

## Council meeting agenda

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Thursday, March 19, 2020

2:10 PM

Conference call

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Revised 3/17/20 -- This meeting will be held virtually. Please see <https://www.oregonmetro.gov/events/metro-council-meeting/2020-03-19> for more information. Written testimony can be sent to [legislativecoordinator@oregonmetro.gov](mailto:legislativecoordinator@oregonmetro.gov).

**1. Call to Order and Roll Call**

**2. Presentations**

2.1 Criminal Background Check Process Audit [20-5384](#)

Presenter(s): Brian Evans, Metro Auditor

Attachments: [Criminal Background Check Process Audit](#)  
[Criminal Background Check Process Audit Highlights](#)

**3. Resolutions**

3.1 Resolution No. 20-5064, For the Purpose of Amending the FY 2019-20 Budget and Appropriations Schedule and FY 2019-20 Through FY 2023-24 Capital Improvement Plan to Provide Changes in Operations [RES 50-5064](#)

Presenter(s): Cinnamon Williams, Metro

Attachments: [Resolution No. 20-5064](#)  
[Exhibit A & B to Resolution No. 20-5064](#)  
[Staff Report](#)  
[Attachments 1 & 2 to Staff Report](#)

3.2 Resolution No. 20-5074, For the Purpose of Authorizing General Obligation Bonds Under the 2019 Parks and Nature Measure [RES 20-5074](#)

Presenter(s): Brian Kennedy, Metro

Attachments: [Resolution No. 20-5074](#)  
[Staff Report](#)

**4. Chief Operating Officer Communication**

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5. Councilor Communication

6. Adjourn

**EXECUTIVE SESSION ORS 192.660(2)(H), TO CONSULT WITH COUNSEL CONCERNING THE LEGAL RIGHTS AND DUTIES OF A PUBLIC BODY WITH REGARD TO CURRENT LITIGATION OR LITIGATION LIKELY TO BE FILED.**

# 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](http://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](http://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](http://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](http://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](http://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](http://www.oregonmetro.gov/civilrights). Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

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

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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](http://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 ឬដើម្បីទទួលបានកម្របកម្រងរើសអើងសម្រាប់សេវាសេវាផ្សេងៗទៀត [www.oregonmetro.gov/civilrights](http://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، يرجى زيارة الموقع الإلكتروني [www.oregonmetro.gov/civilrights](http://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](http://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.

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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](http://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.

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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](http://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](http://www.oregonmetro.gov/civilrights). Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev sawv ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntawm lub rooj sib tham.

Agenda Item No. 2.1

**Criminal Background Check Process Audit**  
*Presentations*

Metro Council Meeting  
Thursday, March 19, 2020



# Criminal Background Check Process:

*Refinements needed to further reduce risks*

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February 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](http://www.metroaccountability.org)**



**Brian Evans**

**Metro Auditor**

600 NE Grand Ave

Portland, OR 97232-2736

TEL 503 797 1892, FAX 503 797 1831

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**MEMORANDUM**

February 26, 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 Criminal Background Check Process**

This report covers the audit of Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions.

The audit found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions. However, there were some weaknesses that made it less likely that sufficient criminal background information would be available.

The audit also found there was no single source of information about what type of criminal records check was required for each position. Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions.

We have discussed our findings and recommendations with Andrew Scott, Interim COO; Carrie MacLaren, Metro Attorney; Heidi Rahn, Interim DCOO, and Julio Garcia, Human Resources Director. A formal follow-up to this audit will be scheduled within five years. We would like to acknowledge and thank all of the employees who assisted us in completing this audit.

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# Summary

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Background checks are used by employers to get information about candidates for job openings. This audit focused on Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions.

We found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions.

While Metro's process was more consistent than the other jurisdictions we reviewed, its criminal background searches did not include some information that could be used to inform hiring decisions. The largest gap was related to federal criminal records. Until March 2019, criminal records from federal courts were not included in most background searches.

In addition, implementation of some parts of Metro's background check policy was underdeveloped. This increased the chance that some senior-level positions and some volunteers were not checked as thoroughly as allowed by policy.

We found there was no single source of information about what type of criminal records check was required for each position. Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions.

We also identified two additional risk areas related to managing criminal background information. Shared responsibility for keeping track of some employees' status increased the risk that a person may be allowed to work when they should not. Unclear and flexible roles in Human Resources (HR) also increased the risk that background and other personal information could be accessed inappropriately.

The audit included six recommendations to reduce risks and ensure consistent reviews of criminal background information.

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# Background

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Background checks are used by employers to get information about candidates for job openings. The scope of what is searched can vary, but generally background checks include information about a candidate's education and work history, at a minimum. References from previous colleagues and criminal records searches are other common types of background information employers may use to inform their hiring decisions.

The timing for background checks can also vary. For example, some employers wait until one or more finalists for the position have been selected before requesting certain background information. This is done to focus attention on the skills and experience of the individual in relation to the job requirements. The goal is to reduce the chances biases get introduced into hiring decisions that are not related to the candidate's ability to do the job.

This audit focused on Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions. Metro is one of several government jurisdictions in Oregon that have established processes to "ban the box." These processes prevent criminal background information from being requested or searched before the interview stage of hiring.

All candidates that have been given a conditional offer of employment by Metro are required to complete a criminal background check. The purpose of the check is to protect the wellbeing of its employees and the public, and safeguard agency assets. The source of the criminal information and thoroughness of the searches depends on the position and its responsibilities. For example, positions that work with children are required to have a more comprehensive criminal background search compared to positions that do not work with children.

Metro uses external service providers for its criminal background checks. The majority of finalists are checked through a private company that searches public records for criminal convictions based on the applicant's name, social security number and addresses where they have lived. Employees in positions that have unsupervised access to children were required to complete a criminal background check through the State of Oregon's Law Enforcement Data Systems (LEDS). That search requires fingerprints and may return a broader set of information beyond criminal convictions. A few executive level employees have been recruited through external firms. Those firms used their own processes and information providers for background checks.

Metro's criminal background check policy was created in 2011. Since that time at least 7,000 checks were completed by one of the providers listed in the previous paragraph. That works out to an average of about 780 per year, but the numbers can vary considerably between years depending on the

number of vacant positions and the number of new positions created. These searches cost an average of \$39,000 per year over that last five years, which was about \$44 per search. For comparison, LEADS searches were \$75 each.

