



600 NE Grand Ave.
Portland, OR 97232-2736

Council work session agenda

Tuesday, March 3, 2020

2:00 PM

Metro Regional Center, Council Chamber

2:00 Call to Order and Roll Call

2:05 Safety Briefing

Work Session Topics:

2:10 Goals and Priorities for Wet Waste Allocation [20-5369](#)
Methodology for Private Transfer Stations

Presenter(s): Roy Brower, Metro
Molly Vogt, Metro

Attachments: [Work Session Worksheet](#)

2:40 Draft Emergency Operations Plan [20-5370](#)

Presenter(s): Heidi Rahn, Metro
Courtney Patterson, Metro

Attachments: [Work Session Worksheet](#)

2:55 Employment Agreement Audit Follow-up [20-5366](#)

Presenter(s): Andrew Scott, Metro

Attachments: [Work Session Worksheet](#)
[Employment Agreements Audit](#)

3:25 Councilor Communication

3:30 Chief Operating Officer Communication

3:35 Adjourn

Metro respects civil rights

Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes that ban discrimination. If any person believes they have been discriminated against regarding the receipt of benefits or services because of race, color, national origin, sex, age or disability, they have the right to file a complaint with Metro. For information on Metro’s civil rights program, or to obtain a discrimination complaint form, visit www.oregonmetro.gov/civilrights or call 503-797-1536. Metro provides services or accommodations upon request to persons with disabilities and people who need an interpreter at public meetings. If you need a sign language interpreter, communication aid or language assistance, call 503-797-1700 or TDD/TTY 503-797-1804 (8 a.m. to 5 p.m. weekdays) 5 business days before the meeting. All Metro meetings are wheelchair accessible. For up-to-date public transportation information, visit TriMet’s website at www.trimet.org.

Thông báo về sự Metro không kỳ thị của

Metro tôn trọng dân quyền. Muốn biết thêm thông tin về chương trình dân quyền của Metro, hoặc muốn lấy đơn khiếu nại về sự kỳ thị, xin xem trong www.oregonmetro.gov/civilrights. Nếu quý vị cần thông dịch viên ra dấu bằng tay, trợ giúp về tiếp xúc hay ngôn ngữ, xin gọi số 503-797-1700 (từ 8 giờ sáng đến 5 giờ chiều vào những ngày thường) trước buổi họp 5 ngày làm việc.

Повідомлення Metro про заборону дискримінації

Metro з повагою ставиться до громадянських прав. Для отримання інформації про програму Metro із захисту громадянських прав або форми скарги про дискримінацію відвідайте сайт www.oregonmetro.gov/civilrights. або Якщо вам потрібен перекладач на зборах, для задоволення вашого запиту зателефонуйте за номером 503-797-1700 з 8.00 до 17.00 у робочі дні за п'ять робочих днів до зборів.

Metro 的不歧視公告

尊重民權。欲瞭解Metro民權計畫的詳情，或獲取歧視投訴表，請瀏覽網站 www.oregonmetro.gov/civilrights。如果您需要口譯方可參加公共會議，請在會議召開前5個營業日撥打503-797-1700（工作日上午8點至下午5點），以便我們滿足您的要求。

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.

Metro의 차별 금지 관련 통지서

Metro의 시민권 프로그램에 대한 정보 또는 차별 항의서 양식을 얻으려면, 또는 차별에 대한 불만을 신고 할 수 www.oregonmetro.gov/civilrights. 당신의 언어 지원이 필요한 경우, 회의에 앞서 5 영업일 (오후 5시 주중에 오전 8시) 503-797-1700를 호출합니다.

Metro의差別禁止通知

Metroでは公民権を尊重しています。Metroの公民権プログラムに関する情報について、または差別苦情フォームを入手するには、www.oregonmetro.gov/civilrights。までお電話ください。公開会議で言語通訳を必要とされる方は、Metroがご要請に対応できるよう、公開会議の5営業日前までに503-797-1700（平日午前8時～午後5時）までお電話ください。

សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

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

إشعار بعدم التمييز من Metro

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

Paunawa ng Metro sa kawalan ng diskriminasyon

Iginagalang ng Metro ang mga karapatang sibil. Para sa impormasyon tungkol sa programa ng Metro sa mga karapatang sibil, o upang makakuha ng porma ng reklamo sa diskriminasyon, bisitahin ang www.oregonmetro.gov/civilrights. Kung kailangan ninyo ng interpreter ng wika sa isang pampublikong pulong, tumawag sa 503-797-1700 (8 a.m. hanggang 5 p.m. Lunes hanggang Biyernes) lima araw ng trabaho bago ang pulong upang mapagbigyan ang inyong kahilingan.

Notificación de no discriminación de Metro

Metro respeta los derechos civiles. Para obtener información sobre el programa de derechos civiles de Metro o para obtener un formulario de reclamo por discriminación, ingrese a www.oregonmetro.gov/civilrights. Si necesita asistencia con el idioma, llame al 503-797-1700 (de 8:00 a. m. a 5:00 p. m. los días de semana) 5 días laborales antes de la asamblea.

Уведомление о недопущении дискриминации от Metro

Metro уважает гражданские права. Узнать о программе Metro по соблюдению гражданских прав и получить форму жалобы о дискриминации можно на веб-сайте www.oregonmetro.gov/civilrights. Если вам нужен переводчик на общественном собрании, оставьте свой запрос, позвонив по номеру 503-797-1700 в рабочие дни с 8:00 до 17:00 и за пять рабочих дней до даты собрания.

Avizul Metro privind nediscriminarea

Metro respectă drepturile civile. Pentru informații cu privire la programul Metro pentru drepturi civile sau pentru a obține un formular de reclamație împotriva discriminării, vizitați www.oregonmetro.gov/civilrights. Dacă aveți nevoie de un interpret de limbă la o ședință publică, sunați la 503-797-1700 (între orele 8 și 5, în timpul zilelor lucrătoare) cu cinci zile lucrătoare înainte de ședință, pentru a putea să vă răspunde în mod favorabil la cerere.

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 lw m ua nte j ntawm lub rooj sib tham.

**Goals and Priorities for Wet Waste Allocation
Methodology for Private Transfer Stations**

Work Session Topics

Metro Council Work Session
Tuesday, March 03, 2020
Metro Regional Center, Council Chamber

PRIORITIES FOR WET WASTE ALLOCATIONS TO PRIVATE TRANSFER STATIONS

Date: February 26, 2020
Department: Waste Prevention and
Environmental Services
Meeting Date: March 3, 2020

Prepared by: Molly Vogt
(503) 797-1666
molly.vogt@oregonmetro.gov
Presenters: Molly Vogt and Roy Brower
Length: 15 minutes

ISSUE STATEMENT

Wet waste is a valuable and limited public resource managed by Metro to serve the public good. Metro is developing a systematic and transparent method of allocating wet waste tonnage annually to private transfer stations within the region.

ACTION REQUESTED

Staff seeks early Council direction in the goal prioritization and engagement plan for the tonnage allocation methodology.

To receive incentivized tonnage allocations, transfer stations must demonstrate a commitment to advancing regional goals as they transfer waste. Staff will use high-level goals identified by Council to inform and establish the criteria by which staff will evaluate transfer stations' commitment to and success in advancing regional goals. For example, if safety is a prioritized goal for allocations, transfer stations may be required to meet specific safety standards above minimum legal requirements to be eligible for certain tonnage.

Staff will seek Council input on the draft methodology. The final methodology will be presented for public comment before it is submitted to the Chief Operating Officer for approval as Administrative Rule.

