Impose a lien on the property for the amount of the fines; or
 - (4) Suspend, modify or revoke the license or franchise pursuant to Section 5.01.320.
- (g) In addition to subsection (a), Metro may enjoin any violation of this chapter upon suit in a court of competent jurisdiction, and the violator may also be subject to a civil penalty not to exceed \$500.00 per day for each day of violation. [Ord. 81-111, Sec. 22; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 47; Ord. 98-767, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 22; Ord. 14-1332; Ord. 16-1387.]

5.01.340 Appeals

- (a) Any applicant, franchisee or licensee may request a contested case hearing pursuant to Code Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance.
- (b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.

- (c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.
- (d) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing. [Ord. 81-111, Sec. 11; Ord. 95-621A, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 14; Ord. 16-1387.]

MISCELLANEOUS PROVISIONS

5.01.350 Miscellaneous Provisions

- (a) The Chief Operating Officer is responsible for the administration and enforcement of this chapter.
- (b) Metro's granting of a license or franchise does not vest any right or privilege in the licensee or franchisee to receive specific quantities of solid waste during the license or franchise term.
- (c) Metro has the power to regulate, in the public interest, the exercise of the privileges it grants by a license or franchise. Metro may establish or amend rules, regulations or standards regarding matters within Metro's authority and enforce those requirements against licensees or franchisees.
- (d) No waiver of any license or franchise condition is effective unless it is in writing and signed by the Chief Operating Officer. If Metro waives a license or franchise condition, that waiver does not waive or prejudice Metro's right to require performance of the same condition or any other condition.
- (e) Metro will construe, apply and enforce a license or franchise in accordance with the laws of the State of Oregon.
- (f) If a court of competent jurisdiction determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect the validity of the remaining provisions in the license or franchise.
- (g) Nothing in this chapter limits the power of a federal, state, or local agency to enforce any provision of law relating to any solid waste facility or disposal site that it is authorized or required to enforce or administer.
- (h) Nothing in this chapter should be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities. [Ord. 98-762C, Secs. 52-53; Ord. 02-974; Ord. 03-1018A, Sec. 24; Ord. 14-1332; Ord. 16-1387.]

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1411 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.01 TO ESTABLISH LICENSING REQUIREMENTS FOR CERTAIN FACILITIES THAT RECEIVE AND PROCESS SOURCE-SEPARATED RECYCLABLE MATERIALS AND MAKE HOUSEKEEPING CHANGES

September 22, 2017

Prepared by: Dan Blue
503-797-1863

Adoption of Ordinance No. 17-1411 will amend Metro Code Chapter 5.01 (Solid Waste Facility Regulation) to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing. This ordinance will also make various other non-substantive technical amendments to the chapter to improve clarity and ease of understanding.

This ordinance is a companion to Ordinance 17-1410 which proposes adding two new definitions to Metro Code Chapter 5.00 (Solid Waste Definitions) which are related to implementing the Code amendments proposed under this ordinance. The Metro Council will consider both of these ordinances collectively at its meetings on October 5 and October 26, 2017.

BACKGROUND

In an effort to shape the future solid waste system to better attain public benefits and improve sustainability, Metro has undertaken a major planning effort (known as the Solid Waste Roadmap) to set the future direction of the region's solid waste system for the next several years. Concurrently with this effort, staff seeks to provide a more consistent, transparent, and equitable regulatory framework for the regional solid waste system. Metro will further support this effort by developing the Regional Solid Waste Management Plan during 2017 and 2018.

In August 2015, Metro staff proposed a wide range of changes to Metro's solid waste code (Metro Code Title V). Metro received feedback from the public requesting a more thorough and transparent process for considering the proposed code changes. In October 2015, Metro Council directed staff to implement an improved and more rigorous process for developing and soliciting feedback on proposed changes to Metro's solid waste code. As directed by Metro Council, staff implemented a thorough public engagement process for soliciting input on the proposed code changes.

Because Metro is the agency tasked with planning, management, and oversight of the region's solid waste system, it has an obligation to the public to ensure the waste intended for reuse,

recycling and other purposes is handled properly and sent to appropriate markets and that all other waste is safely managed and disposed.

Metro Code currently exempts from licensing certain material recovery and conversion technology facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program. However, collection methods, material composition, and market conditions for source-separated recyclable materials have changed significantly since Metro initially established that regulatory exemption. These significant changes over the years have resulted in greater potential for material degradation at recovery facilities and adverse impacts on neighboring communities.

In December 2015, Metro's Solid Waste Alternatives Advisory Committee (SWAAC) commissioned a subcommittee to consider whether material recovery and conversion technology facilities that receive source-separated recyclable materials should be subject to Metro's licensing and inspection requirements similar to that of other solid waste facilities. Also, if so, the subcommittee was with charged identifying which licensing requirements were appropriate for such material recovery and conversion technology facilities.

The 15-member subcommittee, comprised of industry, local government, nonprofit, and general public representatives, held a series of meetings throughout 2016 and recommended that Metro establish regulatory requirements for certain material recovery and conversion technology facilities that receive and process source-separated recyclable materials. The subcommittee's recommendation was subsequently endorsed by SWAAC. The proposed code amendments described in this ordinance, as well as the companion Ordinance No. 17-1410, reflect SWAAC and the subcommittee's recommendations.

On May 10, 2017, SWAAC recommended that Metro solicit input from the public on the proposed changes and open a 60-day review and comment period. A formal public comment period was open from May 12 through July 14, 2017. The comments received and staff's response to those comments is provided as Attachment 1.

Staff presented the comments received and responses to those comments to SWAAC at its meeting on August 9, 2017. Staff then reviewed the proposed code changes with Metro Council at its work session meeting on September 19 and Council directed staff to bring the proposed code changes forward for formal consideration.

PUBLIC OUTREACH AND ENGAGEMENT:

As directed by Metro Council in October 2015, staff conducted extensive public outreach and solicited input on the proposed changes to Chapter 5.01. The public outreach for the proposed code changes included:

1. SWAAC review and SWAAC Subcommittee review :
 - (a) December 2015 – SWAAC commissioned a 15-member subcommittee to consider regulation of material recovery and conversion technology facilities. The subcommittee held seven meetings (between January and October 2016) and recommended that Metro establish authorization requirements for material recovery and conversion technology facilities.
 - (b) October 2016 – SWAAC endorsed the subcommittee’s recommendations.
 - (c) May 2017- SWAAC endorsed staff’s draft code changes and the opening of a 60- public review period.
 - (d) August 2017– SWAAC reviewed the public comments received by Metro, staff’s responses, and proposed revisions. SWAAC endorsed presenting the final proposal to Metro Council.

2. Public review and comment period:
 - (a) Metro opened a 60-day public review and comment period from May 15 through July 14, 2017.
 - (b) Metro also held two public workshops on May 31 and June 13, 2017 to review the proposal and answer questions.
 - (c) Metro received three written comments related to the proposed code changes (see Attachment 1).
 - (d) Staff prepared a detailed response to the written comments received during the public review period (see Attachment 1).

3. Other outreach:
 - (a) Metro established a dedicated web page that was used to post the proposed code change information and related documents at <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>
 - (b) Staff sent routine status updates and other correspondence to interested parties via email.

PROPOSED AMENDMENTS TO CHAPTER 5.01

Metro Code Chapter 5.01 (Solid Waste Facility Regulation) governs the regulation of solid waste facilities and disposal sites within the region. The Chief Operating Officer (COO) recommends the proposed changes to Chapter 5.01 as described below and further detailed in Exhibit A.

1. Establish Licensing Requirements for Material Recovery Facilities that Receive Source-Separated Recyclables.

Currently, facilities that exclusively receive non-putrescible source-separated recyclable materials that are collected through a curbside residential or commercial collection program are exempted from Metro’s licensing and franchising requirements. However,

there have been significant changes in the solid waste system over the years such as an increased practice of “commingled” collection (mixing most recyclables together in a cart or container which has increased contamination), the consistently changing composition of materials placed out at the curb for recovery, and the volatile nature of recycling markets locally, nationally, and globally. These significant changes over the years have increased the potential for material degradation and adverse impacts from facilities on neighboring communities. The COO finds that it is in the public’s interest for Metro to implement greater regulatory oversight of the facilities that receive and process source-separated recyclable materials. The COO recommends removing the current licensing exemption for this class of facilities and requiring that these facilities be subject to Metro’s licensing, inspection, and reporting requirements similar to other solid waste facilities.

