

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 19-5029
CHIEF OPERATING OFFICER TO ISSUE A)	
RENEWED NON-SYSTEM LICENSE TO FRED)	Introduced by Acting Chief Operating Officer
MEYER FOR TRANSPORT OF COMMERCIAL)	Andrew Scott in concurrence with Council
FOOD WASTE FOR PROCESSING AT THE)	President Lynn Peterson
DIVERT, INC. FACILITY LOCATED IN)	
ALBANY, OREGON)	

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 holds a Metro non-system license No. N-181-17C which expires on December 31, 2019 and has filed a complete application seeking to renew its non-system license to transport commercial food waste, generated at grocery stores within the Metro region, to a non-system facility for processing under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Divert's processing method results in approximately 30 percent residual waste that is ultimately disposed at a disposal site, and Metro assesses its Regional System Fees and Excise Taxes on all solid waste ultimately disposed at a disposal site. Therefore, the proposed non-system license requires Fred Meyer (the licensee) to pay regional system fees and excise taxes on 30 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 reviews 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,

BE IT RESOLVED that the Metro Council:

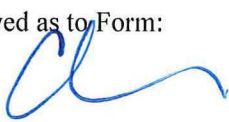
1. Approves the non-system license renewal application of Fred Meyer subject to the terms, conditions and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue a non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 5th day of December, 2019.



 Sam Chase, Deputy Council President

Approved as to Form:



 Carrie MacLaren, Metro Attorney



600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov

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

No. N-181-20

LICENSEE:
Fred Meyer Clackamas Distribution Center 11500 SE Highway 212 Clackamas, OR 97230
CONTACT PERSON:
Stephanie Fuller Phone: (503) 797-3198 E-mail: stephanie.fuller@kroger.com
MAILING ADDRESS:
Fred Meyer 3800 SE 22nd Ave Portland, OR 97202

ISSUED BY METRO:

Roy W. Brower
Interim Property and Environmental Services Director

Date

1	NATURE OF WASTE COVERED BY LICENSE
	Commercial food waste, including unpackaged and packaged food items, generated at Fred Meyer grocery stores within the Metro region and consolidated at its Clackamas Distribution Center.
2	CALENDAR YEAR TONNAGE LIMITATION
	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
	<ol style="list-style-type: none"> 1. The licensee is authorized to transport the waste described in Section 1 to the following non-system facility for processing: <ul style="list-style-type: none"> Divert, Inc. – Albany 950 SE Jackson St. Albany, OR 97322 2. This license is issued 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.
4	TERM OF LICENSE
	January 1, 2020 to December 31, 2020, unless amended, suspended, or revoked as provided in this license.
5	COVERED LOADS
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
6	REPORTING OF ACCIDENTS AND CITATIONS
	The licensee must report to Metro any significant incidents (such as fires), accidents and citations involving vehicles transporting the solid waste authorized by this license.
7	MATERIAL MANAGEMENT
	The licensee is authorized to deliver the waste described in Section 1 to the non-system facility listed in Section 3 under the following conditions:

	<ol style="list-style-type: none"> 1. The non-system facility must accept all solid waste that is transported under authority of this license for the sole purpose of processing. The licensee must not dispose of any source-separated recyclable material, except as provided in Section 8; and 2. 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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8	REGIONAL SYSTEM FEE AND EXCISE TAX
	<p>The licensee is subject to the following conditions:</p> <ol style="list-style-type: none"> 1. 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. 2. The licensee must pay to Metro regional system fee in an amount equal to 30 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility. 3. The licensee must pay to Metro excise tax in an amount equal to 30 percent of the food waste tonnage that it transports under authority of this license and is processed at the non-system facility. 4. 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: <ol style="list-style-type: none"> (a) Regional system fee, as provided in Metro Code Title V, for each ton or portion thereof of waste transported to the non-system facility that is ultimately transported to a disposal site; and (b) Excise tax, as provided in Metro Code Title VII, for each ton or portion thereof of waste transported to the non-system facility that is ultimately delivered to a disposal site.