IDENTIFIED POLICY OUTCOMES

This work session will identify the goals that will inform the development of criteria and methodology for goal-based tonnage allocation. This effort supports and implements components of Council's adopted 2030 Regional Waste Plan (RWP), Council Resolution 16-4716, and Metro Code 5.01.195.

POLICY QUESTION(S)

Which high-level goals does Council direct staff to focus on in determining wet waste tonnage allocations to private transfer stations? Are the engagement plan and timeline appropriate?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Option 1: Select the seven recommended goals presented in the Staff Recommendations section below without prioritizing among them and direct staff to explore their feasibility as allocation criteria.

- Pros – Allows a broader set of evaluation criteria and incentives to be used in awarding tonnage to a diverse set of participants.
- Cons – Greater development time required. May lead to a greater number of criteria which would reduce the incentive power of each criterion by diluting the individual effect. Similarly, may lead to a more complex methodology that cannot be guaranteed to provide greater overall benefit.

Option 2: Select a shorter list of goals for staff to consider in the design of allocation criteria.

- Pros – Shorter development time. Clearer and easier to implement. Focuses more tightly on Council's priorities. Additional goals can be added in later years after the process is established and successful.
- Cons – Transfer stations that seek goal-based tonnage allocations will have fewer options to choose from in demonstrating that they are achieving Metro's goals.








Option 3: Provide other direction beyond the recommended goals below.

- Pros – Enables broader discussion across a wider range of Council priorities.
- Cons – May delay the implementation of the work by introducing new themes that require additional time to research.

STAFF RECOMMENDATIONS

The staff recommends Option 1 with the following recommended Regional Waste Plan and other goals. These seven goals have been selected through internal discussions and identified as best fits for **wet waste tonnage allocation incentives** based on current information. Regional Waste Plan goals not listed below remain priority goals but will be addressed through other department programs and initiatives.

If Council selects Option 1, directing staff to consider all of these goals in the development of the allocation methodology, staff will explore and compare potential allocation criteria for each goal and recommend those that are both feasible and likely to deliver positive outcomes and public benefits. Staff's recommendation may not include all seven goals if, during the next phase of research and coordination work, some of these goals are determined to be a better fit for other departmental incentive or requirement programs.

	Topic	Goal
	Living wages and good benefits	RWP Goal 3 – Ensure that all jobs in the garbage and recycling industry pay living wages and include good benefits
	Diverse workforce	RWP Goal 4 – Increase the diversity of the workforce in all occupations where people of color, women and other historically marginalized communities are underrepresented
	Environmental and human health impacts	RWP Goal 12 – Manage all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public
	Investing in communities	RWP Goal 13 – Invest in communities that receive garbage and recyclables from the Metro region so that those communities regard solid waste facilities as an asset
	Rates	RWP Goal 14 – Adopt rates for all services that are reasonable, responsive to user economic needs, regionally consistent and well understood
	System disruption	Industry concern – Minimize year over year changes that would create unstable and unpredictable economic factors for the private transfer station operators.
	Logistics	Industry/Metro concern – Include the geographic distribution of waste generation and authorized transfer station locations as well as capacity limits in final allocations.

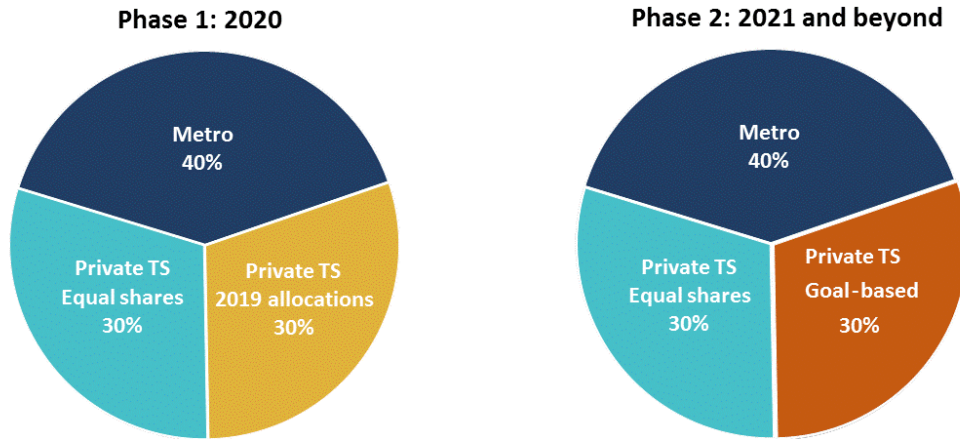
STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

- How is this related to Metro’s Strategic Plan or Core Mission?
 - Wet waste tonnage directly impacts transfer station revenue and therefore allocations can be used to incentivize actions that achieve Regional Waste Plan and other Metro goals. Council adopted the framework for the methodology development in 2019 and a long-term methodology is needed to ensure that Metro receives 40% of the region’s wet waste as specified in Metro Code.
- How does this advance Metro’s racial equity goals?
 - Several recommended goals speak directly to racial equity, including Goal 4: Increase Diversity of the Workforce. If Council directs staff to prioritize this or other goals that directly relate to racial equity, staff will work to design and incorporate relevant criteria into the final methodology.
- How does this advance Metro’s climate action goals?

- Several recommended goals speak directly to climate action, including Goal 12: Reduce nuisance, safety, and other environmental impacts. If Council directs staff to prioritize this or other goals that directly relate to climate action, staff will work to design and incorporate relevant criteria into the final methodology.
- Known Opposition/Support/Community Feedback
 - Transfer station operators have voiced concern about previously proposed methodologies for allocating wet waste tonnage. The goal-based approach is new and details have not been drafted or shared. Industry has noted a concern that a goal-based approach could lead to significant year-over-year changes in allocations that would create operational and financial challenges for them. Local governments have supportive of moving to an allocation methodology that advances one or more Regional Waste Plan goals, while maintaining an interest in the effects on rates.
- Explicit list of stakeholder groups and individuals who have been involved in policy development.
 - Prior project phases
 - Private Transfer Station owners and operators
 - Oregon Refuse and Recycling Association (ORRA)
 - Local government solid waste directors
 - Solid Waste Alternatives Advisory Committee (SWAAC)
 - Current project phase – proposed stakeholder groups
 - Private Transfer Station owners and operators
 - Oregon Refuse and Recycling Association (ORRA)
 - Local government solid waste directors
 - Committee On Racial Equity (CORE)
 - Regional Waste Advisory Council (RWAC)

BACKGROUND

Council adopted the 2016 Metro Transfer System Configuration Policy and 2019 code amendments establishing that at least 40% of the region’s wet waste would be reserved for public transfer stations. Council also directed staff to develop a transparent and predictable method for allocating annual wet waste tonnage to in-region private transfer stations. In 2019, staff developed a transitional, Phase 1 approach for allocating wet waste tonnage for 2020 that entailed reserving 40% for public transfer stations, allocating a portion of the remaining waste into equal parts for each authorized in-region station (base share), and allocating a portion to in-region stations based proportionately on their prior year’s allocation (proportional share).



In the Phase 2 final methodology, the proportional share will be replaced with an incentivized, goal-based share. This goal-based share will be determined by Metro staff based upon transfer stations' demonstrated commitment to achieving Regional Waste Plan and other Metro goals.

The final objective of this project is to establish the evaluation process and criteria for the goal-based share which will be used to allocate tonnage to private transfer stations starting in calendar year 2021.