2. Create Exemption for Specific Material Recyclers.

The COO recommends that facilities that exclusively receive and process a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets be exempted from the requirement to obtain a solid waste license. For purposes of Metro Code, specific material recyclers are defined as facilities that receive and process materials that include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. Specific material recyclers do not include facilities that processes commingled source-separated recyclables collected through curbside residential or commercial collection programs.

3. Create Exemption for Certain Conversion Technology Facilities.

The COO recommends that conversion technology facilities that exclusively receive non-putrescible waste for use as feedstock that has been (A) extracted from other solid waste and (B) processed to meet prescribed specifications for direct introduction into a conversion technology process be exempted from the requirement to obtain a solid waste license.

4. General Housekeeping Changes (Non-Substantive).

In addition to the changes described above, the COO recommends amending Metro Code Chapter 5.01 with several non-substantive housekeeping changes which include deleting a reference to a requirement that is no longer effective, correcting a misnumbered cross-reference, and clarifying when certain documents and payments are due.

ANALYSIS / INFORMATION

1. Known Opposition

One operator of a material recovery facility within the region is known to oppose the proposed code amendments and licensing requirements for material recovery facilities

that receive and process source-separated recyclable material (see Attachment 1). A representative of the facility operator participated on the SWAAC subcommittee which considered this issue and the operator also had the opportunity to provide further input throughout the subsequent public engagement process.

The SWAAC subcommittee and SWAAC subsequently endorsed the proposed code amendments to establish additional regulatory oversight for material recovery and conversion technology facilities that receive and process source-separated recyclable materials.

2. Legal Antecedents

Any change to the Metro Code requires a legislative action of the Metro Council. Metro Code Section 2.01.070 states that the legislative action of Metro shall be by ordinance.

3. Anticipated Effects

Approval of this ordinance would amend Metro Code Chapter 5.01 to establish licensing requirements for certain facilities that receive and process source-separated recyclable materials, and exempt certain conversion technology and specific material recycler facilities from licensing as provided in Exhibit A. If Council adopts this ordinance, then material recovery and conversion technology facilities that receive non-putrescible source-separated recyclable materials would be required to apply for and obtain a solid waste license by January 1, 2019.

4. Budget Impacts

There are no expected budget impacts associated with the adoption of this ordinance.

RECOMMENDED ACTION

The COO recommends adoption of Ordinance No. 17-1411

Material Recovery Facility & Conversion Technology Facility Project (MRF/CT)
Compilation of Feedback Received, Metro Response, and Actions Taken
Topic: Proposed Changes to Title V, Chapters 5.00 and 5.01
August 1, 2017

On May 12 2017, Metro opened a 60-day public review and comment period to solicit input on proposed changes to Metro Code Chapters 5.00 and 5.01 related to the regulation of certain material recovery facilities (MRFs) and conversion technology (CT) facilities. The public comment period closed on July 14, 2017. At that time, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. If Metro Council were to adopt amendments to Metro Code, then Metro would subsequently open a formal public review and comment period for the proposed administrative rules as provided in Metro Code Section 5.01.280.

The following is a summary of the written comments that Metro received during the public comment period and Metro's responses to those comments related specifically to the proposed changes to Metro Code. All comments were received in writing by email. A copy of each comment received is also attached to this document.

All documents related to this project are located on Metro's website here:

<http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

For questions or concerns regarding the project please contact Dan Blue at 503-797-1863 or dan.blue@oregonmetro.gov.

NOTE: Due to the length and varied nature of the comments received and for clarity, pertinent sections of the comments are italicized. Responses to those comments are in *bold and are italicized*. Copies of all comments received are attached to the end of this document.

Scott Farling (SF) representing Agilyx, by email on July 13, 2017:

Comment 1. *5.01.030 (b) should include "conversion to petrochemical products" along with reuse and recycling as accepted means of disposal for source-separated recyclable materials. (Note: 5.01.040 (b) refers back to 5.01.030 (a), (b), (d), and (f).)*

Metro Response: This suggested change is outside the scope of the current proposed changes to 5.00 and 5.01. No change made.

Comment 2. *5.01.040(a)(4) should include the information under the heading "Characteristics of CT Facilities Exempt from Obtaining a Metro License" from page 10 of the MRF-CT Recommendations for SWAAC Final.*

CT facilities that receive feedstocks that have already been extracted from mixed solid waste and otherwise processed to conform to prescribed specifications and largely resemble commodity feedstocks (material streams) for direct introduction into a conversion technology process may have the following characteristics:

- The facility does not accept unprocessed, mixed solid waste from collection trucks/containers, reload facilities, or other solid waste generators.
- A majority of feedstock material is used productively in conversion process.
- Feedstock specifications are prescribed to conform to the specific conversion technology industrial process requirements.

- Shredding, mixing, right-sizing or other similar treatment of already sorted and processed feedstocks typical in a manufacturing process does not constitute “processing of solid waste”.
- The facility’s receipt and processing of the feedstock presents low potential risk to the environment, or to neighboring businesses and residential communities (e.g., odors, dust, noise, vectors, litter, fire safety etc.).

Metro Response: The “Characteristics of CT Facilities Exempt from Obtaining a Metro License” were developed to inform the discussion and deliberation of the MRF/CT Subcommittee which led to the Subcommittee’s subsequent recommendations to Metro’s Solid Waste Alternatives Advisory Committee (SWAAC). While this language helps to clarify what types of facilities would be exempt under the proposed code changes, Metro staff does not concur that this level of specificity is needed in the Code and recommends that the proposed code language is sufficient. Metro staff will consider including this level of detail in the draft administrative rules should Council elect to modify the Code as proposed. No change made.

Matt Cusma, Representing Schnitzer Steel, by letter sent by email July 14, 2017:

Schnitzer Steel Industries appreciates the opportunity to submit these comments on the proposed amendments to Metro Code Chapters 5.00 and 5.01 dated May 12, 2017. The proposed amendments are the result of many months of effort by the Solid Waste Alternatives Advisory Committee’s MRF/CT Subcommittee, other stakeholders, and Metro staff. Schnitzer believes this collaborative approach and deliberate effort to involve stakeholders in the Metro Solid Waste Code revision process improved on the code revisions originally proposed in 2015. Schnitzer commends Metro on this renewed commitment to collaboration and stakeholder engagement at the outset of any discussions regarding whether changes to Metro’s Solid Waste Code are necessary and, if so, what those changes should be.

One purpose of the proposed amendments is to clarify that recyclers that receive and process non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets (e.g., scrap metal, plastic, paper, and similar commodities) will remain exempt from Metro’s solid waste license and franchise requirements. See Proposed Sec. 5.01.040(a)(5). This exemption appropriately recognizes that these types of recyclable materials are managed as valuable commodities, not waste, and present little risk of harm to human health or the environment. Much of this recyclable material never enters the solid waste stream because of its recycling value. Based on these considerations and others, Metro has long recognized facilities that process such materials as a unique type of commercial recycling facility and has exempted them from solid waste facility licensing requirements. The proposed amendments appropriately codify a specific exemption that covers these types of facilities: the “Specific Material Recycler” exemption.

Schnitzer fully supports the clarification of the Specific Material Recycler exemption, but believes the proposed language is unnecessarily narrow. As drafted, the exemption applies to: “Specific material recyclers that receive and process a single type of nonputrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper, or other similar commodities.” But for recyclers that receive recyclable materials with intrinsic value and manage those materials as valuable commodities, it should not matter whether the recycler receives and processes only a single type of material. That is, eligibility for the exemption should depend on the type of material accepted by the recycler (i.e., recyclable materials that hold intrinsic value in established markets), not whether the recycler accepts more than one type of such material.

Comment 1. To address this issue, Schnitzer urges Metro to remove the phrase “a single type of” from the exemption, so that the exemption would apply to specific material recyclers that receive and process “nonputrescible recyclable materials that hold intrinsic value in established reuse and recycling markets, such as scrap metal, paper, or other similar commodities.” The phrase “a single type of” would also need to be removed from the definition of “specific material recycler,” which Metro is proposing to add to Section 5.00.010.