If criminal records were discovered, that by itself was not sufficient to deny employment. Metro's guidance for reviewing criminal background check information is based on U.S. Equal Employment Opportunity Commission (EEOC) guidelines. Those guidelines, known as the *Green factors*, state that a "targeted screen" should be used for each candidate's criminal background information based on three factors:

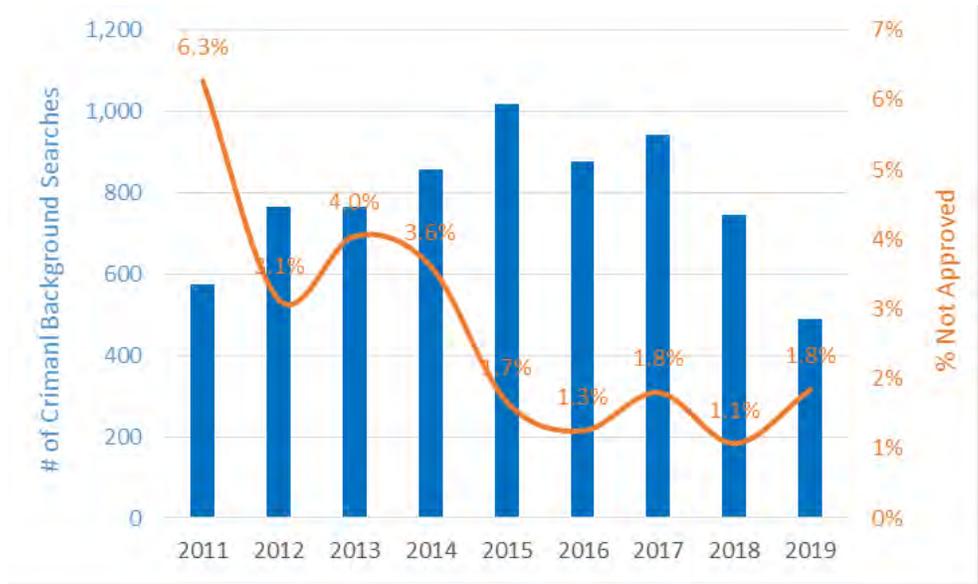
- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct, and/or completion of the sentence; and
- The nature of the job sought.

These factors are intended to balance the individual candidate's rights to be treated fairly during the hiring process, while also recognizing the responsibilities employers have to provide a safe work environment and protect their assets. The *Green factors* provide the criteria employers should use to evaluate criminal background information. Effective use of the criteria can reduce the likelihood that some employment related claims against Metro will be successful.

One of the major points of emphasis in Metro's policy and EEOC guidance was the difference between arrests and convictions. The policy stated that for most positions only convictions would be considered when reviewing criminal background information. According to the policy, arrest records could only be considered for positions that involved financial or fiduciary responsibilities, safety and security, or direct unsupervised access to children.

For the vast majority of Metro candidates, criminal background information appeared to have played a minor role in hiring decisions. For example, from 2011 to 2019 about 2.6% of the candidates who completed a criminal background check through Metro's primary vendor were not hired according to Metro's records. There was insufficient data to estimate the percentage of LEADS searches that resulted in a no hire decision.

**Exhibit 1 Criminal background checks appeared to have played a role in the hiring decisions of a small number of candidates**



*Source: Auditor's Office analysis of criminal background data from Metro's primary vendor.*

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# Results

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We found Metro’s criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions. However, there were some weaknesses that made it less likely that sufficient criminal background information would be available.

Until March 2019, criminal records from federal courts were not included in most background searches. Metro believed those records were part of its contract with one of the external providers, but they were not. In addition, implementation of some parts of Metro’s background check policy were underdeveloped. This increased the chance that some senior-level positions and some volunteers were not checked as thoroughly as allowed by policy.

Formally designating the type of criminal background check required for each position would reduce the risk of insufficient or inappropriate checks. We also found clearer roles and responsibilities were needed to control who has access to criminal background information and ensure it was kept up-to-date.

**Despite covering all employees, the criminal background check process may not have been sufficient in some cases**

Metro was the only jurisdiction of the five reviewed in this audit whose policy required criminal background checks on all internal and external applicants selected as finalists. The policy stated that this requirement includes internships and volunteer positions. None of the other four jurisdictions reviewed required criminal background checks for all positions.

Requiring background checks for all positions increased the chances that hiring decisions were based on consistent information and procedures. Metro’s policy and use of external service providers reduced variation in what was searched and what information could be used as part of the hiring process. These safeguards made it less likely that biases would be introduced into hiring decisions.

While Metro’s processes were more consistent than the other jurisdictions we reviewed, its criminal background searches did not include some information that could be used to inform hiring decisions. The largest gap was related to federal criminal records. In addition, management stated that arrest records were not considered during the hiring process for positions with financial or safety and security responsibilities as allowed by policy. There were also indications that some applicants for volunteer positions may not have gone through criminal background checks as allowed by policy.

## Federal criminal records

Metro learned in late 2018 and early 2019 that some criminal records may not have been included in its background searches. After researching the issue, employees determined that it was related to federal court records.

Employees in Human Resources and Office of Metro Attorney (OMA) stated that they met with the external service provider to discuss the issue. They discovered that the contract did not include federal records in Metro's default criminal records searches. The contract was amended in March 2019 to include federal records.

As a result, Metro's costs for background checks were higher after March 2019. Federal records searches were \$7.13 per court district. In 2018, about 750 background searches were done by Metro's primary external service provider according to Human Resources data. If each of those people only lived in one federal court district, Metro would have paid an extra \$5,300 to search for federal criminal records for each of them.

The omission of federal court records created challenges for Metro to determine how to respond. Searching for those records retroactively could increase the chances an employee could claim they were being treated unfairly. Conversely, Metro could be liable for retaining an employee with a criminal record who was later responsible for a work-related incident.

Metro's policy provided some clarity for how to address these challenges. Employees were required to disclose criminal convictions that were drug-related or related to the qualifications or duties of their position. The policy also required employees to disclose arrests if their responsibilities included driving, safety and security, financial and fiduciary responsibility, or direct unsupervised access to children that related to these functions. In addition, the policy stated a criminal background check could also be conducted if there was reason to believe that an arrest or undisclosed conviction had occurred that may be relevant to the safety of employees and customers or to the integrity of the organization.

As a result, Metro would likely be in a stronger position to claim that an employee with a criminal record was liable for not disclosing it rather than the organization for not seeking those records out at the time of hire. Similarly, EEOC guidance made it clear that criminal background information could only be considered if it was related to the nature of the job. As such, even if Metro had known about federal criminal records, it may not have changed the decision about whether the person was hired.

## Arrest records and other background information

Another potential gap in Metro's criminal background check process was related to positions with financial or fiduciary responsibilities, and safety and security. Metro's policy allowed arrest records to be considered when making hiring decisions for these positions. Management stated that they do not consider arrest records during the hiring process for any positions.

Metro used a more comprehensive criminal background search, the State of

Oregon's Law Enforcement Data Systems (LEDS), for employees who had direct unsupervised access to children as part of their job. However, the process to conduct additional checks or consider arrest records appeared to be underdeveloped for positions with financial or fiduciary responsibilities, and safety and security.

For example, there were notes in the background check documentation indicating credit checks were completed for some lower level positions with fiduciary responsibilities, but those appeared to be outliers. Employees with similar titles or positions did not have notes in the spreadsheet that documented credit checks were done.

We also learned that executive level positions recruited through external firms had their criminal records checked through different providers than Metro's normal background check process. These positions have the highest levels of authority to approve payments and take actions on behalf of the agency.

In the last two years, Metro used two firms to recruit for five positions. The contracts for these services included provisions for conducting background and reference checks. One of the firms appeared to have a more comprehensive process for searching background information than the other. They said they searched driving records, credit histories and civil court cases (i.e. lawsuits). The other firm told us they do not look at civil court case information or credit histories.

## Volunteer positions

During the audit, a concern was raised about the process to appointment volunteers on one of Metro's advisory committees. Metro Code lists 16 advisory committees responsible for giving input on specific issues like transportation policy, land use policy, solid waste and recycling policy, and bond oversight. Most of these positions were appointed by the Council President. However, membership on at least two committees was based on a list of elected officials from specific jurisdictions in the region.