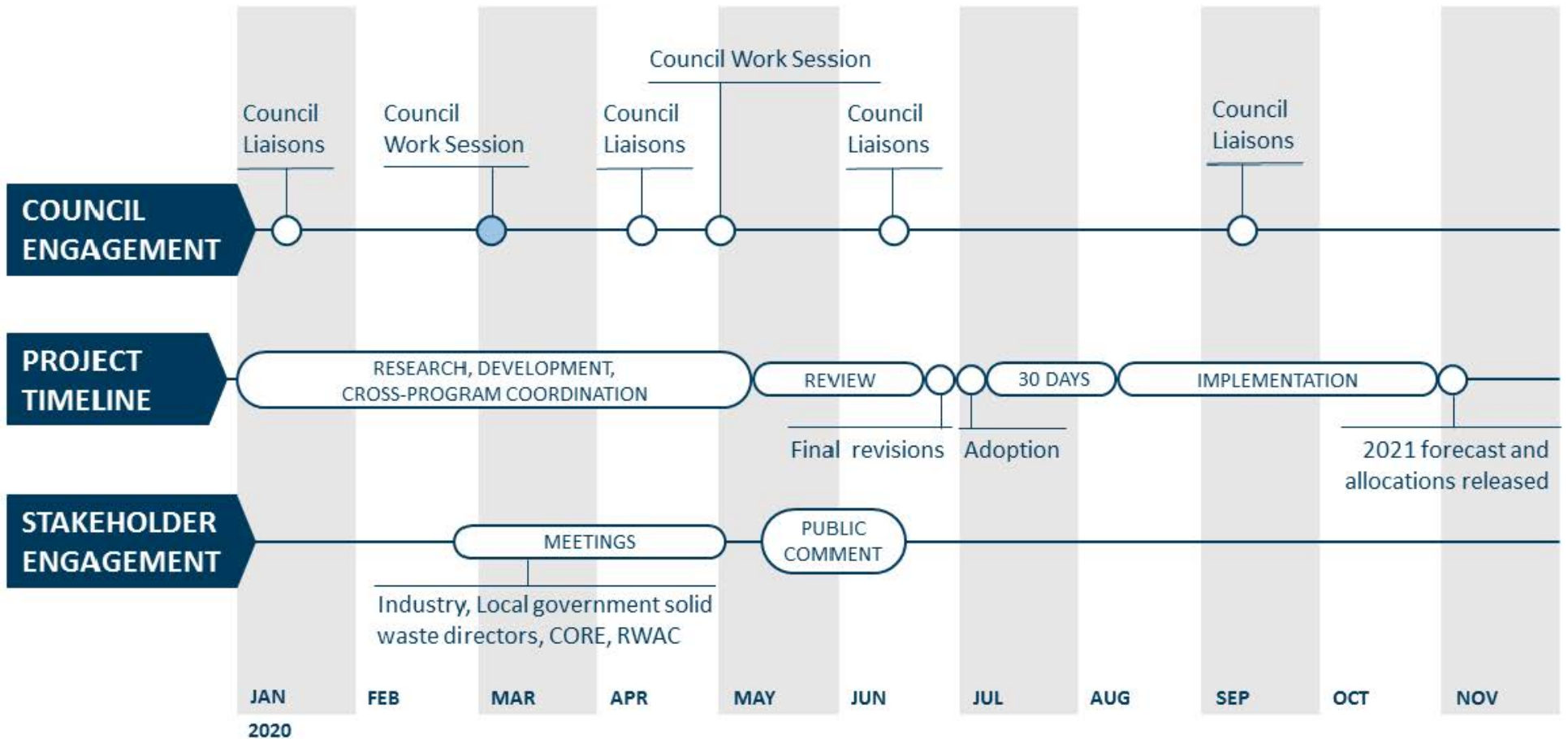
ATTACHMENTS

A. Proposed timeline and engagement schedule

- Is legislation required for Council action? Yes No
- If yes, is draft legislation attached? Yes No
- What other materials are you presenting today?
 - PowerPoint presentation

Attachment A: Proposed Timeline and engagement schedule

Proposed timeline



Draft Emergency Operations Plan

Work Session Topics

Metro Council Work Session
Tuesday, March 03, 2020
Metro Regional Center, Council Chamber

DRAFT EMERGENCY OPERATIONS PLAN

Date: 2/26/20
Department: CAM
Meeting Date: 3/3/20

Presenter(s): Courtney Patterson and
Heidi Rahn, Metro
Length: 15 minutes

Prepared by: Courtney Patterson,
Courtney.patterson@oregonmetro.gov,
503-797-1789

ISSUE STATEMENT

In October 2018 the Office of the Auditor completed an audit of Metro's emergency management program. The audit recommended that Metro clarify its emergency management roles and develop an emergency operations plan. Staff convened a project and steering team and have completed an initial draft.

ACTION REQUESTED

Provide input on expected outcomes for the Emergency Operations Plan. This input will inform revision of the draft and development of the final plan, which will be presented in June 2020.

IDENTIFIED POLICY OUTCOMES

Staff receive Council guidance on Emergency Operations Plan. Council learn about the emergency operations plan draft content and next steps for formalizing the emergency management program.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This project was initiated in response to the October 2018 Emergency Management audit. The Emergency Operations Plan is a foundational step for Regional Waste Plan goals 17, 18, and 19.

Waste Prevention and Environmental Services has a clear emergency response role to manage the region's disaster debris. This role cannot be fulfilled without agency support services such as IS, payroll, timekeeping, purchasing, and HR. The Emergency Operations Plan ensures continuity of those essential services.

Natural hazards amplify existing structural and historical racism. Therefore, communities of color, those with disabilities, recent immigrants, unsheltered populations, and others with additional access and functional needs are typically hit "first and worst" in any disaster. A well-developed emergency operations plan will provide support to these first line communities.

Prior planning will be needed to ensure the safe reuse, recycling and disposal of materials following a debris-generating incident (Regional Waste Plan goal 19.4). This plan is a

foundational step to ensure that Metro solid waste facilities can continue operations despite a disruptive event. This will decrease the environmental impact from any future disasters.

KNOWN OPPOSITION/SUPPORT/COMMUNITY FEEDBACK

Regional Disaster Preparedness Organization (RDPO) stakeholders have expressed support for Metro to become more involved in emergency management, especially in the debris management role.

Project Team:

- Comms: Kimberlee Ables
- COO: Sasha Pollack
- FRS: William Jemison, Susanne McGlothlin
- HR: Jason Meyers
- IS: Adam Karol
- PNA: Susan Baxter-Harwell
- RC: Zac Christensen
- Venues: Matt Pizzuti (OCC), Daniel Lorenzen (Zoo)
- WPES: Courtney Patterson, Kari Meyer, Daniel Nibouar

Steering Committee:

- Deputy COO: Heidi Rahn (Chair)
- WPES: Roy Brower
- HR: Julio Garcia
- FRS: Brian Kennedy
- IS: Rachel Coe
- Venues: Ivan Ratcliff (Zoo)
- COO: Sasha Pollack

LEGAL ANTECEDENTS

Core member of the Regional Disaster Preparedness Organization including \$25,000 annual funding. Disaster Debris Management Plan 9/5/18.

ANTICIPATED EFFECTS

The Emergency Operations Plan will clarify emergency response roles and framework and allow Metro to respond in a unified fashion across departments and venues.

FINANCIAL IMPLICATIONS

WPES created the emergency manager position in June 2019. FY21 budget proposes to split emergency manager's time between WPES and Capital Asset Management. Additional staff will be needed in future fiscal years to fulfill requirements identified in the emergency operations plan and complete continuity of operations planning.