This limited expansion of the Specific Material Recycler exemption would be consistent with the purposes of Metro's solid waste facility regulations. See Sec. 5.01.010(a). Because Schnitzer's proposed changes would not expand or change the types of materials that would fall within the exemption, the proposed changes would not undermine Metro's ability to protect and preserve the health, safety, and welfare of its residents. See Sec. 5.01.010(a)(1). Moreover, the proposed changes would create additional incentive for facilities that receive and process recyclable materials with intrinsic value to reduce the volume of solid waste disposal. See Sec. 5.01.010(a)(4). Schnitzer would welcome the opportunity to discuss this proposed revision to the Specific Material Recycler exemption with Metro staff.

Metro Response: Use of the phrase "a single type of" is intended to distinguish between a facility that predominately receives multiple homogeneous types of source-separated recyclable materials from a facility that receives commingled source-separated recyclables from curbside commercial and residential collection programs. Staff finds that removing the phrase "a single type of" from the definition of Specific Material Recycler may cause confusion for facility operators as to which types of facilities would be exempted, and which would not. Staff has revised the proposed definition of Specific Material Recycler to include the following statement for additional clarification: "The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs." Staff will also consider providing further clarification of this distinction as part of administrative rule.

As such, the proposed definition in Metro Code Section 5.00.010 has been revised to read: "Specific material recycler" means a facility that processes a single type of non-putrescible recyclable material that holds intrinsic value in established reuse or recycling markets. These materials include, but are not limited to, scrap metal, plastic, paper, or other similar commodities. The exemption does not apply to facilities receiving commingled source-separated recyclables collected through curbside residential or commercial collection programs.

Jeff Murray, Representing EFI, by letter send by email July 14, 2017:

EFI has an interest in and would be effected by the Proposed Ordinances because EFI is located within the Metro Region and receives significant volumes of Commercial Commingled Recyclables collected by EFI trucks and licensed refuse haulers from businesses located inside and outside the Metro Region. A majority of the recycling that EFI processes at its facility on Swan Island is source segregated recyclables (ie OCC, Office Paper and other various grades of recyclables separated by the generator by grade). *Competitors that only receive and process source segregated recyclables will not be subject to licensing by Metro and the requirements associated with licensing, placing EFI in a competitive disadvantage with these facilities.*

Comment 1. *EFI opposes the Proposed Ordinances because it is a dramatic change in Metro Code that violates a stated policy in the Metro RSWMP and is in violation of Oregon State Statute (ORS 459A.075).*

Metro Response: Metro has thoroughly discussed and evaluated the need for this ordinance with a stakeholder subcommittee, SWAAC, the public and Metro Council over the last two years. While EFI states its opposition to this ordinance, Metro staff finds that the proposed amendments to Metro Code are in the public interest. Metro staff has found that many in the solid waste industry, local government officials, and the public are in support of these changes. The 2008 Metro Regional Solid Waste Management Plan (RSWMP) states that certain facilities including those that exclusively handle source-separated recyclable materials "are not required to obtain authorization from Metro to operate." That statement is found in the section of the

RSWMP entitled “Current System,” which is intended to simply describe Metro’s current solid waste system. It is a factual statement and not intended to be a policy statement or a prohibition on future regulation.

The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. Finally, Metro’s definition of solid waste includes source-separated recyclables. No change made.

Comment 2. Past reports by staff have downplayed the potential negative impacts of the Proposed Ordinances and we have deep concerns that licensing can place facilities, such as EFI, that handle commingled recyclables and that are located within the Metro Region at a strong disadvantage to those outside the Region.

Metro Response: Metro is responsible for and has broad regulatory authority over all solid waste within the region and, in particular, has identified concerns about potential nuisance, odor, litter and dust generated by some facilities. Metro currently issues licenses or franchises to over 30 solid waste facilities within the region to ensure that the region’s solid waste is managed appropriately and that nearby residents and business are not adversely impacted. Currently some MRFs inside the region are subject to Metro authorization while others are not. The proposed legislation would establish similar and consistent requirements for solid waste facilities performing similar functions. No change necessary.

Comment 3. The Proposed Ordinances would, through licensing, allow Metro to impose unnecessary requirements on source separated recycling facilities, including design requirements, operating requirements, performance standards and reporting of detailed, confidential account information.

Metro Response: No performance standards are being proposed at this time. Operating, design and reporting requirements are being proposed with the full and unanimous support of the MRF/CT Subcommittee and SWAAC and are contained within the draft administrative rules that accompany the proposed Code amendments. No change necessary.

Comment 4. To this point there has only been discussion related to already existing administrative rules.

Metro Response: Metro does not currently have administrative rules related to the operation or regulation of MRFs that receive source-separated recyclables (SSR). The preliminary administrative rules that staff posted for public review are proposed in draft form for information only.

Metro will not adopt an administrative rule related to regulation of SSR MRFs unless the Metro Council first adopts Code amendments that authorizes regulation of SSR MRFs. To date Metro staff has engaged with stakeholders in a variety of ways to solicit input on potential operating requirements for SSR MRFs including initiating an “informal” public comment process related to proposed administrative rules.

As part of the public engagement process, the proposed amendments to Code, and preliminary drafts of administrative rules, were provided to SWAAC, MRF/CT Subcommittee members and interested parties on May 2, 2017 and discussed at the May 10, 2017 SWAAC meeting. A stakeholder workshop was held on May 31, 2017 to discuss proposed changes to Code chapters 5.00 and 5.01 as well as draft administrative rules. A second public workshop was also held on June 12, 2017.

If the Metro Council adopts the proposed Code changes and requires that SSR MRFs obtain authorization from Metro, then Metro will subsequently open a formal public comment process and hold a public hearing for any proposed administrative rules as provided in Metro Code Chapter 5.01. No change necessary.

Comment 5. *We have two specific concerns related to the administrative rules: 1) Are there more administrative rules to come specifically related to source separated commingle facilities?*

Metro Response: *Much useful input was received on the draft administrative rules for both CT and for SSR MRFs during the two stakeholder workshops on May 31 and June 12, 2017 as well as the initial “informal” public comment period on the rules that closed July 14, 2017. If the Metro Council adopts the proposed Code amendments, then staff will revise the draft administrative rules based on the preliminary stakeholder input that has already been provided and will open another public comment period on a revised set of administrative rules as provided in Metro Code Chapter 5.01. No change necessary.*

Comment 6. *2) If there are more administrative rules, will there be a committee established to help developed these rules before Metro Council votes on the Proposed Ordinances? Without finalized Administrative Rules, we do not yet know what the full implication of licensing will mean to our business.*

Metro Response: *The proposed administrative rules that will accompany the Code amendment package will be open to a formal public review period and hearing process if the proposed Code changes are adopted by Metro Council. Adoption of any subsequent amendments or new administrative rules would be considered as provided in Metro Code Section 5.01.280. No change necessary.*

EFI may be harmed and the regional refuse / recycling system as a whole may suffer unintended consequences by the Proposed Ordinances for the following reasons:

- 1) Within the City of Portland, recycling facilities in the appropriate zones have outright use. Solid waste facilities are not allowed within some of the zones and need conditional use in the limited number of zones that they are allowed.

Comment 7. *In the event that EFI became a licensed solid waste facility, we may need conditional use to make any significant changes to our facility. This is particularly troubling if Metro were to require the changes.*

Metro Response: *Metro staff has researched this issue, which was raised and discussed in the MRF/CT Subcommittee and with city of Portland officials. Metro has not received any evidence suggesting that local land use decisions would, or have been, influenced by the issuance of a Metro solid waste license. The actual “use” of EFI’s property remains unchanged regardless of Metro’s proposed licensing requirements. Because land use regulations are based on “use” of the property, then a Metro requirement to license a facility should not automatically change any land use decisions affecting that property if the use remains the same. As indicated in the referenced “attachment A” Table 140-1 (a City of Portland planning document) “Industrial Service (Includes Recycling)” is an outright approved use. No change made.*

- 2) Currently, most of the commingled recyclables collected in the state of Oregon are received and sorted at facilities within the Metro region. In the event that Metro were to license commingle recycling facilities within the region the following may happen:

Comment 8.