The breadth of responsibilities among these volunteers may make it more difficult to assess the appropriateness of background checks for advisory committee members. None appear to have unsupervised access to youth so a LEDS check does not appear to be appropriate. Similarly, these positions did not appear to have special access to Metro property or equipment, so they did not meet the current requirements for a basic search by Metro's primary vendor.

However, some of the committees advised on financial matters or may have access to sensitive information that could make additional background check requirement appropriate for some committees. If Metro decides to reevaluate its volunteer background check requirements, it will be important to consider how background information would be assessed. Under Metro's current policy it appears the EEOC guidance would need to be applied. This

## Documenting the type of background check required would improve the process

would limit consideration of background information to only what was related to the volunteer position's responsibilities.

We found there was no single source of information about what type of criminal records check was required for each position. Metro's policy did not specify the scope (e.g. local, state, or federal court; look back period) or type (e.g. convictions; arrests; driving; credit) of criminal checks. Documenting the type of criminal background check required for each position would reduce the risk of insufficient or inappropriate information being used in the hiring process.

Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions. For example, narrow or limited criminal checks may omit information that could be considered when making hiring decisions. Overly broad criminal checks may include information that should not be considered when making hiring decisions.

Employees involved in the process relied mostly on their interpretation of job-related information and conversations with hiring managers to determine which type of check was needed. Informal practices to determine the scope of the criminal background search may not:

- Capture changes in position responsibilities or program changes over time.
- Take into consideration the policy for additional scrutiny for positions with financial or fiduciary, and safety and security responsibilities.

We also found responsibility to determine what type of criminal check was required was undefined. Hiring managers have the most knowledge about the specific roles and responsibilities of the position, but they may not be aware that they can give input. HR employees assumed hiring managers would tell them what type of check was needed, but the process to solicit that information was informal.

While it is possible to overcome these challenges with good communication between HR and hiring managers during each recruitment, a more effective way would be to create an approved list that everyone could reference. One of the jurisdictions we reviewed in this audit formally approved a list of positions, classifications, and departments that are required to have each type of criminal background check.

**Exhibit 2 Example of one jurisdiction’s alignment between departments and criminal background check requirements**

Department	Type of Check (A-D)
Sheriff’s Office*; Community Corrections*; District Attorney*; Central Communications*; Juvenile Department*; Emergency Management*	A
Finance^; Technology Services^	B & D
Business and Community Services^; Department of Employee Services^; County Clerk^	D
Department of Human Services^	C & D
Department of Transportation and Development; Water Environment Services; County Assessor; County Admin/BDD/County Counsel/Community & Legislative Affairs; Public and Government Relations; Family Court Services, Law Library, Tourism	None

*Source: Auditor’s Office analysis of Clackamas County’s Employment Policy and Practice (EEP #58) for Criminal History Checks, June 22, 2009.*

*\*All positions*

*^Some positions*

If Metro took that approach, it could provide a more well-rounded assessment of the risks associated with each position. It could also decrease the ability of individual employees to influence what criminal information was searched for each recruitment. This is because the criteria for those decisions would be used to create the list, rather than having to be recreated for each recruitment.

**Clear roles and responsibilities needed to reduce risks**

We also identified two additional risk areas related to managing criminal background information. Shared responsibility for keeping track of LEADS statuses increased the risk that a person may be allowed to work when they should not. Unclear and flexible roles in HR also increased the risk that background and other personal information could be accessed inappropriately. Clear roles and responsibilities were needed to reduce these risks.

**Tracking the status of positions that have direct unsupervised access to children**

Staff and volunteer positions that may require unsupervised access to children were required to complete a LEADS check. Responsibility for tracking the LEADS status to determine the person’s ability to work was shared between the position’s supervisor or manager, and HR.

HR was the primary contact with the state employees who administered LEADS to determine the status of new hires before they started work. HR also received official LEADS notifications by mail. We were told managers and supervisors were supposed to track the status of employees and volunteers to make sure they did not work without LEADS approval. In practice, HR appeared to keep track and send reminders to managers about the status of their employees.

These processes appeared to be working reasonably well, although employees involved in the process stated that the information was not updated as frequently as they would like. In addition, none of the volunteers in the tracking spreadsheet had a manager or supervisor listed for them. Without that information, it would be more difficult for HR employees to know who to contact about the volunteer’s responsibilities and their LEDS status.

LEDS statuses were more difficult to check than other criminal background checks for several reasons. They were paper-based, so the only way to confirm a person’s status was to get a letter in the mail or talk to a LEDS representative on the phone. In addition, there were four possible LEDS statuses for each person and each had a different effect on the person’s ability to work with children.

**Exhibit 3 There were four possible LEDS statuses, each had a different effect on the person’s ability to work with children**

Status	Meaning	Duration
Approved 	No restrictions on having direct unsupervised access to children	Five years
Conditionally Approved 	Restricted from having direct unsupervised access to children until the results of FBI fingerprint search was complete	Up to one year
Not approved 	Not allowed to have direct unsupervised access to children	Undefined
Not required 	No restrictions on having direct unsupervised access to children	Until 18 <sup>th</sup> birthday

*Source: Auditor’s Office analysis of the State of Oregon’s Law Enforcement Data Systems (LEDS) requirements and statuses.*

Some employees and volunteers had expired, conditionally approved, or unknown LEDS statuses listed in Metro’s tracking spreadsheet. We were able to determine most of these employees and volunteers were not active or had not worked after the date of their expiration. However, five active employees and one active volunteer were required to register when they turned 18 but had not completed it as of October 16, 2019. We did not assess the reliability of the data, so it’s possible that there were other employees or volunteers, but we did not see evidence of that during the audit.

Employees or volunteers under the age of 18 were not required to complete a LEDS search. An employee's or volunteer's birthday would need to be known to effectively track when they were required to register. That information may not be available to managers and supervisors, so HR was the only source of that information.

We also learned some employees who were waiting for the results of the LEDS check were allowed to start working after completing a criminal records check by Metro's other provider of criminal background information. This appeared to be a relatively limited practice that HR approved in some cases. Managers stated that they mostly used it to allow a conditionally approved employee to complete training before they start working directly with children. This alternative process increased costs for each criminal check, but also reduced some risk.

Managers and supervisors stated that the LEDS process drove their hiring timelines for many of the positions that required direct unsupervised access to children. They said it was not uncommon for a candidate's LEDS status to still be pending the first day they were supposed to work. We were told some events had to be canceled in the past because there were not enough LEDS approved employees available.

**Access to confidential information should be limited**

Some HR employees have access to all background check information from Metro's primary criminal information provider. Background check information contained sensitive and confidential information about an employee or applicant's social security number, addresses, arrests, and criminal convictions. For some employees, it may have included driving records and credit histories.

HR employees shared roles in some situations. During those times, and potentially afterward, those employees may have been given access to information that was not needed for their normal role. Access to sensitive and confidential information should be limited to only those who need it for their jobs. Safeguards should be in place to protect the data from unauthorized use.

There has been turnover within HR in recent years that required employees to fill in for other roles. During that time, the review of criminal information varied between several employees who may not have had experience reviewing criminal information.