ATTACHMENTS

- Is legislation required for Council action? Yes No

- If yes, is draft legislation attached? Yes No
- What other materials are you presenting today? Powerpoint presentation

Employment Agreement Audit Follow-up

Work Session Topics

Metro Council Work Session
Tuesday, March 03, 2020
Metro Regional Center, Council Chamber

EMPLOYMENT AGREEMENTS AUDIT FOLLOW UP

Date: February 25, 2020
Department: Office of the COO
Meeting Date: March 3, 2020

Prepared by: Val Galstad;
val.galstad@oregonmetro.gov; 503-797-
1810
Presenter: Andrew Scott
Length: 30 minutes

ISSUE STATEMENT

The Office of the Auditor released an Employment Agreements audit on January 22, 2020 and presented it to Metro Council on January 30, 2020 with their recommendations. This work session will provide management guidance from Council regarding the recommendations from this audit. While management agrees that Metro should be clear and transparent with regards to the approval authority for employment agreements, we disagree with the Auditor's recommendation to remove the COO's authority to approve employment agreements.

ACTION REQUESTED

Management is seeking additional guidance from Metro Council regarding the below recommendation from the Auditor. We would like to clarify the extent and scope of the delegated authority of the COO.

Recommendation 1: To increase transparency and clarify approval authority for employment agreements, Metro Council should amend Metro Code to remove the COO's delegation authority for groups of Director level positions.

IDENTIFIED POLICY OUTCOMES

Consistent and equitable practices when negotiating employment terms and approving employment agreements.

POLICY QUESTION(S)

- Should Metro Council remove delegation authority to approve employment agreements from the COO?
- What specific parameters of employment agreements must the COO operate within?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Maintain COO's delegation authority for groups of Director level positions. Provide clarification on the parameters of delegated authority to the COO.
- Amend Metro Code to remove the COO's delegation authority for groups of Director level positions.

STAFF RECOMMENDATIONS

The COO is responsible for managing Metro operations, which includes hiring senior executives to lead the organization. Once Council has established the parameters for employment agreements, management believes the COO should have the flexibility to operate within those parameters without having to return to Council for each individual position. The COO should seek Council approval only if a particular negotiation requires provisions outside those authorized by Council.

We recommend to Council that they delegate authority to the COO to approve all employment agreements for director-level positions and above, and any subsequent amendments, while at the same time clarifying the parameters for those employment agreements.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This discussion and guidance from Council will help Metro recruit and retain high performing, diverse leadership in the most senior positions in the organization. By establishing the appropriate level of consistency and flexibility around employment agreements, Metro will establish itself as an employer of choice and ensure the success of all of its programs. The COO's office and OMA were involved in developing these recommendations, and there is not known opposition.

BACKGROUND

In 2014 Council approved a code change that gives the COO authority to approve employment agreements in some situations. This practice allows flexibility when negotiating employment terms for executive positions at Metro. In 2017 Council passed a resolution delegating authority to the COO to approve employment agreements for department directors, further enhancing the COO's flexibility to hire directors without having to return to Council for a separate resolution or approval of each employment agreement.

The 2014 code change provides that for a group of director-level employment agreements, all terms of the employment agreement needed to be identical except for salary. However, the 2017 Council resolution also included a template with blanks for both salary and other forms of compensation (e.g., vacation accrual), and provided that the terms be substantially similar rather than identical. As a result, management interpreted that authority had been delegated for salary and other compensation.

Similarly, when Council delegated authority to approve employment agreements for department directors, management interpreted this to include the Deputy Chief Operating Officer and General Manager of Visitor Venues.

The Employment Agreements audit released on January 22, 2020 and presented it to Metro Council on January 30, 2020 found inconsistencies in employment agreements over time

and contained five recommendations to clarify approval authority, and reduce financial and compliance risks.

ATTACHMENTS

Employment Agreements audit

[For work session:]

- Is legislation required for Council action? No
- What other materials are you presenting today? none



Employment Agreements:

Clarify approval authority to increase transparency and reduce risks

January 2020

A Report by the Office of the Auditor

Brian Evans

Metro Auditor

Metro Accountability Hotline

The Metro Accountability Hotline gives employees and citizens an avenue to report misconduct, waste or misuse of resources in any Metro or Metro Exposition Recreation Commission (MERC) facility or department.

The Hotline is administered by the Metro Auditor's Office. All reports are taken seriously and responded to in a timely manner. The auditor contracts with a hotline vendor, EthicsPoint, to provide and maintain the reporting system. Your report will serve the public interest and assist Metro in meeting high standards of public accountability.

To make a report, choose either of the following methods:

Dial 888-299-5460 (toll free in the U.S. and Canada)
File an online report at www.metroaccountability.org



Brian Evans

Metro Auditor

600 NE Grand Ave

Portland, OR 97232-2736

TEL 503 797 1892, FAX 503 797 1831

MEMORANDUM

January 22, 2020

To: Lynn Peterson, Council President
Shirley Craddick, Councilor, District 1
Christine Lewis, Councilor, District 2
Craig Dirksen, Councilor, District 3
Juan Carlos Gonzalez, Councilor, District 4
Sam Chase, Councilor, District 5
Bob Stacey, Councilor, District 6

From: Brian Evans, Metro Auditor

Re: Audit of Employment Agreements

This report covers the audit of employment agreements which included employment separation agreements within its scope. Metro Code has different approval requirements for each type of agreement. Employment agreements required Council approval. In contrast, separation agreements were considered part of the Chief Operating Officer's authority and did not require Council approval.

We found approval authority for some agreements and subsequent amendments was unclear, which reduced transparency and accountability. A 2014 ordinance that delegated Council's approval authority to the COO in certain situations caused confusion. We also found similar provisions in some employment and separation agreements that raised questions about the appropriate approval process. These issues increased financial and compliance risks.

As part of the audit, we estimated the cost of the separation agreements Metro has reached with employees over the last five fiscal years. We then compared Metro's annual average amount per agreement with benchmark data. The analysis indicated Metro had managed employment separations well, on average, to keep the financial impact to the agency relatively low.

We have discussed our findings and recommendations with Andrew Scott, Interim COO; Carrie MacLaren, Metro Attorney; and Nathan Sykes, Deputy Metro Attorney. A formal follow-up to this audit will be scheduled within five years. We would like to acknowledge and thank all of the employee who assisted us in completing this audit.

Summary

Employment and separation agreements create a contract between an employee and Metro. These agreements can reduce risks when an employee departs, while recognizing the service and contributions the employee made on the agency's behalf.

Metro Code has different approval requirements for employment agreements and separation agreements. Employment agreements required Council action, while separation agreements were considered part of the Chief Operating Officer's (COO) authority to appoint and terminate employees. We found a couple of examples that raised questions about which approval method was appropriate based on the provisions contained in each type of agreement.

In 2014, Metro Council changed the Code to allow the COO to approve employment agreements under two conditions if the Council delegated their authority by resolution. Some of the agreements approved by the COO did not appear to meet the criteria for delegation in Metro Code.

Misalignments between Code requirements, delegation resolutions, and some employment agreements appeared to be caused by three factors:

- Mixing the criteria for case-by-case approvals and group approvals.
- Unclear review for compliance with Code.
- Lack of clarity about who had the authority to approve amendments.

Without more specificity in resolutions about who the delegation applies to and when its sunsets, it is possible the COO would never have to return to Council to get approval for any director level employment agreement in the future.

Metro's use of employment agreements has been inconsistent over time. The COO and Metro Attorney were the only positions required to have one per Code. Lack of employment agreements could increase the amount paid to some employees when they leave service. Conversely, depending on the provisions in the contract, an employment agreement could result in unknown financial impacts if certain provisions were not controlled.