- a. *Commingled recyclables collected outside the region that are currently delivered to facilities within the region may travel to facilities currently outside the region. This would raise the cost per ton to receive and sort the material that continues to be delivered to the facilities*

within the Metro region. Fewer commingle tons also raises the per ton cost to handle source segregated recyclables (separated by type), placing EFI at a competitive disadvantage on our segregated portion of our business.

- b. Commingled recyclables collected in the region may be delivered, or reloaded and delivered to facilities outside the region. There is a commingled recycling facility located in Salem, OR that may draw commingle material from the south end of the region and there are a number of facilities in the Puget Sound area that are currently running under capacity. The facilities in the Puget Sound market are much closer to the port. A few dollars difference in pricing and more stringent controls on the commingled material may be enough to send the material north to facilities owned by haulers that also provide collection service in the metro area.*
- c. Licensing of commingle recycling facilities in the Metro region may cause recyclers currently in the region to relocate outside the region.*

Metro Response: The concerns outlined in a – c above are speculative. Metro’s intent in this Code change package is to ensure that nuisance, odor, vector, dust and litter impacts for residents and businesses located nearby MRFs and CT facilities are minimized. There is no evidence to suggest that the proposed changes to Code are likely to result in any of the impacts outlined above (comments a. – c.) for facilities that are already meeting the minimum standards proposed in the rules. No change necessary.

Comment 9. *The result of Metro licensing facilities that handle commingled recycling may result in giving Metro and local governments less information about and control over the source separated commingled recyclables collected in the region.*

Metro Response: This is both speculative and contrary to the expected outcome of the proposed changes. Staff believes that adoption of these changes will result in a much better understanding of the regional solid waste system and that many information gaps will be filled in that will better inform future policy choices and planning efforts. No change made.

Metro’s Authority to Regulate Solid Waste

Comment 10. *EFI does not question Metro’s authority to regulate solid waste; however, we do not agree that source separated recycling and / or source separated commingled recycling are solid waste, therefore Metro does not have the authority to license source separated recycling facilities. The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.*

459A.075 Exemptions. *Nothing in ORS 459.005, 459.015, 459.035, 459.250, 459.992, 459.995 and 459A.005 to 459A.665 applies to recyclable material which is: (1) Source separated by the generator; and (2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. [Formerly 459.192]. The source separated recycling described above is exempted from all pertinent sections of 459 and 459A.*

Metro Response: Metro staff recommends the following passage of the Oregon Recycling Opportunity Act in 1983 as a point of reference. In 1984, the Oregon Department of Environmental Quality (DEQ) sought legal advice from the Oregon Attorney General as to whether recyclable material was still considered “solid waste” for regulatory purposes under state law. The specific question was whether facilities “that receive only source separated recyclable materials [were] now exempt by definition, from the Department’s solid waste management rules?” (See Oregon Department of Justice letter to William Dana, DEQ, dated June 21, 1984.) The Oregon Department of Justice unequivocally stated that “recyclable material” is considered “solid waste” for regulatory purposes. The Attorney General’s Office further explained:

“The overall policy of the Act, the expressed concerns of individual legislators, and the specific language of particular sections all indicate that the Legislative Assembly intended that ‘recyclable material’ continue to be a sub-category of ‘solid waste,’ and that facilities for collecting and sorting recyclable materials continue to be regulated as ‘disposal sites.’

** * **

[I]t appears to be the intent that DEQ continue to have power to regulate materials which meet the definition of ‘solid waste,’ whether such materials are recyclable or not.”

For similar Oregon Department of Justice interpretations, see Memorandum from Assistant Attorney General Larry Edelman to DEQ, dated February 27, 1996, and Letter from Assistant Attorney General Larry Edelman to Mark Morford, dated November 4, 2002.

In addition, ORS 268.317(8) gives Metro explicit statutory authority to “Receive, accept, process, recycle, reuse and transport solid and liquid wastes.” This statute indicates that the legislature considers “recyclable materials” as a sub-category of “solid waste.” Further, the definition of “Solid Waste Management” in ORS 459.005 (25) references “recycling” from “solid waste.”

Finally, it is not entirely clear what is meant by the comment: “The primary document that gives Metro its authority over disposal and solid waste also exempts source separated recyclables that meet specific, yet broad criteria.” Metro’s sources of solid waste legal authority are its home rule Charter, the Metro Code, the RSWMP, Oregon Revised Statutes (ORS) Chapters 268, 459 and 459A.

NOTE: The state law exemption in ORS 459A.075 is not relevant to the proposed Code change. To enjoy this exemption, the recyclable material must be “Purchased from or exchanged by the generator for fair market value for recycling or reuse.” The source-separated recyclable materials covered by the proposed Metro Code changes and administrative rules are not “purchased from or exchanged by the generator for fair market value.” Accordingly, commingled source-separated recyclables from residential and commercial curbside collection programs do not align with this exemption because the collection hauler, under the terms of a solid waste franchise or license with the local government, is providing that collection service and transporting that material to a recovery facility for further processing. There is no direct exchange or purchase from the generator for fair market value for recycling or reuse. No change made.

Why Regulate Commingle Recycling Facilities?

The answers that we have been given by staff were primarily related to storage of recycling and “house-keeping”. Local regulators had concerns that certain recycling facilities were stock-piling large volumes recyclable materials outside. In a few cases, for extended period. This caused a concern that the facilities were becoming nuisances and that the material would degrade and become unmarketable. There was also a general concern related to the house-keeping at these same facilities. Before the MRF / CT Subcommittee held its last meeting, the electronics recycler in Washington County was cited by DEQ and closed its doors shortly thereafter, and a commingle facility that was of concern shuttered its business.

Comment 11. *Metro has stated in the 2008 RSWMP: “Certain facilities, such as those exclusively handling inert wastes or source-separated recyclable materials, are not required to obtain authorization from Metro to operate. However, Metro retains the authority to inspect and audit these operations to periodically confirm compliance with Metro Code.” Similar language also existed in the 1995 RSWMP. EFI asks the following questions: 1) When and how often has Metro exercised this Authority?*

Metro Response: *Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3) i.e. exclusively accepting source-separated recyclable materials. However, under current Code requirements, such visits are typically pre-scheduled with the operator and performed for the purpose of determining whether the facility exclusively receives source-separated recyclable materials for reuse or recycling. Currently, SSR MRFs are not subject to licensing or franchising requirements and Metro does not have any authorization mechanisms in place to establish and enforce operating conditions at these types of facilities.*

Comment 12. *2) What has the response been by facilities that handle commingled recyclables when Metro has informed the facility operators that the facility is out of compliance?*

Metro Response: *As explained in Metro's response above, SSR MRFs are not subject to licensing or franchising requirements under current Metro Code. Metro does not have any authorization mechanisms in place at this time to establish and enforce operating conditions at these types of facilities. As stated earlier, Metro's intent with these proposed changes is to minimize nuisance, odor, vector, litter and dust from these operations, and to avoid material degradation due to improper handling. Given that local, national and global commodity markets ebb and flow, it is critical that periodic unannounced, random site visits are conducted to reduce undue impacts on communities.*

Comment 13. *3) Has any facility that handles source separated commingled recyclables turned down a request by Metro to enter the property or to respond in a positive manner when metro staff has recommended / requested a change to improve their operation?*

Metro Response: *As explained in Metro's response above, Metro staff have periodically visited SSR MRFs over the years to determine if they meet the exemption criteria provided in Metro Code Section 5.01.040(a)(3). Currently, such visits are typically pre-scheduled, limited in scope, and subject to approval by the operator. Metro staff has found that SSR MRF operators have generally accommodated Metro's requests to allow site access over the years. However, Metro does not have any authorization mechanisms in place to require site access or other operating conditions at these types of facilities.*

Comment 14. *Regulation of commingle facilities will have little if any positive impact on the quality of the outgoing product from commingle facilities.*

Metro Response: *Improving the quality of outgoing materials is not an objective of this proposed Code change. However, the proposed regulations will likely have a positive impact in those cases in which source-separated recyclable materials are either stored or mishandled in such a way as to lead to significant degradation of that material (as Metro staff has observed at one MRF in the region) making that material unmarketable. Additionally, the proposed regulations will likely have a positive impact on the people living and working nearby these types of facilities in that it will result in establishing operating requirements that will help minimize nuisance conditions such as litter, dust, and vectors.*

Material recovery facility (MRF) and conversion technology (CT) Subcommittee

EFI has several concerns regarding the process followed in developing the final draft recommendations. A primary concern is that the end product is no different than what was presented at the end of summer, 2015.