Metro's policy stated that the Office of Metro Attorney (OMA) was responsible for determining applicants' suitability for employment based on the information obtained through the recruitment process. However, we were told it was uncommon to involve OMA and that OMA was only consulted in the most challenging situations. Additional criteria to help determine when OMA should be consulted would help ensure Metro's policy and guidance was implemented as intended.

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## Recommendations

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To reduce the risk of insufficient or inappropriate criminal background searches, the Human Resources with input from Office of Metro Attorney and hiring managers, should:

1. Formally approve a list of positions, including volunteer positions, for each type of background check.
2. Periodically reassess and update the list.

To reduce the chances of misalignments between expected and actual criminal background searches, the Human Resources Recruiting Manager should:

3. Create a process to regularly verify the scope of the criminal searches ordered by Metro.

To ensure consistent reviews, and safeguard criminal background information, the Human Resources Director and Office of Metro Attorney should:

4. Document the process and personnel involved in reviewing criminal background information.
5. Establish a process to formally approve who has access to criminal background information, including the duration that access has been granted.

To reduce the chances an employee or volunteer will be allowed to work prior to being approved by LEDS, the Human Resources Recruiting Manager should:

6. Document the process and timelines for notifying managers and supervisors about the LEDS status of their employees and volunteers.

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## Scope and methodology

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The objective of this audit was to determine if Metro's criminal background check process provided sufficient and appropriate information to ensure consistent hiring decisions. The scope of the audit was 2011 through November 2019. Metro began requiring criminal background checks in 2011.

To meet our objective, we reviewed policy, guidance, and data related to Metro's criminal background check process. We also obtained and reviewed information about the criminal background check processes at Clackamas County, Multnomah County, Washington County, and the city of Portland. We reviewed previous audits related to this topic, professional literature about background checks, and data from Metro's human resources and financial accounting systems.

We also analyzed criminal background check records maintained by the Human Resources department. Since we used data and evidence from multiple sources and did not rely solely on Metro's data for our findings, we did not assess the data's reliability.

We interviewed Metro employees involved in the process, and some of the managers who hire the employees and volunteers who were required to complete a LEDS search. We interviewed representatives from two of the local jurisdictions that we used as comparisons. We also interviewed representatives from several of Metro's external service providers.

This audit was initiated, in part, based on a concern raised about safety and security of Metro employees after the gap in information about federal court records was discovered. While researching that issue, additional concerns were raised about privacy and the effectiveness of the background check process for some recruitments and volunteer appointments.

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.

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# Management response

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## Memo



Date: Friday, Feb. 21, 2020

To: Brian Evans, Metro Auditor

From: Andrew Scott, Interim Chief Operating Officer

Subject: Background Check Audit Response

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Thank you for your recent audit of Metro's background check practices during the hiring process. Below you will find a written response to each of the six recommendations including our proposed plans and implementation timelines. Management agrees with all of the recommendations.

Metro is in a solid position given our consistent approach to conducting criminal background checks prior to hiring for any position. This consistency will support successful implementation of the improvements outlined below. I appreciate the Auditor and his staff's work on this issue and look forward to moving forward on these recommendations.

**Recommendation 1:** Formally approve a list of positions, including volunteer positions, for each type of background check.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will develop a list of classifications or positions and the type of check required for each.
- **Timeline:** December 31, 2020

**Recommendation 2:** Periodically reassess and update the list.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will reassess this list on an annual basis to ensure that any new classifications or positions are added and that any necessary updates are captured.
- **Timeline:** December 31, 2020

**Recommendation 3:** Create a process to regularly verify the scope of the criminal searches ordered by Metro.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** Each year when HR reassesses this list of classifications or positions that require background checks, we will also review the scope of the criminal searches that are ordered.
- **Timeline:** December 31, 2020

**Recommendation 4:** Document the process and personnel involved in reviewing criminal background information.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will provide a list of staff (by position title) of those involved in reviewing criminal background check information.
- **Timeline:** December 31, 2020

**Recommendation 5:** Establish a process to formally approve who has access to criminal background information, including the duration that access has been granted.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will provide a list of staff (by position title) of those involved in reviewing criminal background check information. This list will also include the duration for which access to the criminal background information is granted.
- **Timeline:** December 31, 2020

**Recommendation 6:** Document the process and timelines for notifying managers and supervisors about the LEADS status of their employees and volunteers.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will document a standard operating procedure (SOP) that outlines the process and timelines associated with background checks conducted through the State of Oregon's Law Enforcement Data Systems (LEADS).
- **Timeline:** December 31, 2020

# Criminal Background Check Process: Refinements needed to further reduce risks

## Why this audit is important

Background checks are used by employers to get information about candidates for job openings. The scope of what is searched can vary, but generally background checks include information about a candidate's education and work history, at a minimum. References from previous colleagues and criminal records searches are other common types of background information employers may use to inform their hiring decisions.

This audit focused on Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions.

All candidates that have been given a conditional offer of employment by Metro are required to complete a criminal background check. The purpose of the check is to protect the wellbeing of its employees and the public, and safeguard agency assets. The source of the criminal information and thoroughness of the searches depends on the position and its responsibilities. For example, positions that work with children are required to have a more comprehensive criminal background search compared to positions that do not work with children.

## What we found

We found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions. However, there were some weaknesses that made it less likely that sufficient criminal background information would be available.

Until March 2019, criminal records from federal courts were not included in most background searches. Metro believed those records were part of its contract with one of the external providers, but they were not. In addition, implementation of some parts of Metro's background check policy were underdeveloped. This increased the chance that some senior-level positions and some volunteers were not checked as thoroughly as allowed by policy.

Formally designating the type of criminal background check required for each position would reduce the risk of insufficient or inappropriate checks. We also found clearer roles and responsibilities were needed to control who has access to criminal background information and ensure it was kept up-to-date.

## Criminal background checks are intended to balance safety and security considerations with fairness to job applicants



## What we recommend

The audit included six recommendations to:

- Reduce the risk of insufficient or inappropriate criminal background searches.
- Ensure consistent reviews of criminal background information.
- Safeguard criminal background information.
- Reduce the chances an employee or volunteer will be allowed to work prior to completing the criminal background check process.

Agenda Item No. 3.1

**Resolution No. 20-5064**, For the Purpose of Amending the FY 2019-20 Budget and Appropriations Schedule and FY 2019-20 Through FY 2023-24 Capital Improvement Plan to Provide Changes in Operations

*Resolutions*

Metro Council Meeting  
Thursday, March 19, 2020

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY 2019-	)	RESOLUTION NO 20-5064
20 BUDGET AND APPROPRIATIONS SCHEDULE	)	Introduced by Marissa Madrigal, Chief
AND FY 2019-20 THROUGH FY 2023-24 CAPITAL	)	Operating Officer, with the concurrence of
IMPROVEMENT PLAN TO PROVIDE FOR	)	Council President Lynn Peterson
CHANGES IN OPERATIONS	)	

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2019-20 Budget; and

WHEREAS, Metro Code chapter 2.02.040 requires Metro Council approval to add any new position to the budget; and

WHEREAS, the need for the increase of appropriations has been justified; and

WHEREAS, adequate funds exist for other identified needs; and

WHEREAS, ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund’s appropriations, if such transfers are authorized by official resolution or ordinance of the governing body, and

WHEREAS, ORS 294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer, and

WHEREAS, ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, and

WHEREAS, ORS 294.338(3) ) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, now, therefore

BE IT RESOLVED,

1. That the FY 2019-20 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled “Revision” of Exhibits A and B to this Resolution for the purpose of recognizing new revenues, approving new FTE, transferring funds from contingency and providing for increased appropriations.
2. That the FY 2019-20 through FY 2023-24 Capital Improvement Plan is hereby amended accordingly.