We estimated the cost of the separation agreements Metro has reached with former employees over the last five fiscal years. We then compared Metro's annual average amount per agreement with benchmark data. The analysis indicated Metro has managed employment separations well, on average, to keep the financial impact to the agency relatively low.

We made five recommendations to clarify approval authority, and reduce financial and compliance risks.

Background

Employment and separation agreements create a contract between an employee and Metro. Most employees at Metro do not have these agreements. The conditions of their employment are based on personnel policies that apply to all employees, and collective bargaining agreements for those represented by a union.

For a variety of reasons, outlining the rights of the employee, and Metro as their employer, at the beginning of employment can be helpful to both parties. These agreements can reduce risks to Metro when a senior or executive employee departs, while recognizing the service and contributions the employee made on the agency's behalf.

Since 2003, at least 28 employment agreements were created. Most of these were for department director positions. They were also created for the Chief Operating Officer (COO), Metro Attorney, Deputy COO, General Manager of Visitor Venues, and the Council President's Chief of Staff. The COO and Metro Attorney are the only positions required to have an employment contract.

Metro Code 2.02 outlines the requirements for approving employment agreements. It requires Council approval in addition to a signature by the Council President or COO, and the employee. It states:

“No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the Council President or Chief Operating Officer and the employee, and subject to the approval of the Council.”

In 2014, Council approved a change to the Code that gave the COO the authority to approve employment agreements in some situations. We were told this was done to give the COO flexibility to negotiate employment terms with the top candidate for the position.

Employment separation agreements have also been created with some employees near the end of their time working at Metro. While these agreements were employment related, they were considered to be within the COO's authority to appoint and dismiss employees, and not subject to Council approval.

This audit was initiated based, in part, on a concern raised about the appropriateness of a payment made at the end of service. The payment resulted from a separation agreement. In the process of making that determination, it became clear that similarities and differences between the two types of agreements caused confusion, which increased financial and compliance risks, and reduced transparency.

Results

Delegated authority to approve employment agreements reduced transparency and accountability

In 2014, Metro Council approved an ordinance amending the personnel code. The change allowed the COO to approve employment agreements under two conditions if the Council delegated their authority by resolution:

- On a case-by-case basis, or
- For a group of director level employees where all terms were identical except for salary.

Since the change, Council has passed at least five resolutions delegating authority to the COO. Four of the resolutions were for individual positions. The fifth resolution allowed the COO to approve agreements with Metro Department Directors. These resolutions resulted in at least nine employment agreements, including one amendment to an agreement.

Exhibit 1 Council delegated approval authority to the COO five times, resulting in nine employment agreements

Resolution # (date)	Position(s)	Employment Agreements (date)
15-4600 (1/15/15)	Interim Oregon Zoo Director	• Interim Oregon Zoo Director (1/21/15)
15-4627 (5/7/15)	General Manager of Visitor Venues	• Interim Oregon Zoo Director and General Manager of Visitor Venues (6/2/15)* • Interim Oregon Zoo Director and General Manager of Visitor Venues (12/28/15)*
16-4682 (1/12/16)	Oregon Zoo Director	Oregon Zoo Director (1/20/16)
17-4778 (3/2/17)	General Manager of Visitor Venues	General Manager of Visitor Venues (4/25/17)
17-4797 (5/25/17)	Metro Department Directors	• Parks and Nature Director (6/29/17) • Deputy COO (5/15/18) • Human Resources Director (3/29/19) • Chief Financial Officer (10/7/19)

Source: Auditor's Office analysis and Office of Metro Attorney analysis of delegation resolutions and resulting employment agreements.

**Employee was serving temporarily as the Interim Oregon Zoo Director while retaining their prior position as General Manager of Visitor Venues.*

Some of the agreements approved by the COO did not appear to meet the criteria for delegation in Metro Code. Approval for one of the agreements was delegated on a case-by-case basis, which indicated that one agreement would be approved. The COO later amended that agreement without additional Council action. In addition, the terms for three of the department director agreements that were delegated for approval as a group were not *identical except for salary* as required by Metro Code.

Another agreement was approved based on the resolution delegating authority to approve department director agreements, but the position was not a department director. Department Director is defined as "...a person designated by the Chief Operating Officer to be responsible for the administration of a department or his/her designee." Several department directors reported to the position, but it was not directly responsible for administering any department itself.

Misalignments between Code requirements, delegation resolutions, and some employment agreements appeared to be caused by three factors:

- Mixing the criteria for *case-by-case* approvals and *group* approvals.
- Unclear review for compliance with Code.
- Lack of clarity about who had the authority to approve amendments.

Mixing criteria

The resolution delegating authority to approve department director positions (Resolution 17-4797) stated that it was for *case-by-case* approvals, even though the delegation was for a *group* of director level positions. None of the agreements approved using that delegation authority included all the same provisions except for salary. As a result, the requirement that a *group* of director level employees all have the same terms except salary was not met. This may have happened, in part, because the complete language from Code was not included in the staff report to the resolution.

Exhibit 2 Staff reports did not include a key requirement from Metro Code

Metro Code	Staff Reports
<p>Metro Council may delegate by resolution to the Chief Operating Officer the authority to execute written employment agreements on a case by case basis, or as a group for Director level employment agreements where all terms in those employment agreements are identical except salary.</p>	<p>...allowing the Metro Council to delegate authority to the Chief Operating Officer ("COO") by resolution to execute written employment agreements on a case by case basis, or as a group for Director level employment agreements.</p>

Source: Auditor's Office analysis of delegation resolutions and Metro Code 2.02.010.

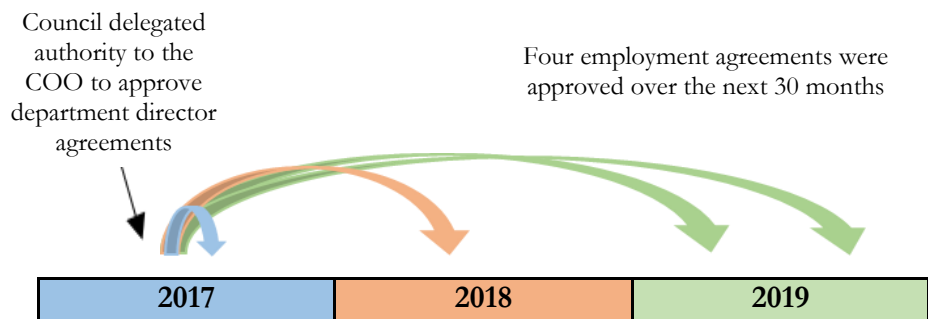
In addition to not meeting Code requirements, approving a group of agreements on a case-by-case basis reduced transparency and accountability. Transparency was reduced by not listing the specific positions that were delegated for approval in the resolution. This appears to have created an opportunity for the COO to approve an agreement with an employee who was not a Department Director without additional approval. It could also potentially be used to approve an unlimited number of agreements without additional Council action.

The other time Metro Council approved a group of department level employment agreements, the resolution included the specific position and employee in that position. This made it clear which positions were being approved and with whom those agreements were made. That specificity was not included in the 2017 group delegation resolution.

It was unclear if the authority delegated to the COO could be used to approve subsequent agreements with a different employee who later served in the same director level position. It was also unclear if Metro's venue directors would be considered part of this delegation authority. Without more specificity in resolutions about who the delegation applies to and when its sunsets, it is possible the COO would never have to return to Council to get approval for any director level employment agreement in the future.