9	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> 1. 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>. 2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> (a) Submit to Metro the records required under Section 9.1 in an electronic format prescribed by Metro; (b) Submit to Metro records showing the weight of the residual resulting from the processing of the waste covered under this license during the preceding month; (c) Submit to Metro a regional system fee and excise tax report, that covers the preceding month; and

	<p>(d) 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> <p>3. The licensee must make available to Metro (or Metro’s designated agent) all records from which Section 9.1 and 9.2 are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. 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> <p>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</p> <p>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 9 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</p>
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10	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> 1. 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. 2. This license is subject to amendment, modification or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> (a) There has been sufficient change in any circumstances under which Metro issued this license; (b) Metro’s solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than the facility listed in Section 3; (c) 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 7; (d) The non-system facility listed in Section 3 does not control and minimize odors that are detectable off-site; or (e) The Metro Council adopts legislation or other policy which affects food waste management practices in the region. 3. In addition to subsections 10.2(a) through (e), Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code. 4. The licensee cannot transfer or assign any right or interest in this license without Metro’s prior written approval. 5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.

	<p>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> <p>7. Metro may direct the licensee’s waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</p> <p>8. If the licensee exceeds the calendar year authorization 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 up to \$500, in accordance with Metro Code Chapter 5.05.</p>
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11	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 rules adopted pursuant to Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. 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 shall be deemed part of this license as if specifically set forth.</p>

12	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 arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys’ fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 19-5029, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO FRED MEYER FOR TRANSPORT OF COMMERCIAL FOOD WASTE TO THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON FOR PROCESSING

Date: November 21, 2019
Department: Property and Environmental
Services
Meeting Date: December 5, 2019

Prepared by: Joanna Dyer, 503-813-7550,
Joanna.dyer@oregonmetro.gov

ISSUE STATEMENT

Fred Meyer seeks to renew its non-system license to transport pre-consumer commercial food waste from its Clackamas Distribution Center to Divert, Inc. in Albany, Oregon for processing. Metro Code Section 5.05.160 requires the Metro Council to approve or deny a non-system license for putrescible waste.

ACTION REQUESTED

Approve Resolution No. 19-5029 which will authorize the Chief Operating Officer to issue a renewed non-system license to Fred Meyer for a term of one year.

IDENTIFIED POLICY OUTCOMES

Approval of this resolution will support the goals of the 2030 Regional Waste Plan and the Business Food Waste Requirement.

POLICY QUESTION(S)

Should the Metro Council grant the Chief Operating Officer authority to renew the non-system license for Fred Meyer to transport commercial food waste to Divert, Inc. in Albany, Oregon for processing, according to the provisions of Metro Code 5.05.160 and as described in this resolution?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to renew the non-system license to transport commercial food waste to Divert, Inc. in Albany, Oregon for processing.
2. Amend the resolution to renew the non-system license with different conditions other than those recommended by staff.
3. Do not approve Resolution No. 19-5029.

STAFF RECOMMENDATIONS

Staff recommends that Council approve Resolution No. 19-5029 to issue a renewed non-system license (NSL) for Fred Meyer to transport commercial food waste to Divert, Inc. (Divert) in Albany, Oregon for processing. If Council approves this resolution, the renewed non-system license (N-181-20) will go into effect on January 1, 2020. Staff recommends issuing a 12-month NSL to authorize Fred Meyer to transport this food waste to Divert until such time that Divert becomes a designated facility. Future changes to Metro Code Chapter 5.05 may include requirements that any facility outside of the Metro region receiving putrescible waste from the Metro region, must be a designated facility.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

KNOWN OPPOSITION / SUPPORT / COMMUNITY FEEDBACK

There is no known opposition to the proposed non-system license. However, in the past, several local government solid waste directors expressed concerns about (1) allowing the region's food waste to go to facilities like Divert when Metro is planning to establish a food waste processing facility at Metro Central, and (2) the impact that the service Divert provides has on food donation at Fred Meyer stores. Staff finds that Divert, Inc. provides needed capacity for processing commercial food waste generated within the region. When 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.

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:

- (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, Oregon. 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. Food waste is processed within 48 hours of receipt and procedures are in place to manage any leachate within the building.

- (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 the Department of Environmental Quality (DEQ permit No. 1594) and has land use approval by the city of Albany. DEQ has indicated the facility is in compliance with its permit requirements. A recent (DEQ) inspection conducted in March 2019, found no violations.