ADOPTED by the Metro Council this 19th day of March, 2020.

\_\_\_\_\_  
Lynn Peterson, Council President

APPROVED AS TO FORM:

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

**Exhibit A**  
**Resolution 20-5064**  
**Schedule of Appropriations**

<b>GENERAL FUND</b>	<b><u>Current Appropriation</u></b>	<b><u>Revision</u></b>	<b><u>Revised Appropriation</u></b>
Council	8,013,471		8,013,471
Office of the Auditor	821,704		821,704
Office of Metro Attorney	2,928,917		2,928,917
Information Services	6,656,621		6,656,621
Communications	2,631,021		2,631,021
Finance and Regulatory Services	6,018,713		6,018,713
Human Resources	3,703,675		3,703,675
Property and Environmental Services	2,399,023		2,399,023
Parks and Nature	12,330,623		12,330,623
Planning and Development Department	36,522,239		36,522,239
Research Center	6,118,459		6,118,459
Special Appropriations	4,259,148	679,300	4,938,448
Non-Departmental			
Debt Service	2,173,009	-	2,173,009
Interfund Transfers	19,576,655	-	19,576,655
Contingency	8,108,388	(679,300)	7,429,088
<i>Total Appropriations</i>	122,261,666	-	122,261,666
Unappropriated Balance	20,548,620	-	20,548,620
<b>Total Fund Requirements</b>	<b>\$142,810,286</b>	<b>\$0</b>	<b>\$142,810,286</b>
<b>MERC FUND</b>			
MERC	96,269,293	200,000	96,469,293
Non-Departmental			
Interfund Transfers	6,773,587		6,773,587
Contingency	22,340,903	(200,000)	22,140,903
<i>Total Appropriations</i>	125,383,783	-	125,383,783
<b>Total Fund Requirements</b>	<b>\$125,383,783</b>	<b>\$0</b>	<b>\$125,383,783</b>
<b>PARKS AND NATURAL AREAS LOCAL OPTION LEVY FUND</b>			
Parks and Nature	12,504,850	12,839	12,517,689
Special Appropriations	1,000,000	-	1,000,000
Non-Departmental			
Interfund Transfers	4,297,205	-	4,297,205
Contingency	4,229,580	(12,839)	4,216,741
<i>Total Appropriations</i>	22,031,635	-	22,031,635
<b>Total Fund Requirements</b>	<b>\$22,031,635</b>	<b>\$0</b>	<b>\$22,031,635</b>
<b>SOLID WASTE FUND</b>			
Property and Environmental Services	85,937,928	157,855	86,095,783
Non-Departmental			
Interfund Transfers	7,048,314	-	7,048,314
Contingency	14,336,561	(157,855)	14,178,706
<i>Total Appropriations</i>	107,322,803	-	107,322,803
Unappropriated Balance	31,189,775	-	31,189,775
<b>Total Fund Requirements</b>	<b>\$138,512,578</b>	<b>\$0</b>	<b>\$138,512,578</b>
<b>Total Appropriations</b>	<b>851,460,783</b>	<b>-</b>	<b>851,460,783</b>
<b>Total Unappropriated Balance</b>	<b>507,926,111</b>	<b>-</b>	<b>507,926,111</b>
	<b>1,359,386,894</b>	<b>-</b>	<b>1,359,386,894</b>
<b>All Other Appropriations Remain as Previously Adopted</b>			

**Exhibit B**  
**Resolution 20-5064**  
**Schedule of FTE**

	<b>Current FTE</b>	<b>Revision</b>	<b>Revised FTE</b>
<b>PARKS AND NATURAL AREAS LOCAL OPTION LEVY FUND</b>			
<b>TOTAL FUND FTE</b>	<b>49.30</b>	<b>1.00</b>	<b>50.30</b>
<b>SOLID WASTE FUND</b>			
<b>TOTAL FUND FTE</b>	<b>175.01</b>	<b>5.00</b>	<b>180.01</b>
<b>TOTAL FTE</b>	<b>993.56</b>	<b>6.00</b>	<b>999.56</b>

All Other FTE Remain as Previously Adopted

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION 20-5064 FOR THE PURPOSE OF AMENDING THE FY 2019-20 BUDGET AND APPROPRIATIONS SCHEDULE AND THE FY 2019-20 THROUGH FY 2023-24 CAPITAL IMPROVEMENT PLAN FOR CHANGES IN OPERATIONS

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Date: 3.5.2020

Prepared by: Lisa Houghton, 503.797.1829,  
Lisa.Houghton@oregonmetro.gov

Department: Finance and Regulatory Services

Presenter: Cinnamon Williams, 503.797.1695,  
Cinnamon.Williams@oregonmetro.gov

Meeting date: 3.19.2020

Length: 10 minutes

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#### ISSUE STATEMENT

This resolution will authorize increases in appropriations and FTE in the FY 2019-20 Budget and approve changes to the FY 2019-20 through FY 2023-24 Capital Improvement Plan.

#### ACTION REQUESTED

Council adoption of Resolution 20-5064.

#### IDENTIFIED POLICY OUTCOMES

Council approval will authorize the additional appropriations and FTE requested by departments for FY 2019-20 and approve requested changes to the FY 2019-20 through FY 2023-24 Capital Improvement Plan.

#### POLICY QUESTION

Council should consider whether the increases of appropriations and FTE have been justified, that adequate funds exist for other identified needs and that proposed changes to the Capital Improvement Plan appear appropriate.

#### POLICY OPTIONS FOR COUNCIL TO CONSIDER

Adoption of the Resolution will provide sufficient appropriations and FTE to accommodate the changes in operations outlined by the departments. Adoption will also allow for changes to capital projects, again due to operational factors.

Disapproval of the Resolution will require departments to reevaluate their proposed changes to operational and capital plans due to the denied requests for additional resources and changes in capital projects.

#### STAFF RECOMMENDATIONS

The Interim Chief Operating Officer recommends adoption of Resolution 20-5064.

#### STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

**Known Opposition:** None known.

**Legal Antecedents:** ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund's appropriation, if such transfers are authorized by official resolution or ordinance of the governing body. ORS

294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer. ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. ORS 294.338(3) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. Metro code chapter 2.02.040 requires the Metro Council to approve the addition of any position to the budget. Metro's adopted financial policies require any project exceeding \$100,000 or an existing CIP project increasing greater than 20 percent to receive Council approval.

**Anticipated Effects:** This action provides for changes in operations as described above, provides additional appropriations authority and adds 6.00 FTE.