While these potential scenarios are theoretical, there was some evidence that these risks were becoming reality. The delegation resolution for department directors was approved in May 2017, but only one agreement was approved by the COO that year. A year later in May 2018, another agreement was approved. In 2019, two additional department director agreements were approved.

Exhibit 3 Some employment agreements were approved a year or more after Council delegated their authority



Source: Auditor's Office analysis of employment agreements, delegation resolutions, and dates of changes to Council and key personnel.

The time lag between Council delegation for department directors, and COO approvals in 2018 and 2019, raised questions about accountability. Three of the seven Metro Council representatives have changed since the 2017 resolution passed. The COO and Metro Attorney positions also changed during that time. All these changes increased the risk that key decision-makers may not have been fully informed about the delegation requirements, previous delegation resolutions, and timeline of approvals.

Unclear review for compliance with Code

To its credit, Metro added an additional requirement that the Office of Metro Attorney (OMA) review the employment agreements that were delegated for approval to the COO. Having additional review can increase transparency and also reduce the chance that a provision in an agreement could be challenged. OMA signed these agreements “approved as to form.” That phrase was undefined, but appeared to mean the agreement used an appropriate template and some level of review was completed.

We found inconsistent information in some of the agreements about what OMA’s review and signature meant. Two agreements included statements that stated the COO was properly delegated the authority to enter into the agreement. Those statements also referenced the Code requirements for approving employment agreements. None of the other agreements included that statement or any references to Code. That may mean OMA’s signature was only related to the form of the agreement, without additional review to determine if the process to approve the agreement was done appropriately.

Lack of clarity about amendment authority

Amendments to employment agreements raised more questions about the appropriate approval process. One employee’s agreement was amended twice after it was originally approved. The first amendment was about one year after Council approved the original agreement. The second amendment was seven years after the original agreement was approved.

We were told the employee’s performance review was the basis for the amendments and that Council signed the performance review. Both amendments were signed by the Council President, but not approved by Council through a resolution.

Another employee’s employment agreement was amended without approval by Council. The change was to the dates the employee would end their interim job and restart in their normal position. Changing the dates could be considered part of the COO’s authority to appoint and dismiss employees. However, it raised questions about how much flexibility the COO had to amend existing agreements.

Amendments to existing agreements reduced transparency and could create confusion about accountability. For example, it was unclear if the delegation authority approved by Council extended to subsequent amendments. If it did, the COO could amend existing agreements with little oversight, which could result in provisions that were substantially different from the original agreement.

Inconsistent use of employment agreements created different relationships between Metro and its leadership positions

Metro's use of employment agreements has been inconsistent over time. The COO and Metro Attorney were the only positions required to have one per Code. At least thirteen other positions have had one since 2003. We found no patterns to help determine why some positions had agreements and others did not.

As of October 2019, eight positions had employment agreements in place. Seven department director or venue director positions did not have an agreement. Two positions were vacant. Management stated that they planned to create employment agreements with all director level positions. Inconsistent use of employment agreements created different relationships between Metro and employees in leadership positions. These differences can impact the financial risks Metro has to manage at the end of an employee's service to the organization.

Lack of employment agreements could increase the amount paid to some employees when they leave service. If there was no agreement, employers may have fewer options to limit end of service payments related to vacation payouts, insurance coverage and other potential separation provisions. At least three employees who did not have an employment agreements received several settlement agreements as they approached the end of their time working at Metro.

Conversely, depending on the provisions in the contract, an employment agreement could result in unknown financial impacts if certain provisions were not controlled. For example, one employment agreement resulted in a significant payout at the end of service because vacation accrual was not capped. This resulted in a large lump sum payment by Metro (\$230,000), and a significant increase in retirement payments (\$37,000 annually) to the employee by the Public Employee Retirement System (PERS).

While neither agreement type was guaranteed to result in a better financial situation for Metro, committing to one strategy - either all senior positions have employment agreements, or none do - can make it easier to evaluate tradeoffs and provide consistent treatment of employees across leadership positions, and over time for the same position.

Employment agreements have the added benefit of providing more transparency. This is because the approval process for employment agreements requires Council approval and the agreements themselves are public records. In contrast, separation agreements did not require Council approval and some of them included confidentiality provisions, which may prevent them from being released through a public records request.

Similar provisions in employment and separation agreements raised questions about the appropriate method of approval

Metro Code has different approval requirements for employment agreements and separation agreements. Employment agreements require Council action, while separation agreements were considered part of the COO’s authority to appoint and terminate employees. However, we found a couple of examples that raised questions about which approval method was appropriate based on the provisions contained in each type of agreement.

Some separation agreements included provisions that were similar to employment agreements, and vice versa. For example, one separation agreement included additional financial benefits for staying in the position past certain dates. That provision was similar to some employment agreements, but it was an outlier for separation agreements. Conversely, one employment agreement included a resignation date for the position. That provision was common in separation agreements, but an outlier for employment agreements.

When similar provisions can be approved using either process, transparency and accountability can be compromised. These risks could be reduced by effective controls to ensure the type of agreement and method of approval were appropriate. Greater transparency through public records like Council resolutions can help for some types of agreements. But, for more sensitive agreements, like separation agreements, OMA was uniquely positioned to reduce these risks. That was because they advised on legal risks, interpreted Metro Code and ordinances, and were required in some cases to sign the agreements.

One of the benefits of employment agreements was that they set expectations between the employee and the employer about how they will handle the end of employment. All the employment agreements reviewed in this audit, other than those for interim appointments, included termination provisions that outlined the financial and other considerations that would be made under various scenarios. If no employment agreement was in place, costs may vary more widely.

To manage the risk of increasing costs to address claims, separation agreements were created in some circumstances. The agreements typically required the employee to waive all claims against the employer in exchange for financial benefits or other considerations. The agreements were intended to reduce the potential for larger impacts that could result from claims against Metro.

There were examples of more than one separation agreement for the same employee. This indicated that Metro was willing to provide additional considerations to some employees even after they had agreed to waive any potential claims. In some situations multiple agreements with the same employee were reached within two or three months of each other, while agreements with another employee were spaced out over almost a year. Multiple separation agreements may be needed if the employee’s last date of

employment changed after the initial agreement was signed. However, this was only the case for one of the four subsequent separation agreements.

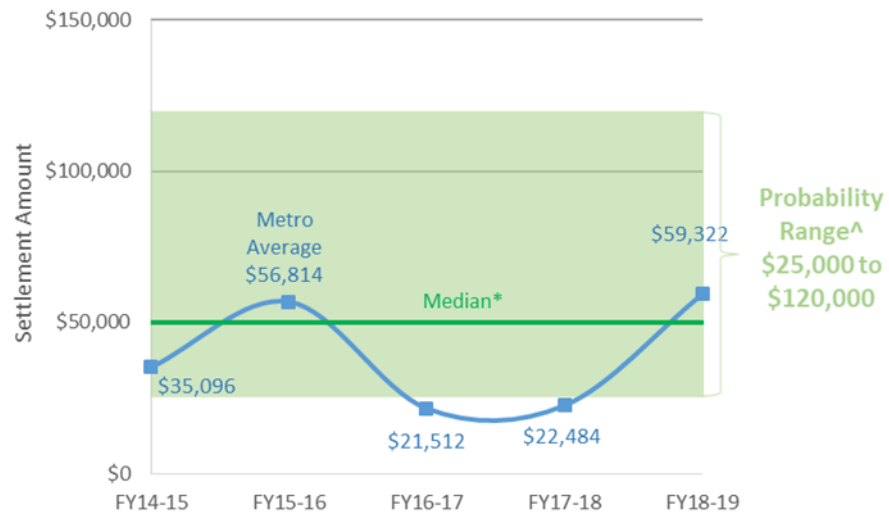
We also identified another weakness that could increase financial and compliance risks. In some cases the COO’s authority to approve separation agreements appeared to have been delegated to other positions. For example, about half of the separation agreements were not signed by the COO, which indicated the COO may have delegated their authority to other positions. We did not attempt to locate documentation of the COO delegating their approval authority for each agreement. However, a delegation memo from the COO in January 2019 did not appear to include separation agreements within its scope.