Comment 15. *The committee process did not address the initial concerns of the recycling community and local governments that brought about their initial support for oversight / regulation of these facilities.*

Metro Response: *The MRF/CT Subcommittee was charged with considering whether MRFs that process source-separated recyclable materials and facilities that convert waste to energy, fuel, or other products should be subject to authorization and inspection similar to other facilities and if so to identify which requirements were appropriate. The MRF/CT Subcommittee deliberated over the course of seven meetings*

with the result being unanimous support for a set of recommendations that included authorizing material recovery facilities processing source-separated recyclables and establishing operating standards for those facilities. The MRF/CT Subcommittee, SWAAC, and Metro Council were clear that the scope of the subcommittee did not include performance standards (material quality) and that consideration of performance standards should be addressed through the upcoming regional waste planning process. No change made.

Comment 16. *Further, I brought forward a motion to recommend Certification of Commingle Recycling Facilities as an alternative to licensing and staff interrupted the motion and later made their own. (Attachment B)*

Metro Response: *The MRF/CT subcommittee did receive a copy of Mr. Murray’s certification proposal, and did discuss third-party certification as well as a Metro-issued certificate, license, or franchise. Through deliberation, the subcommittee elected to focus on a broader statement recommending that such facilities be subject to a Metro “authorization.” Metro Code provides for two types of facility authorizations - solid waste license or franchise. Rather than creating a third type of authorization and developing an additional apparatus in Code, staff recommended removing the current licensing exemption for this type of facility. Therefore, Metro staff recommends using a solid waste license as the form of authorization for this particular class of facility. This approach is consistent with current Code, and Metro’s current regulatory oversight of the region’s solid waste system.*

Comment 17. *Why didn't Metro staff tell members at this second meeting that their list of issues would NOT be addressed in the sub-committee?*

Metro Response: *The deliberation of the Subcommittee, taken in whole, addressed many of the issues included in Mr. Murray’s comment letter attached to this document. Those issues not specifically addressed in the subcommittee were identified to be better suited to the upcoming regional waste planning process.*

This information was clearly articulated, as mentioned in these public comments, at the Subcommittee’s March 17 meeting (Meeting No. 3). The summary notes for the above-mentioned meeting are available on the Metro website at: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>.

Mr. Murray began his presentation indicating that it had been mentioned many times in the Subcommittee that so called “clean mrf’s” and “dirty mrf’s” were similar now, and that his presentation was to show that they are still very different. Mr. Murray then showed a series of slides from both types of facilities indicating that dry waste facilities and SSR MRFs were indeed different in terms of the mixes of materials they receive and the composition of materials leaving the facilities (both to markets and to landfill). Mr. Murray showed a short video from a dry waste MRF and clarified that the outgoing residuals from the two different types of facilities were quite different with far more residuals going to landfill from the dry waste facilities that what comes out of the SSR MRF’s.

During the same meeting Jeff made a motion to consider Certification as an option. The motion was interrupted by staff and staff asked if they could first give their presentation.

Comment 18. *Jeff was not given another opportunity to present his motion.*

Metro Response: *At the May 20 meeting the various available options for “authorization” of these types of facilities was discussed. The Subcommittee discussed the certification option, and coalesced around the suggested language that ultimately became the key recommendation contained in the*

MRF/CT Recommendation Memo. Mr. Murray's (and EFIs) focus on the certification is acknowledged and was well-represented in Subcommittee discussions, however the rest of the MRF/CT Subcommittee seemed comfortable with the broader term "authorization" for its recommendations going forward and reliance on staff to recommend the exact type of appropriate authorization. This position is further evidenced by the thorough review, editing, and subsequent adoption of the final MRF/CT Recommendation Memo dated October 5, 2016. Finally, it is Metro staff's recommendation that licenses are the appropriate legal form of authorization for this class of facility. Metro licenses can be developed to address conditions specific to a class of facilities. A Metro-issued certificate would only be a different name for a Metro-issued authorization – and it would not be any more restrictive or expansive than a license.

Has Metro Council and / or staff discussed the possibility of:

Comment 19. 1) *Building or utilizing an existing facility the purpose of sorting source separated commingled recycling collected within the Metro region?*

2) *Bidding out the processing of source separated commingled recycling collected within the Metro region?*

3) *Flow controlling source separated commingled recycling collected within the Metro region to either a publicly or privately-owned facility?*

Metro Response: *The three questions above are not relevant to the proposed changes to Metro Code Chapters 5.00 and 5.01 for which Metro has sought public comment. Metro entering into any of the activities described above would be the result of a policy decision. Policy direction comes from Metro Council. Metro Council has not directed staff to explore any of the three activities described in the questions above.*

Comment 20. *EFI requests that Metro re-instate the policy stated in Objective 4.3 of the Metro 1995 RSWMP in the RSWMP currently under development.*

Metro Response: *Thank you for this comment. It is, however, not related to the proposed changes to Metro Code. Please be sure to provide these comments through the Regional Waste Plan process. Information is available here: <http://www.oregonmetro.gov/public-projects/future-garbage-and-recycling>. No change made.*

Conclusion

In summary, EFI appreciates the opportunity to comment on the Proposed Ordinances. We request that Metro staff and Council give serious consideration to the concept of certification of source separated commingled recycling facilities. We continue to ask the question:

Comment 21. *Why does Metro need to license source separated commingled recycling facilities when they have not fully exercised their "authority to inspect and audit these operations to periodically confirm compliance with Metro Code."*

Metro Response: *While code provides "authority to inspect and audit these operations to periodically confirm compliance with Metro Code" the Code does not include sufficient details or operating requirements related to the operation of these types of facilities. The MRF/CT Subcommittee and SWAAC, have endorsed additional regulatory oversight including establishing design and operating standards as well as reporting for SSR MRFs. The proposed removal of the licensing exemption for*

this class of facilities accomplishes the recommendations of the Subcommittee and SWAAC. No change made.

Administrative Rule Process:

The comments received and responded to in this document were focused entirely on the proposed changes to Metro Code Chapters 5.00 and 5.01. When the proposed code changes were put out for public comment, Metro also posted preliminary drafts of two proposed administrative rules associated with the Code amendments for informal review and comment. Staff received comments on the draft administrative rules from the following:

- Keith Ristau, Far West Recycling
- Andy Kahut, KB Recycling
- Dave Claugus, Pioneer Recycling
- Chris McCabe, Northwest Pulp and Paper Association

If Metro Council adopts the proposed changes to Metro Code Chapters 5.00 and 5.01, Metro will subsequently adopt administrative rules as provided in Metro Code Section 5.01.280. Specifically, staff will post revised, draft administrative rules for public review and comment which will take into consideration the preliminary input that Metro received during the informal comment period that ended on July 14, 2017. At the conclusion of the next public comment period for the proposed rules, Metro staff will provide written responses to all comments received during the formal public comment period.

All project materials are located on Metro's website here: <http://www.oregonmetro.gov/regional-leadership/metro-advisory-committees/solid-waste-alternatives-advisory-committee/material>

Questions or concerns regarding the project can be directed to Dan Blue at 5023-797-1863 or dan.blue@oregonmetro.gov.

Materials following this page were distributed at the meeting.

Metro

600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov



Metro

Minutes

Thursday, October 19, 2017

5:00 PM

Forest Grove Community Auditorium
1915 Main Street, Forest Grove, OR

Council meeting

1. Call to Order and Roll Call

Council President Tom Hughes called the Metro Council meeting to order at 5:03 p.m. Forest Grove Mayor Pete Truax welcomed everyone to the meeting and thanked them for their support.