**Budget Impacts:** This action has the following impacts on the FY 2019-20 budget:

- Adds 5.00 FTE and provides \$157,855 to the Solid Waste fund through a transfer from the fund's contingency
- Adds 1.00 FTE and provides \$12,839 to the Parks and Local Option Levy fund through a transfer from the fund's contingency
- Provides \$679,300 to the General Fund through a transfer from the fund's contingency
- Amends the FY 2019-20 through FY 2023-24 Capital Improvement Plan for projects at the Metro Regional Center and Oregon Convention Center. The project changes do not require increases to current year appropriations in the General Asset Management fund and provide \$200,000 to the Oregon Convention Center fund through a transfer from the fund's contingency.

## **BACKGROUND**

The following amendments have been proposed for Council review and action:

*5.00 FTE for Waste Prevention and Environmental Services - Estimated Annualized Costs of \$631,300 - Current Year Appropriations of \$157,855 Provided by a Transfer from the Solid Waste Fund's Contingency*

Waste Prevention and Environmental Services (WPES) is requesting the following positions based on an organizational assessment conducted to evaluate the structure of the department. The assessment identified how the department should be organized to best achieve the 2030 Regional Waste Plan and the additional resources needed to accomplish the work. The new organizational structure will be implemented in phases during the next six to eight months. The FTE requested will address structural shortfalls in support of increasing demand for services, and needed financial and administrative support. FTE requested includes:

- 1.00 FTE Deputy Director to address identified gaps in leadership critical to implementing the Regional Waste Plan and focusing on cross-departmental coordination. Currently, the Department Director is responsible for oversight of both internal operations and strategic direction. This position will oversee four operating units with more than 175 employees and six direct reports thereby allowing the Department Director to focus on the strategic direction of the department; managing external stakeholder relations with industry, local elected leaders and community organizations and meeting Councilor needs. Annualized

costs for the position are estimated at \$189,800; costs for the remainder of this fiscal year are \$47,453.

- 1.00 FTE Manager I to help implement the new department organizational structure and provide the needed management capacity to address span of control issues within the WPES education and technical assistance programs. This position will provide more efficient delivery of programs and services. Currently, the recycling information center functions is managed by the PES Education Programs Manager who is responsible for the youth education and leadership programs and has 25 direct reports. This position will better align competencies to deliver on department goals and make span of control more reasonable and supportive of employees. Annualized costs for the position are estimated at \$136,100; costs for the remainder of this fiscal year are \$34,029.
- 1.00 FTE Construction Project Manager I to supervise St. Johns landfill, environmental compliance of Metro's solid waste facilities, oversee facility maintenance and improve overall safety for customers and staff. Recent years have seen substantial investment in our asset management maturity and competency and we want to move forward with more intentional care of Metro's physical assets. In addition, WPES' recent development of Disaster Debris Management and Continuity of Operations Plans identifies the need to protect our assets from disruptions – whether caused by humans or nature. Annualized costs for the position are estimated at \$113,400; costs for the remainder of this fiscal year are \$28,347.
- 1.00 FTE Education Specialist III to provide essential capacity to carry-out WPES education campaigns and efforts related to recycling contamination, climate mitigation, toxics reduction and the Recycle or Not campaign. Without this position, WPES lacks capacity in other positions to project manage this portfolio of complex education campaigns and communications-related contracts. Annualized costs for the position are estimated at \$96,000; costs for the remainder of this fiscal year are \$24,013.
- 1.00 FTE for a MetroPaint Sales Representative to aggressively focus on increasing and maintaining paint sales for our MetroPaint program. The program's goal is to function as a revenue neutral operation and this requires efforts to retain and grow market share. MetroPaint has achieved positive results and shown "proof of concept" by filling this role temporarily during calendar year 2019. The additional FTE is essential to the overall continued success of MetroPaint and ensuring that recycled paint gets used and not end up in a landfill. Human Resources is currently developing the new job classification. Annualized costs for the position, based on Human Resources evaluation of the proper pay range, are estimated at \$96,000; costs for the remainder of this fiscal year are \$24,013.

1.00 FTE for Parks and Nature - Estimated Annual Costs of \$77,000 - Current Year Appropriations of \$12,839 Provided by a Transfer from the Parks and Local Option Levy fund's Contingency

Parks and Nature is requesting the following position:

- 1.00 FTE Park Ranger to provide overnight staff at Oxbow Park. The position will address safety concerns at Oxbow related to numerous hours each day where park attendees are in Oxbow camping without a single staff member present. The request is being made in March in order to fill the position by May when camping activity at Oxbow begins to increase. Annualized costs for the position are estimated at \$77,000; costs for the remainder of this fiscal year are \$12,839. A transfer from the Parks and Nature Local Option Levy fund will cover the current year costs.

\$679,300 of Additional Appropriations for General Fund Elections Expenses Provided by a Transfer from the General Fund's Contingency

Metro's apportioned elections expense for the November 2019 Parks and Nature Fund ballot measure across Washington, Multnomah, and Clackamas Counties was \$604,238. Metro estimates the May 2020 elections, which will include three Councilor seats and likely a homeless services measure, will cost \$200,000. The General Fund currently has \$125,000 budgeted for elections expenses, therefore an additional \$679,300 is requested from the General Fund Contingency.

Capital Asset Management - Capital Improvement Plan Changes –No Additional Appropriations Requested

The following Capital Improvement Projects require revision as outlined below:

General Asset Management Fund (Metro Regional Center):

- MRC Fire Stoppage (01332): In 2019 the Metro Regional Center began replacing missing fire stop insulation to meet life, safety and health code requirements. Many existing conditions that required repair were unidentified at the time the project began due to their location behind insulation, ceiling tiles, etc. As contractors have exposed these issues, the amount of repair work required has increased significantly. To fully remedy all code deficiencies, the project budget will need to be increased by \$600,000. Budgeted MRC HVAC and BAS replacement projects that have come in under-spent in the current fiscal year are being reduced to cover the additional costs. No additional appropriations are requested.
- MRC HVAC & BAS Replacements (MRC001): Project budget reduced due to decrease in year to date spending.

Attachment 1 outlines the capital projects changes requested.

Oregon Convention Center - Capital Improvement Plan Changes –\$200,000 of Additional Appropriations Provided by a Transfer from the Fund's Contingency

The following Capital Improvement Projects require revision as outlined below:

Oregon Convention Center:

- Waterproofing: Loading Dock and PPL V: In October 2019, water entered the vault room and shorted out the electrical bus duct servicing the Oregon Convention Center. This project will address waterproofing failures on the loading dock that are contributing to water intrusion into the Pacific Power transformer vault room below. The increased project costs will be funded by a transfer from the fund's contingency.

Attachment 2 outlines the capital projects changes requested.