Separation payments were consistent with benchmark amounts

We estimated the cost of the separation agreements Metro reached with former employees over the last five fiscal years. The costs associated with individual agreements ranged from zero to several hundred thousand dollars. We did not review the details of each separation agreement, but the variation in amounts was likely the result of the unique circumstances of each employee, their position, and the duration of their time at Metro.

We then compared Metro’s annual average amount per agreement with benchmark data. The analysis showed Metro’s average settlement amount was consistent with benchmarks.

Exhibit 4 Metro’s average settlement amount was within or below the expected range during each of the last five years



Source: Auditor’s Office analysis of Metro’s estimated separation amounts and settlement data from Thomson Reuters’ *Employment Practice Liability: Jury Award Trends and Statistics, 2018 Edition*. Metro averages were not adjusted for inflation.

*The median is the middle settlement value among all settlements from 2011-2017 listed in ascending order. This value provides the most accurate gauge of the norm for a specific sampling of settlement data.

^The probability range is defined as the middle 50 percent of all settlements arranged in ascending order in a sampling, 25 percent above and below the median award. Although settlements rarely produce a normal distribution, the probability range and the median settlement does aid in establishing parameters of where settlements tend to cluster.

As the graph shows, in two of the last five years Metro's average was slightly more than the median amount, but still within the expected (probability) range of outcomes. In three of the years, Metro's average was below the median, and below even the low end of the expected range in two years. The Metro Auditor conducted a similar analysis in 2005 and found the average at that time was about \$38,000 in today's dollars, which was similar to Metro's most recent five-year annual average (\$41,000).

The analysis indicated Metro has managed employment separations well, on average, to keep the financial impact to the agency relatively low. Because of the sensitive, and in some cases confidential, nature of separation agreement provisions, we did not seek to determine how settlement amounts were reached. The trend analysis compared to the benchmark amounts indicated Metro had made sound financial decisions, on average, to limit costs that can rise rapidly through additional legal proceedings.

Recommendations

To increase transparency and clarify approval authority for employment agreements, Metro Council should:

1. Amend Metro Code to remove the COO's delegation authority for groups of director level positions.

To reduce financial and compliance risks, the COO or their designee should:

2. Specify in approval resolutions, or delegation resolutions, if the approval was one-time or for future employees in the same position.
3. Specify in approval resolutions, or delegation resolutions, if approval has been delegated for subsequent amendments.
4. Analyze separation amounts periodically and compare them to appropriate benchmarks.

To reduce compliance risks, OMA should:

5. Create and utilize a consistent process to review employment agreements and separation agreements for compliance with Metro Code and related delegated authority approvals.

Scope and methodology

The objective of this audit was to determine if controls were in place to ensure compliance with Metro Code requirements related to employment and separation agreements. The scope of the review for employment agreements was January 6, 2003, the date Metro switched to the Council President structure, through October 2019. The change to the Council President structure changed the relationship between the legislative branch (Council) and the executive branch (originally led by the Executive Officer). The scope of the review of separation agreements was July 1, 2014 to June 30, 2019.

To achieve the audit objective, we reviewed employment agreements and separation agreements to determine how they were approved. We then compared the results to the requirements outlined in Metro Code 2.02.010 (Personnel). We researched the causes for those misalignments by talking with the COO and Office of Metro Attorney.

We also obtained and compared Metro's data to jury award and settlement agreement data from Thompson Reuters. We used the settlement probability range and median settlement amounts in our analysis. The publisher of the data noted that the size of the sample from which their settlement figures are drawn is difficult to gauge. While some caution is warranted, we believe it represents the best available data to evaluate Metro's separation amounts.

The audit was included in the FY 2019-20 audit schedule. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management response



Memo

Date: Friday, January 17, 2020
To: Brian Evans, Metro Auditor
From: Andrew Scott, Interim Chief Operating Officer
Subject: Employment Agreements Audit Response

Thank you for your recent audit of Metro's employment agreements. Below you will find a written response to each of the five recommendations. Overall, management agrees that Metro should be clear and transparent with regards to the approval authority for employment agreements. And we were pleased to find that Metro's separation payments were consistent with benchmark amounts.

In 2014 Council approved a code change that gives the COO authority to approve employment agreements in some situations. This practice allows flexibility when negotiating employment terms for executive positions at Metro. In 2017 Council passed a resolution delegating authority to the COO to approve employment agreements for department directors, further enhancing the COO's flexibility to hire directors without having to return to Council for a separate resolution or approval of each employment agreement.

The 2014 code change provides that for a group of director-level employment agreements, all terms of the employment agreement needed to be identical except for salary. However, the 2017 Council resolution also included a template with blanks for both salary and other forms of compensation (e.g., vacation accrual), and provided that the terms be substantially similar rather than identical. As a result, management interpreted that authority had been delegated for salary and other compensation. Management agrees with the Auditor that we should seek additional clarity from Council on this point.

Similarly, when Council delegated authority to approve employment agreements for department directors, management interpreted this to include the Deputy Chief Operating Officer and General Manager of Visitor Venues. We agree with the Auditor that we should seek additional clarity on this point as well.

While we agree with the need to clarify the extent and scope of the delegated authority, management disagrees with the Auditor's recommendation to remove the COO's authority to approve employment agreements. The COO is responsible for managing Metro operations, which includes hiring senior executives to lead the organization. Once Council has established the parameters for employment agreements, management believes the COO should have the flexibility to operate within those parameters without having to return to Council for each individual position. The COO should seek Council approval only if a particular negotiation requires provisions outside those authorized by Council.

As a result, we will recommend to Council that they delegate authority to the COO to approve all employment agreements for director-level positions and above, and any subsequent amendments, while at the same time clarifying the parameters for those employment agreements.

Once again, we want to thank the Auditor for diving into this issue and providing us with an opportunity to clarify the code and have a conversation with Council.

Recommendation 1: To increase transparency and clarify approval authority for employment agreements, Metro Council should amend Metro Code to remove the COO's delegation authority for groups of Director level positions.

- **Response:** This recommendation is directed to the Metro Council. As discussed above, management disagrees with the recommendation and will seek additional guidance from Metro Council.

Recommendation 2: To reduce financial and compliance risks, the COO or their designee should specify in approval resolutions, or delegation resolutions, if the approval was one-time or for future employees in the same position.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** We will discuss with Council their preferred level of delegation and will specify that in future code changes and resolutions. -
- **Timeline:** February 2020

Recommendation 3: To reduce financial and compliance risks, the COO or their designee should specify in approval resolutions, or delegation resolutions, if approval has been delegated for subsequent amendments.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** We will discuss with Council their preferred level of delegation for subsequent amendments and will specify that in future code changes and resolutions. -
- **Timeline:** February 2020

Recommendation 4: To reduce financial and compliance risks, the COO or their designee should analyze separation amounts periodically and compare them to appropriate benchmarks.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** HR will analyze separation amounts on an annual basis and compare them to benchmarks. -
- **Timeline:** Beginning in 2021

Recommendation 5: To reduce compliance risks, OMA should create and utilize a consistent process to review employment agreements and separation agreements for compliance with Metro Code and related delegated authority approvals.