Present: 5 - Council President Tom Hughes, Councilor Carlotta Collette, Councilor Shirley Craddick, Councilor Kathryn Harrington, and Councilor Bob Stacey

Excused: 2 - Councilor Sam Chase, and Councilor Craig Dirksen

2. Citizen Communication

Dana Carstensen, City of Hillsboro: Mr. Carstensen spoke to the importance of increased transportation options in the region, particularly related to public transit. He proposed a plan to add new electric busses to TriMet's fleet in order to provide cost savings, support the region's sustainability goals, and provide better services to the public.

4. Consent Agenda**Approval of the Consent Agenda**

A motion was made by Councilor Craddick, seconded by Councilor Harrington, to adopt items on the consent agenda. The motion passed by the following vote:

Aye: 5 - Council President Hughes, Councilor Collette, Councilor Craddick, Councilor Harrington, and Councilor Stacey

Excused: 2 - Councilor Chase, and Councilor Dirksen

4. Parks and Nature West Side Parks Update

Council President Hughes called on Ms. Lisa Goorjian and Ms. Karen Vitkay, Metro staff, and Mr. Juan Carlos González, Centro Cultural, for a brief presentation on the resolution. Ms. Goorjian, Parks Planning and Operations Program Director for Metro's Parks and Nature department, noted that the meeting focused on an important milestone: the adoption of a plan for the future of Chehalem Ridge

Nature Park, a key part of Metro's growing parks system. She explained that at more than 1,200 acres, Chehalem Ridge was a significant part of Metro's public footprint in Washington County. Ms. Goorjian explained that thanks to investments made by voters across the Portland metropolitan region, Metro was opening a total of five sites in the county. She stated that each played an important role in Metro's mission to protect clean water, restore fish and wildlife habitat, and connect people with nature close to home. Ms. Goorjian provided an overview of new park destinations in Washington County, including Orenco Woods Nature Park, the new Farmington Paddle Launch, Killin Wetlands, and East Council Creek Natural Area. She noted that it was an honor to be in the City of Forest Grove to consider the master plan for Chehalem Ridge Nature Park and thanked Metro's many partners and community members who helped develop the project.

5. Resolutions

5.1 Resolution No. 17-4823, For the Purpose of Approving the Chehalem Ridge Nature Park Access Master Plan

Ms. Goorjian then introduced Ms. Karen Vitkay to provide an overview of the Chehalem Ridge master plan. Ms. Vitkay explained that Chehalem Ridge was a forested upland just south of the Cities of Forest Grove and Cornelius. She shared a brief history of the site and noted that it was identified in the 1992 Metropolitan Greenspaces Master Plan as a site well-suited to protect large upland areas for the benefit of wildlife and water quality as well as public access to nature. Ms. Vitkay explained that while the planning process began in 2016, staff had been studying the site and conducting restoration work there since 2010. She shared an overview of conservation efforts at the site,

including tree thinning, roadway decommissioning, and the planting of native trees and shrubs. Ms. Vitkay highlighted that the conservation strategy included continuing to protect streams that fed into the Tualatin River, the source of drinking water for 360,000 people.

Ms. Vitkay recalled the extensive public engagement process that was used during development of the plan, including the work of a Stakeholder Advisory Committee. She noted that staff provided a number of ways for people to contribute to the future of Chehalem Ridge and received over 6,000 points of input from Metro's partners and community members. Ms. Vitkay shared an overview of the feedback received, including that people wanted to experience a variety of activities at the nature park such as walking, hiking, off-road cycling, and horseback riding. Ms. Vitkay also shared questions and concerns received during the public comment period and reviewed how they were addressed.

Ms. Vitkay announced that through Metro's Partners in Nature grant program, staff were able to make a concerted effort to connect with Latino community members in Washington County. She noted that their input was incorporated into the final draft. She then introduced Mr. Juan Carlos González, Development Director for Centro Cultural, to speak about the partnership. Mr. González highlighted how the Partners in Nature program allowed communities of color to authentically engage with the planning process. He emphasized the importance of making nature accessible across different communities and using a culturally-specific lens for outreach and development. He

shared continuing challenges, but explained that it was important to continue working to ensure that Metro represented everyone. He highlighted the importance of advancing leadership opportunities, capacity, and empowerment for volunteers and staff and thanked Metro for its commitment to furthering these causes.

Ms. Vitkay then provided an overview of the Chehalem Ridge master plan including the primary trailhead, a welcome plaza, bicycle parking, multi-use shelters, and a nature play area. She noted that the plan provided plenty of unique visitor opportunities while also protecting significant areas of habitat as guided by the conservation strategy. Ms. Vitkay shared the phasing plan for Chehalem Ridge, noting that if approved, the site would likely formally open to the public in early 2020. Ms. Vitkay thanked the Council for their support throughout the planning effort and encouraged them to pass the resolution.

Council Discussion

Councilors expressed their support for the plan. Council Harrington discussed the long history of the site and expressed excitement about the opening of the nature park. She noted the restored park would benefit not only the public, but also the valuable clean water, fish, and wildlife habitat inside. She thanked Metro's project partners and the public for their participation developing the important plan. Councilor Collette noted that she felt the plan included an incredible balance of restoring areas for the public while also being mindful of protecting water sources and habitats. Councilor Stacey expressed excitement about making natural resources accessible to everyone in the community

and thanked Centro Cultural for their valuable input throughout the process.

A motion was made by Councilor Harrington, seconded by Councilor Stacey, that this item be approved. The motion passed by the following vote:

Aye: 5 - Council President Hughes, Councilor Collette, Councilor Craddick, Councilor Harrington, and Councilor Stacey

Excused: 2 - Councilor Chase, and Councilor Dirksen

5.1.1 Public Testimony on Resolution No. 17-4823

Tom Gamble, City of Forest Grove: Mr. Gamble, Director of Parks and Recreation for the City of Forest Grove, expressed support for the Chehalem Ridge master plan. He informed the Council that the plan was developed as part of a very thorough and well-thought-out public process. He noted that having the ability to participate was incredibly valuable and spoke to the vision of the project. He stated that Forest Grove staff looked forward to the opening of the park and the resources it would provide to the public.

Matthew Weintraub, City of Cannon Beach: Mr. Weintraub of the Northwest Trail Alliance expressed his organization's support for the plan. He explained that the plan was visionary and provided many benefits for the community, including multi-use trails, numerous opportunities for collaboration, and access for underprivileged communities.

John Charles, City of Portland: Mr. Charles of the Cascade Policy Institute expressed concerns about the Chehalem Ridge master plan. He noted the limited miles of trails that would be available and the fact that dogs would not be allowed on the site. He explained that he felt the plan did not fit the public's preferences or needs.

Lindsey Garcia, City of Cornelius: Ms. Garcia, Centro Cultural Program Manager, testified in support of the resolution and

spoke to the importance of providing learning experiences in nature for children. She noted that seeing children interact with the Chehalem Ridge Natural Area was inspiring, as it sparked their curiosity about their surroundings. She also expressed excitement for other opportunities included in the plan, such as designated family areas.

Michael Kinkade, City of Forest Grove: Mr. Kinkade, Forest Grove Fire and Rescue Fire Chief, informed the Council that he worked closely with staff members to review the safety plan for the park that included emergency equipment access, water supplies, forestry needs, and more. He noted that Metro staff listened carefully to Fire and Rescue's concerns and were responsive and professional throughout the process.

Maria Rubio, City of Cornelius: Ms. Rubio, Centro Cultural Executive Director, testified in support of the resolution and spoke to Centro Cultural's participation in the process. She explained that Centro Cultural served many residents in Washington County, including people of color and low-income individuals, and it was important for them to have opportunities to interact with nature. She noted that many undocumented residents worried about going to public places and stressed that it was important that they were able to feel safe while enjoying nature. She thanked the Metro Council and encouraged them to approve the plan.

Alberto Rodriguez, City of Cornelius: Mr. Rodriguez of Centro Cultural stated that he enjoyed being able to participate in the Chehalem Ridge planning process. He noted that he was able to bring community into nature by tabling events, providing guided tours, and helping others experience the opportunities the park provided. He spoke to the importance of the site and encouraged the Council to adopt the resolution.