**ATTACHMENTS**

- Resolution 20-5064
- Exhibit A – Schedule of Appropriations
- Exhibit B – Schedule of FTE
- Attachments 1-2 - Capital Project Details

**Mid Year Amendment FY 2019-20 BUDGET**

**Capital Project Detail**

**Capital Asset Management (MRC)**

Attachment 1

Resolution 20-5064

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source/s of Funding (Carry Fwd, Grant, etc.)	Other Project Comments
							2020	2021	2022	2023	2024		
N	01332	MRC Fire Stoppage	526000	618	00434	6/30/2020	1,000,000					Budget is being increased to a total project budget of \$1,000,000.	Using savings from other projects to fund additional costs
N	MRC001	HCAV & BAS Replacments	574000	618	434	6/30/2020	1,881,756					Budget is being reduced by \$600,000 to a total of \$\$1,881,856.	Using \$600,000 from the HVAC and BAS Upgrades to supplement the MRC Fire Stoppage project

**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Oregon Convention Center**

Attachment 2

Resolution 20-5064

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source/s of Funding (Carry Fwd, Grant, etc.)	Other Project Comments
							2020	2021	2022	2023	2024		
Y	OCCTBD	Waterproofing: Loading Dock and PPL V	526100	550	55999	6/30/2021	200,000	350,000					

Agenda Item No. 3.2

**Resolution No. 20-5074**, For the Purpose of Authorizing  
General Obligation Bonds Under the 2019 Parks and Nature  
Measure  
*Resolutions*

Metro Council Meeting  
Thursday, March 19, 2020

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 20-5074
GENERAL OBLIGATION BONDS	)	
UNDER THE 2019 PARKS AND NATURE	)	Introduced by Chief Financial Officer Brian
MEASURE 26-203	)	Kennedy with concurrence of Council
	)	President Lynn Peterson

WHEREAS, voters in the Metro region approved a \$475,000,000 bond measure at the November 5, 2019 election (“Measure 26-203”) to protect clean water, natural areas, access to parks and nature, and other capital costs, as described in the ballot title for Measure 26-203; and,

WHEREAS, it is now desirable to authorize the sale of up to \$200,000,000 of bonds under the authority of Measure 26-203; and,

WHEREAS, Oregon Revised Statutes (“ORS”) Section 268.520 limits the amount of the Metro’s outstanding general obligation bonds to ten percent (10%) of the real market value of taxable property within the Metro region and issuing the bonds authorized under this resolution will not cause Metro to exceed its debt limit;

BE IT RESOLVED by the Metro Council as follows:

**Section 1. Bonds Authorized.**

The Metro Council hereby authorizes the issuance of up to \$200,000,000 of the general obligation bonds that were authorized by Measure 26-203. The bonds authorized by this Section 1 (the “Bonds”) shall be sold and issued as provided in this resolution pursuant to ORS Section 268.520 and the applicable provisions of ORS Chapter 287A. Proceeds of the Bonds shall be used for the purposes authorized in Measure 26-203 and costs related to the Bonds.

**Section 2. Delegation.**

The Chief Operating Officer, the Chief Financial Officer, or their designee to act under this resolution (the “Metro Official”), on behalf of Metro and without further action by Metro Council, may:

- 2.1 Issue the Bonds in one or more series that may be sold at different times.
- 2.2 Apply for ratings for each series of Bonds, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancements for each series of Bonds, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.
- 2.3 Prepare, execute and deliver a bond declaration for each series of Bonds specifying the terms under which each series of Bonds is issued, and entering into covenants for the benefit of Bond owners.
- 2.4 Issue any qualifying series of Bonds as “tax-exempt bonds” bearing interest that is excludable from gross income under the Internal Revenue Code of 1986, as amended, (the “Code”) and enter into covenants for the benefit of the owners of those series to maintain the excludability of interest on those series from gross income under the Code.

- 2.5 Issue any series of Bonds as “taxable bonds” bearing interest that is includable in gross income under the Code.
- 2.6 Participate in the preparation of, authorize the distribution of, and deem final the preliminary and final official statements and any other disclosure documents for each series of the Bonds.
- 2.7 Undertake to provide continuing disclosure for each series of the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.
- 2.8 Engage the services of and enter into agreements with paying agents, registrars, and any other professionals and service providers that the Metro Official determines are desirable in connection with the Bonds.
- 2.9 Solicit competitive bids for the purchaser of each series of Bonds and award their sale to the bidder offering the most favorable terms to Metro, or select one or more underwriters or lenders, negotiate the terms of the sale of each series of Bonds, and sell that series.
- 2.10 Establish the final principal amounts, maturity schedules, interest rates, sale prices, redemption terms, payment terms and dates, record date and other terms of each series of the Bonds.
- 2.11 Issue, sell and deliver the Bonds and execute any documents and take any other action in connection with the Bonds that the Metro Official finds will be advantageous to Metro in accordance with this resolution.

### **Section 3. Security For Bonds.**

Metro hereby pledges its full faith and credit to pay the Bonds. Metro hereby covenants for the benefit of the Bond owners to levy a direct ad valorem tax upon all of the taxable property within Metro which is sufficient, after taking into consideration discounts taken and delinquencies that may occur in the payment of such taxes, to pay all Bond principal and interest when due. Metro covenants to levy this tax each year until all the Bonds are paid. This tax shall be in addition to all other taxes of Metro, and this tax shall not be limited in rate, amount or otherwise, by Sections 11 or 11b of Article XI of the Oregon Constitution.

### **Section 4. Effective Date.**

This resolution shall take effect on the date of its passage by the Metro Council.

ADOPTED by the Metro Council this 19<sup>th</sup> day of March, 2020.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 20-5074, FOR THE PURPOSE OF AUTHORIZING THE SALE OF \$200,000,000 OF GENERAL OBLIGATION BONDS UNDER THE 2019 PARKS AND NATURE MEASURE**

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Date: February 25, 2020  
Department: Finance and Regulatory  
Services  
Meeting Date: March 19, 2020

Prepared by: Lisa Houghton, 503-797-  
1829, [lisa.houghton@oregonmetro.gov](mailto:lisa.houghton@oregonmetro.gov)  
Presenter: Brian Kennedy  
Length: 10 minutes

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#### **ISSUE STATEMENT**

The purpose of this resolution is to authorize the sale of up to \$200,000,000 of general obligation bonds in May 2020. The resolution was prepared with the assistance of Metro's bond counsel Hawkins, Delafield & Wood, LLP and Metro's financial advisor, Piper Sandler.

#### **ACTION REQUESTED**

Council adoption of Resolution No. 20-5074.

#### **IDENTIFIED POLICY OUTCOMES**

Council authorization of the sale of up to \$200,000,000 of Park and Nature General Obligation Bonds approved by voters on November 5, 2019.

#### **POLICY QUESTION(S)**

Is Council ready to authorize the sale of up to \$200,000,000 of bonds to provide funding for the initial phases of the programs outlined in the Parks and Nature November 5<sup>th</sup>, 2019 ballot measure?

#### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Council can authorize the sale of up to \$200,000,000 of bonds now followed by additional bond issuances up to the \$475,000,000 approved by the voters or postpone authorization pending receipt of additional information.

#### **STAFF RECOMMENDATIONS**

The Interim Chief Operating Officer recommends Council adoption of Resolution No. 20-5074.

#### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

- How is this related to Metro's Strategic Plan or Core Mission?

The proceeds from the bond sale will fund the Parks and Nature programs as approved by voters in November 2019. The programs align with the Greenspaces Master Plan, the Parks and Nature System Plan, the Regional Conservation Strategy and the Strategic Plan to Advance Racial Equity, Diversity and Inclusion.

- **Known Opposition/Support/Community Feedback:**

None

- **Legal Antecedents:**

Metro may issue general obligation bonds pursuant to the authority granted by Metro

Charter Section 10 and ORS 268.520 and the applicable provisions of ORS Chapter 287A and pursuant to the voters' approval of Measure 26-203 at the general election held on November 5, 2019.