- **Response:** The Office of Metro Attorney provides review and advice to the Chief Operating Officer for employment agreements and separation agreements, and amendments thereto. OMA review and advice includes compliance with Metro Code, Metro policy, and employment law. Both the COO and OMA agree with the recommendation, which reflects OMA's role and current practice.

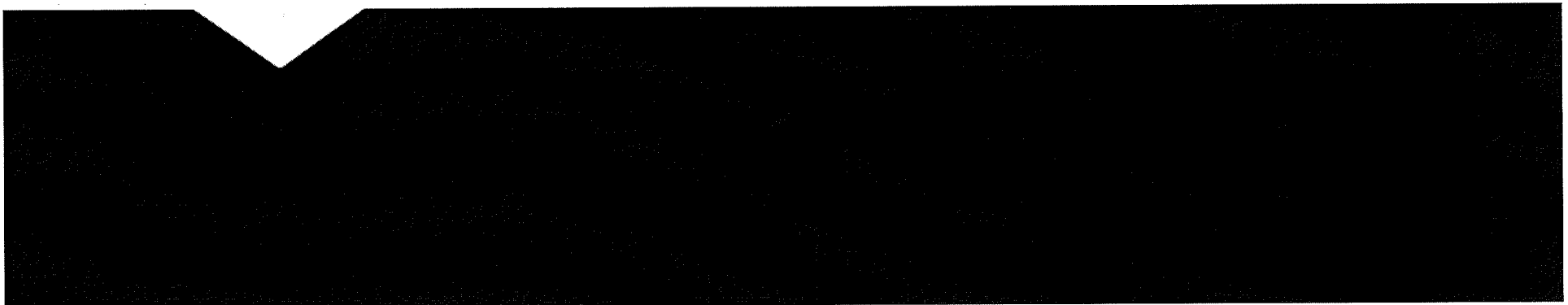


Office of the Metro Auditor
600 NE Grand Avenue
Portland, Oregon 97232
503-797-1892
www.oregonmetro.gov



Employment Agreements Audit Follow-up

March 2, 2020



Employment Agreements

Delegation of Authority

- Does Council want to delegate authority to the COO to negotiate and enter into employment agreements, within certain parameters?
- If yes, for whom?
 - Deputy COO
 - General Manager of Visitor Venues
 - Department Directors
- Does Council want to delegate authority for all subsequent *amendments* to those agreements?

Employment Agreements

Scope

Areas for COO discretion

- Salary (within established Metro pay range)
- Vacation accrual rate and initial leave bank (within established Metro policy)
- Moving expenses

Areas for Council discretion

- Other compensation (car allowance, housing allowance, etc.)
- Other benefits (health, retirement, etc.)
- Severance (three-month standard)

April XYZ, 2020

The Honorable Nancy Pelosi Speaker U.S. House of Representatives H-232, The Capitol Washington DC 20515	The Honorable Mitch McConnell Majority Leader United State Senate S-230, The Capitol Washington DC 20510
The Honorable Kevin McCarthy Minority Leader U.S. House of Representatives H-204, The Capitol Washington, D.C. 20515	The Honorable Chuck Schumer Minority Leader United States Senate S-221, The Capitol Washington DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader McCarthy, and Minority Leader Schumer:

We write because America's transportation system is in a crisis that more funding alone cannot fix. Despite billions spent every year, our roads, bridges, and transit systems are in disrepair, congestion has increased, pedestrian fatalities and emissions are the highest in decades and rising, and too many people lack safe, affordable, and convenient access to jobs and important services. The time has come to elevate the national conversation about transportation beyond the spending and distribution of funds, and focus on changes in the program to address these challenges.

Under President Eisenhower, our country developed the current transportation program to build interstate connections between cities. With the interstates now complete, and travel within communities the biggest challenge, the 70-year-old federal program continues to incentivize highway construction over all other investments and modes of travel. This has led to a significant maintenance backlog. It has also increased emissions and congestion while undermining the economic mobility and health of our communities, particularly for low-income people and people of color.

Reforming our nation's transportation system is necessary to reduce emissions that contribute to climate change and harm public health. Transportation is the single largest source of greenhouse gases (GHG), contributing 29 percent of the United States' total GHG emissions, with the majority of these emissions from driving. While electric vehicles (EVs) and vehicle efficiency standards are absolutely essential, they are sadly not sufficient to meet our emissions reduction goals. Neither will these technologies improve access to jobs and services for those who cannot afford a car, nor will they improve safety or reduce congestion. Providing safe and convenient ways for people to travel through their communities using shorter or fewer car trips and other forms of transportation is essential to addressing these challenges.

To modernize our transportation system, Congress should make the following reforms:

Prioritize Maintenance: Cut the road, bridge, and transit maintenance backlog in half

The next authorization should cut the maintenance backlog in half by dedicating formula highway funds to maintenance. In addition, when building new road capacity, agencies should be required to create a plan for maintaining both the new road and the rest of their system. This is common sense and is already required when building new transit projects. Roads should not be treated differently. On the highway side, it will be important to organize the program to better support repair. On the transit side, the program is organized well in terms of addressing maintenance needs but needs more resources. With this approach, the federal government can halve the current backlog in six years under current funding levels. If funding is increased, we can do more.

Design for safety over speed: Save lives with slower, safer road design

Access to safe, convenient transportation is a fundamental right. Today, most Americans are denied this right because their roads—not just highways—are designed to move vehicles at the highest speeds possible, and not for people walking, biking, or taking transit. High speeds make sense on interstates and other highways, but people die when we bring that design to streets that are supposed to connect people and create value. The federal program should require designs and approaches, including complete streets, that put safety first and slow speeds on local and arterial roads.

Roads surrounded by development and open to pedestrians should be designed to speeds that dramatically decrease the likelihood of fatalities in a crash (35mph or below). Creating safer communities will not only save lives, it makes walking, biking and riding transit a more viable and convenient option, providing people with affordable choices while reducing congestion and emissions.

Connect people to jobs and services: Determine current connectivity and prioritize projects that will improve those connections.

The point of transportation is to get people where they need to go. Since the dawn of the modern highway era, we have used vehicle speed as a poor proxy for access to jobs and important services like healthcare, education, public services, and grocery stores. The way we build roads and design communities to achieve high vehicle speed often requires longer trips and makes shorter walking, bicycling, or transit trips unsafe, unpleasant, or impossible. New technologies can now help us measure success by the primary thing that matters to real people: the ease of arriving at your destination. Using this technology we can more accurately compare the costs and benefits of investment, and hold agencies accountable to deliver improved connections across all types of travel.

We can now consider access by driving, as well as walking, biking and transit. Studies have shown that communities with better access to jobs and services have greater economic mobility, and lower emissions from transportation because people have travel options, and do not need to drive as far, or at all, to get to jobs and other needs. Further, this data

can help to address decades of disinvestment which have disconnected communities and worsened economic outcomes.

Congress should require USDOT to collect the data necessary to develop a national assessment of access to jobs and services and set national goals for improvement. With these data, state departments of transportation and planning organizations can ensure federal investments are effectively connecting people to economic opportunity. Funding should go to projects that will improve these connections, regardless of mode. State departments of transportation (DOTs) and metropolitan planning organizations (MPOs) should be held accountable by evaluating how well their investments help connect people to destinations.

Thank you for considering fundamental reform in the next authorization. We stand ready to assist in setting a new vision for federal transportation program to address 21st Century challenges.

Sincerely,