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

DEQ regulates the Divert facility. During the last DEQ inspection in March 2019, the inspector recommended that the facility take steps to further mitigate the possibility of leachate migrating into a storm drain from broken totes staged outside, to prevent potential violation of the permit. 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 Fred Meyer to continue to transport food waste to Divert's Albany facility for processing into a liquid slurry. The slurry is transported by Divert to Stahlbush Island Farms in Corvallis, Oregon, which operates an anaerobic digestion facility to produce biogas. Thus, approval of the proposed NSL will support Metro's current recycling and waste reduction efforts. Metro, in partnership with local governments providing technical assistance, 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;

This proposed license will not affect Metro's existing contractual agreements. Metro's long-term disposal contract with Waste Management, which guaranteed nearly 90 percent of the region's putrescible waste flow to a disposal site owned by Waste Management, expires on December 31, 2019, and therefore is outside of the term of this proposed license, which is effective January 1, 2020.

(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 staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety and environmental regulations.

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

The Metro Council adopted Ordinance No. 18-1418 in July 2018 which added the Business Food Waste Requirement to Metro Code 5.10. Under this ordinance, each local government must require certain businesses in its jurisdiction to separate and recover food waste to be delivered to a facility authorized by Metro. Businesses in the first group (largest generators) will be required to begin separating food waste in March 2020.

Although approval of Resolution No. 19-5029 would authorize Fred Meyer to transport waste to Divert, the proposed NSL does not obligate Divert to accept Metro-area waste. Additionally, adoption of this 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 if more proximate food waste processing capacity is available earlier than the end of the license term.

ANTICIPATED EFFECTS

Approval of Resolution No. 19-5029 will authorize the Chief Operating Officer to issue a renewed NSL to Fred Meyer to transport up to 4,400 tons of packaged and unpackaged commercial food waste per calendar year to Divert's Albany facility for processing and disposal. The proposed NSL would take effect January 1, 2020 and expire December 31, 2020.

SPECIAL PROVISION OF THE NSL UNIQUE TO DIVERT PROCESSING FACILITY

In March 2018, Divert began conducting a monthly waste residual sampling study on Metro area food waste transported to its facility to calculate the weight and resulting percentage of residual which is transported to a landfill and is subject to fees and taxes. This information is submitted to Metro monthly as a requirement of the current NSL (N-181-17-C). Metro tracks this information and uses it to inform future licensing conditions. Staff recommends that the NSL continue to include a condition requiring Fred Meyer to remit fees and taxes on 30 percent of the food waste tonnage that is transported 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.

FINANCIAL IMPLICATIONS

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. 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 30 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 Divert for processing and Fred Meyer has not proposed an increase in tonnage, so there should not be a direct financial impact to Metro.

BACKGROUND

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. Unsold food, including produce, dairy products, deli products, baked goods, floral cuts and trims, and packaged materials are placed into Divert's enclosed bins and are transported to Divert's facility in Albany within 24 hours.

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 helps stores to identify 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 at Stahlbush Island Farms near Corvallis to produce biogas. Divert reports that the residual waste of the incoming material is approximately 30 percent by weight and is comprised of packaging pieces, fibrous materials and other residual solids. The residual waste is transported to Coffin Butte Landfill for disposal.

Fred Meyer submitted a complete renewal application to Metro on August 28, 2019. The waste covered by this proposed NSL is generated at the Fred Meyer Clackamas Distribution Center located in unincorporated Clackamas County, and is subject to the county's solid waste management regulations as outlined in the County Code. Clackamas County generally supports the flow of commercial food waste from its jurisdiction to Divert if it is transported in accordance with the requirements of the County and Metro. Adoption of this proposed resolution does not limit Metro's ability to amend or terminate the NSL if there is a significant change in circumstances or Fred Meyer does not comply with any license condition or other regulatory requirements related to the transport of commercial food waste.

In 2018, 1,705 tons of commercial food waste were transported to Divert from Fred Meyer and 1,520 tons have been transported through September 2019.

ATTACHMENTS

- A. Exhibit A to Resolution No. 19-5029: Draft non-system license N-181-20.