- **Anticipated Effects:**

This action authorizes the issuance of up to \$200,000,000 in general obligation bonds for Parks and Nature programs. It also authorizes the Chief Operating Officer, Chief Financial Officer or their designee to negotiate and sign all documents and conduct the sale and issuance of the bonds.

- **Financial Implications (current year and ongoing):**

The issuance of the bonds will generate funding for the Parks and Nature programs in the current and future fiscal years. Bond proceeds will be recognized in the current fiscal year. Current fiscal year appropriations and FTE required to begin implementation of the programs were approved by Council by adoption of Resolution 20-5065 on February 6<sup>th</sup>, 2020. Payments for debt service will be included in the FY 2020-21 budget and future budgets.

## **BACKGROUND**

### **Parks and Nature Bonds:**

In November 2019 Metro's voters authorized \$475,000,000 in general obligation bonds to fund programs designed to protect natural areas in greater Portland and connect people to nature close to home. The program's guiding principles include; protecting clean water for people, fish and wildlife, improving habitat for native fish and wildlife, protecting and restoring culturally significant native plant communities, advancing racial equity and serving communities through inclusive engagement, transparency and accountability. To date, Metro has not issued bonds under the authority of the Parks and Nature Measure.

### Issuance amount

This \$200,000,000 issuance will be the first in a series of bond issuances planned in the next several fiscal years. Metro believes that issuing up to \$200,000,000 this spring will take advantage of current low interest rates, generate high buyer interest in the marketplace and provide sufficient funding for the initial components of the multi-year planned projects.

### Ratings Review

Metro currently carries bond ratings of “AAA,” the gold standard, from Moody’s Investor’s Service and S&P Global Ratings. Metro anticipates seeking ratings from both agencies again for this bond sale, a significant work effort for the entire agency, from financial, program and executive staff, to the Council. We are confident that Metro’s financial discipline and adherence to our financial policies will be seen favorably and result in confirmation of our highest ratings. Piper Sandler, our financial advisor, will assist us in preparing for the ratings meeting which is scheduled for this March.

### Impact to Taxpayers

Metro’s tax bill for bonded debt remains relatively low compared with other governmental agencies. While the final levy cannot be determined until after the sale, we estimate that the average increase for our taxpayers over the current year, including this new issuance the adjustment for all other scheduled debt, will be no more than 19 cents per thousand of assessed value. For a property assessed at \$200,000, the average metropolitan property amount, this would be an additional \$48 per year, approximately \$3 per month, all within the parameters described to the voters at the time of the November 5, 2019 election.

### **ATTACHMENTS**

- Is legislation required for Council action? Yes
- If yes, is draft legislation attached? Yes
- What other materials are you presenting today? None

Materials following this page were distributed at the meeting.

**From:** [Wufoo](#)  
**To:** [Legislative Coordinator](#)  
**Subject:** [External sender]Submit testimony to Metro Council [#35]  
**Date:** Wednesday, March 18, 2020 2:53:33 PM

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**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Name *	Daniel Frye
Email *	<a href="mailto:danielfrye@gmail.com">danielfrye@gmail.com</a>
Address	<input type="checkbox"/> 9326 NW Murdock Street Portland, Oregon 97229 United States

#### Your testimony

My name is Daniel Frye and I strongly urge Metro to commit to a faster, smarter transition to an all-electric bus fleet. TriMet has placed an order for the first 31 diesel-fueled 60 ft articulated buses for the Division Street project and has stated they will continue to buy more while "hoping" for new electric buses that fit their specification will come on the market. New diesel buses purchased now to start operation in 2022 will still be on the road in 2034. That is not good enough. Even worse will be the bus orders that will come after the first 31. Those will be on Portland's streets well into the late 2030s. That is unacceptable. In light of the governor's declaration of a climate emergency (EO 20-04), Metro & TriMet need to strengthen their commitment to combating climate change now. Three points:

#1) The current commitment by Metro & TriMet for an all-electric bus fleet by 2040 is way too slow and much too cautious. Our climate crisis calls for faster action. I call on Metro & TriMet to set a new target of 2030 to convert the entire fleet to electric. This acceleration will reduce climate pollution, toxic diesel emissions and save on operating costs.

#2) Any of the diesel buses currently being operated by TriMet can be converted to electric. In addition to switching from polluting diesel to cleaner/cheaper electricity, the conversion process itself can be done here in the Portland metro region. There are multiple local companies with the capability of creating a manufacturing line to process conversions from diesel to electric, which would add jobs here. Also, given that electric buses have a longer lifetime on the road, they'll stay on the road longer, further reducing the overall program expense.

#3) There is an active market for used city buses. Metro & TriMet should investigate buying used and converting those to electric. It may well be faster and cheaper than ordering new buses and likely much faster and cheaper than waiting for the perfect articulated electric bus of the future.

We can and must move faster to address our climate emergency.

Sincerely,  
Daniel D. Frye, PhD

Portland  
OLCV Metro Climate Action Team

Is your testimony related to an item on an upcoming agenda? \* No

Hi! My name is Micealle Hawkins. I've worked at OCC for Aramark since 2008. All of us are so afraid that we are going to lose our seniority, our pension, our healthcare. Our question for the Metro Council is: will we keep our jobs? Our Union? Our Contract? Our Healthcare and pensions? All of us are invested in this beautiful building where we work. Thank you for your time and consideration.

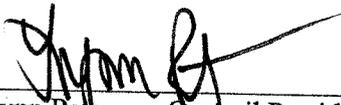
## Metro Council President Declaration of Emergency

The following conditions have resulted in the need for an emergency declaration to allow Metro Council to conduct council meetings, including work sessions, electronically:

- A. On March 11, 2020, COVID-19 was declared a pandemic by the World Health Organization.
- B. COVID-19 may cause respiratory disease leading to serious illness or death. COVID-19 spreads person-to-person through coughing, sneezing, close personal contact, including touching a surface with the virus on it, and then touching your mouth, nose, or eyes.
- C. State and local public health officials advise that the virus is circulating in the community and expect the number of cases to increase. The United States Centers for Disease Control (CDC) reports that COVID-19 is most contagious when the individual is most symptomatic, but may spread before symptoms appear. CDC recommends measures to limit the spread of the disease in the community
- D. On March 8, 2020, Governor Brown declared a state of emergency due to the COVID-19 outbreak in Oregon (Executive Order No. 20-03), finding that COVID-19 has created a threat to public health and safety, and constitutes a statewide emergency under ORS 401.025(1).
- E. On March 16, 2020, Governor Brown issued Executive Order No. 20-07, prohibiting gatherings of more than 25 people, and encouraging exempt businesses and services implement social distancing protocols.
- F. Metro Code 2.01.055 authorizes the Metro Council President to declare an emergency situation to enable the Metro Council to conduct its meetings electronically.

THEREFORE, based on the above findings, I hereby declare an emergency in accordance with Metro Code Section 2.01.055 and order that all Metro Council meetings will be conducted electronically, effective March 18, 2020, and continuing until otherwise directed.

Dated this 18<sup>th</sup> day of March, 2020.

  
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Lynn Peterson, Council President