6. Chief Operating Officer Communication

Deputy Chief Operating Officer Scott Cruickshank invited those present to a “Leading with a Racial Equity Approach for Structural Transformation” workshop at the Immigratn & Refugee Community Organization (IRCO) on October 31. He congratulated Ms. Heidi Rahn, Metro staff, for being honored by the Daily Journal of Commerce as one of its 2017 Women of Vision. He also noted that the first crane had been planted on the Oregon Convention Center Hyatt Regency site and invited people to attend the salmon homecoming at Oxbow Regional Park.

7. Councilor Communication

Councilors provided updates on the following meetings or events: the Community Placemaking awards, the Regional Waste Plan workshops, the Southwest Corridor Equitable Housing forum, the opening of Pintail Pond at Jackson Bottom Wetlands, new openings at Bull Mountain Park, the Joint Policy Advisory Committee on Transportation (JPACT), and Metro’s 20 years of air quality attainment status.

8. Adjourn

There being no further business, Council President Hughes adjourned the Metro Council meeting at 6:37 p.m. The Metro Council will convene the next regular council meeting on October 26 at 2:00 p.m. at the Metro Regional Center in the council chamber.

Respectfully submitted,



Nellie Papsdorf, Legislative and Engagement Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF OCTOBER 19, 2017

ITEM	DOCUMENT TYPE	DOC DATE	DOCUMENT DESCRIPTION	DOCUMENT No.
5.1	PowerPoint	10/19/17	Metro Parks and Nature West Side Update	101917c-01



Metro

2040 Planning and Development Grants

October 26, 2017



2040 Planning and Development Grants Funding Targets and Grant Recommendations

Grant Category	Funding Target
Equitable Development	\$ 1 million
Development within UGB	\$ 500,000
Urban Reserves/New Urban Areas	\$ 500,000
Total	\$ 2 million

2040 Planning and Development Grants

Recommended Grants

Recommended proposals had clearest alignment with the program's mission to support planning and pre-development activities that:

- remove barriers to development
- are necessary to make land ready for development
- enable existing developed sites to be redeveloped

2040 Planning and Development Grants Recommendations: Equitable Development

City of Cornelius	\$ 315,000
Cornelius Urban Renewal Plan, Town Center Plan, and Conceptual Site Planning	
Clackamas County	\$ 180,000
Park Avenue Development and Design Standards	
Housing Authority of Clackamas County	\$ 214,000
Hillside Master Plan for Housing Opportunity	
Multnomah County /City of Portland	\$ 150,000
Joint Office of Homeless Services	
Tri-county Strategy to Expand Permanent Supportive Housing for People Experiencing Chronic Homelessness	

2040 Planning and Development Grants Recommendations: Development Within UGB

City of Beaverton	\$ 150,000
Downtown Design and Development Readiness Project	
City of Tigard	\$ 340,246
Tigard Triangle Urban Renewal Implementation Project	
City of Portland	\$ 112,500
Rossi Farms Site Specific Development Plan	

2040 Planning and Development Grants Recommendations: New Urban Area Planning

City of Happy Valley

\$ 400,000

Pleasant Valley/North Carver Comprehensive Plan

2040 Planning and Development Grants Screening Committee Recommended Awards

Grant Category	Funds Targeted	Proposed Awards
Equitable Development	\$1 million	\$ 859,000
Development within UGB	\$ 500,000	\$ 602,746
New Urban Areas	\$ 500,000	\$ 400,000
Total		\$1,861,746

2040 Planning and Development Grants

COO Recommendation for Conditional Award

City of Portland

\$ 125,000

Expanding Opportunities for
Affordable Housing in Faith Communities

Condition for funding:

The City of Portland will obtain letters of support from three or more Faith-based institutions willing to partner on this project and explore opportunities for construction of affordable housing on their property

2040 Planning and Development Grants

COO Recommended Grant Awards by Category

Grant Category	Funds Targeted	Proposed Awards
Equitable Development	\$1 million	\$ 984,000
Development within UGB	\$ 500,000	\$ 602,746
New Urban Areas	\$ 500,000	\$ 400,000
Total		\$1,986,746

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Exhibit A to Ordinance No. 17-1408

Adding new code sections 3.07.1427 and 3.07.1428 to implement HB 2095:

3.07.1427 Mid-Cycle Amendments - Procedures

- (a) The Metro Council may consider a mid-cycle amendment to the UGB for residential needs between legislative UGB amendments, as provided in ORS 197.299(6). Cities may initiate a mid-cycle amendment to the UGB for areas adjacent to the city by filing a proposal on a form provided by Metro.
- (b) The COO will accept proposals from cities for mid-cycle UGB amendments during the period that is between 24 and 30 months after the date of the Council's adoption of its most recent analysis of the regional buildable land supply under ORS 197.296.
- (c) The COO shall provide written notice of the deadline for proposals for mid-cycle amendments not less than 90 days before the first date proposals may be accepted to each city and county within the Metro region and to anyone who has requested notification.
- (d) Proposals must indicate that they have the support of the governing body of the city making the proposal.
- (e) As part of any proposal, the city shall provide the names and addresses of property owners for notification purposes, consistent with section 3.07.1465.
- (f) The proposing city shall provide a concept plan for the urban reserve area that includes the proposed expansion area consistent with section 3.07.1110.
- (g) The proposing city shall provide written responses to the criteria listed in 3.07.1428(b).
- (h) Proposals from cities under this section shall be initially reviewed by the COO and the Metro Planning Department. No later than 60 days after the final date for receiving proposals under subsection (b) of this section, the COO shall submit a recommendation to the Metro Council regarding the merits of each proposal, including consideration of the criteria listed in Section 3.07.1428.

- (i) The Metro Council is not obligated to take action on proposals submitted by cities or on the recommendation of the COO. If the Council chooses to expand the UGB in accordance with one or more of the proposals, it may add no more than 1000 acres total.
- (j) If the Council elects to amend the UGB under this section, it shall be accomplished by ordinance in the manner prescribed for ordinances in Chapter VII of the Metro Charter. For each mid-cycle amendment, the Council shall establish a schedule of public hearings that allows for consideration of the proposed amendment by MPAC, other relevant advisory committees, and the public.
- (k) Any decision by the Council to amend the UGB under this section must be adopted not more than four years after the date of the Council's adoption of its most recent analysis of the regional buildable land supply under ORS 197.296.
- (l) Notice to the public of a proposed amendment to the UGB under this section shall be provided as prescribed in section 3.07.1465.

3.07.1428 Mid-Cycle Amendments - Criteria

- (a) In reviewing city proposals for mid-cycle UGB amendments, the Metro Council shall determine whether each proposal demonstrates a need to revise the most recent analysis of the regional buildable land supply as described in ORS 197.299(5). The Council's decision shall include consideration of:
 - (1) Need to accommodate future population, consistent with the most recently adopted 20-year population range forecast; and
 - (2) Need for land suitable to accommodate housing and supporting public facilities and services, schools, parks, open space, commercial uses, or any combination thereof.
- (b) If, after revising its most recent analysis of the buildable land supply under paragraph (a) of this subsection, the Council concludes that expansion of the UGB is warranted, the Council shall evaluate those areas that have been proposed by cities for possible addition to the UGB. Any expansion(s) under this section may not exceed a

total of 1000 acres. Cities proposing mid-cycle UGB amendments shall demonstrate that:

- (1) The city has an acknowledged housing needs analysis that was completed in the last six years and is coordinated with the Metro regional growth forecast and population distribution in effect at the time the city's housing needs analysis or planning process began;
 - (2) The housing planned for the city's proposed UGB expansion area is likely to be built in fewer than 10 years. As part of any proposal, cities must provide a concept plan that is consistent with section 3.07.1110 of this chapter. Cities may also provide evidence of property owner support for the proposed UGB expansion, and/or other evidence regarding likelihood of development occurring within 10 years;
 - (3) The city has demonstrated progress toward the actions described in section 3.07.620 of this chapter in its existing urban areas;
 - (4) The city has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas. Such practices may include regulatory approaches, public investments, incentives, partnerships, and streamlining of permitting processes; and
 - (5) The city has taken actions in its existing jurisdiction as well as in the proposed expansion area that will advance Metro's six desired outcomes set forth in Chapter One of the Regional Framework Plan.
- (c) The land proposed for UGB expansion must be a designated urban reserve area.
- (d) Mid-cycle UGB amendments made under this section are exempt from the boundary location requirements described in Statewide Planning Goal 14.

Amendments to existing code sections 3.07.1425 and 3.07.1465 (new language underlined):

3.07.1425 Legislative Amendment to the UGB - Criteria

* * * * *

- (c) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering the following factors:
- (1) Efficient accommodation of identified land needs;
 - (2) Orderly and economic provision of public facilities and services;
 - (3) Comparative environmental, energy, economic and social consequences;
 - (4) Compatibility of proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal;
 - (5) Equitable and efficient distribution of housing and employment opportunities throughout the region;
 - (6) Contribution to the purposes of Centers and Corridors;
 - (7) Protection of farmland that is most important for the continuation of commercial agriculture in the region;
 - (8) Avoidance of conflict with regionally significant fish and wildlife habitat; and
 - (9) Clear transition between urban and rural lands, using natural and built features to mark the transition.
- (d) If the Council determines there is a need to amend the UGB for housing, in addition to consideration of the factors listed in subsection (c) of this section, the Council shall also consider the following factors in determining which urban reserve areas better meet the housing need:

- (1) Whether the area is adjacent to a city with an acknowledged housing needs analysis that is coordinated with the Metro regional growth forecast and population distribution in effect at the time the city's housing needs analysis or planning process began;
- (2) Whether the area has been concept planned consistent with section 3.07.1110 of this chapter;
- (3) Whether the city responsible for preparing the concept plan has demonstrated progress toward the actions described in section 3.07.620 of this chapter in its existing urban areas;
- (4) Whether the city responsible for preparing the concept plan has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas; and
- (5) Whether the city responsible for preparing the concept plan has taken actions to advance Metro's six desired outcomes set forth in Chapter One of the Regional Framework Plan.

3.07.1465 Notice Requirements

- (a) For a proposed legislative amendment under section 3.07.1420, the COO shall provide notice of the public hearing in the following manner:
 - (1) In writing to the Department of Land Conservation and Development and local governments of the Metro region at least 35 days before the first public hearing on the proposal; and
 - (2) To the general public at least 35 days before the first public hearing by an advertisement no smaller than 1/8-page in a newspaper of general circulation in the Metro area and by posting notice on the Metro website.

(b) For a proposed mid-cycle amendment under section 3.07.1427, the COO shall provide notice of the first public hearing on the proposal in the following manner:

(1) In writing at least 35 days before the first public hearing on the proposal to:

(A) The Department of Land Conservation and Development;

(B) The owners of property that is being proposed for addition to the UGB;

(C) The owners of property within 250 feet of property that is being considered for addition to the UGB, or within 500 feet of the property if it is designated for agriculture or forestry pursuant to a statewide planning goal;

(2) In writing at least 30 days before the first public hearing on the proposal to:

(A) The local governments of the Metro area;

(B) A neighborhood association, community planning organization, or other organization for citizen involvement whose geographic area of interest includes or is adjacent to the subject property and which is officially recognized as entitled to participate in land use decisions by the cities and counties whose jurisdictional boundaries include or are adjacent to the site;

(C) Any other person who requests notice of amendments to the UGB; and

(3) To the general public by posting notice on the Metro website at least 30 days before the first public hearing on the proposal.

(bc) For a proposed major amendment under sections 3.07.1430 or 3.07.1435, the COO shall provide notice of the hearing in the following manner:

* * * * *

(ed) The notice required by subsection (a), and (b), and (c) of this section shall include:

* * * * *

(9) For the owners of property described in subsection (bc)(1)(C) of this section, the information required by ORS 268.393(3).

(de) For a proposed minor adjustment under section 3.07.1445, the COO shall provide notice in the following manner:

* * * * *

(ef) The notice required by subsection (de) of this section shall include:

* * * * *



133 SW 2nd Avenue, Suite 201 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Willamette Valley Office • PO Box 51252 • Eugene OR 97405 • (541) 520-3763
Central Oregon Office • 155 NW Irving Ave • Bend OR 97703 • (541) 797-6761

October 25, 2017

Metro Council
600 NE Grand Ave.
Portland, OR 97232

Re: Ordinance No. 17-1408

Dear Council President Hughes and Council Members:

1000 Friends of Oregon participated in MTAC meetings leading to the recommended Ordinance and Metro Code changes before you. We are generally supportive of these, as we were of HB 2095, which enables Metro to make smaller, mid-cycle expansions of the urban growth boundary (UGB) for residential purposes.

We say “generally,” because we would have preferred stronger language regarding the compliance with Goal 10, Housing that an applying city must demonstrate to justify a UGB expansion.

For both the mid-cycle and regular UGB expansions, the proposed Code changes state that the relevant city must demonstrate it has an acknowledged housing needs analysis (3.07.1428((b)(1) and 3.07.1425(d)(1)), which we support. However, rather than requiring an applying city to show it is in compliance with that HNA or will be in compliance upon the UGB expansion, the Code requires demonstrating that a city has implemented “best practices for preserving and increasing the supply and diversity of housing.” While we certainly support this requirement, and it reflects necessary actions a city must take, we would prefer that it go an additional step and require a demonstration that whatever measures the city has adopted are, in fact, resulting in housing outcomes that achieve its HNA and complies with Goal 10.

We applaud Metro’s guidance to local governments on how to comply with the Code changes and, in particular, we support the guidance on how to show compliance with Metro’s Six Desired Outcomes. As demonstrated by many academic reports, surveys, and evaluations of programs and laws in other states, as well as some of Metro’s own work, such as its Climate Smart Communities Strategy, none of these outcomes will be met unless diverse and affordable housing is provided in every community.

Finally, 1000 Friends writes to note that local jurisdictions and Metro have legal obligations to comply with Goal 10, in addition to complying with the Metro Code, particularly at legislative reviews and expansions of the Metro urban growth boundary.

Thank you for consideration of our comments.

A handwritten signature in cursive script that reads "Mary Kyle McCurdy".

Mary Kyle McCurdy
Deputy Director

Metro Letterhead

October 25, 2017

Regional Solutions Advisory Committee
Metro Region
Portland State University
Market Center Building
1600 SW Fourth Ave, Suite 109
Portland, OR 97201

Dear Metro Regional Solutions Advisory Committee,

On behalf of the Metro Council, I request your support for Levee Ready Columbia. Metro's responsibility is to chart a wise course for the future of our region while protecting the things we love about the Portland metropolitan area. Given our charge, this project is a high priority for the Council as it helps Metro meet our mission to plan sensibly for the future of our region while safeguarding ourselves today.

Metro is the regional government for the Portland metropolitan area and the only directly elected regional government and metropolitan planning organization in the United States. As such, Metro is empowered with managing the boundary that separates urban land from rural and working with communities to plan for future growth in housing, employment, transportation, and recreation. Much of the Metro-designated "regionally significant industrial areas" are located behind the levees. The Council sees that reducing the risk of flooding to these areas provides a pressure-relief valve for prime agricultural land located to the south and west of Portland. These industrial lands are linked to the continued vibrancy and success of our region. The 27 miles of levees built by the USACE serves an area that is also home to the Port of Portland, Portland International Airport, two intercontinental railroads and three interstate highways. This transportation hub contributes to a thriving traded sector economy in the leveed area that generates \$16 billion in annual economic activity and over \$7 billion in property value, much of this trade linked into international markets.

Beyond Metro's efforts to support the regional economy, Metro also owns and operates a number of vital assets located behind the levees. The Gleason Memorial Boat Ramp and Chinook Landing Marine Park provide public access to the Columbia River for anglers and others. Blue Lake Regional Park provides family-oriented recreational opportunities, fishing, and boating in East Multnomah County and Metro Expo Center is Oregon's largest multi-purpose facility, boasting over 333,000 square feet of exhibition halls and driving an economic multiplier effect that supports tourism to our region. Metro's assets behind the levees contribute to the livability of the region.

For the reasons stated above and more, we enthusiastically urge the State's continued partnership and support through Regional Solutions. I urge you to ensure this project is selected to receive Regional Solutions funding.

Sincerely,

Metro Council President Tom Hughes
On behalf of the Metro Council