



*Code of the
Metropolitan
Service District*

June 1991

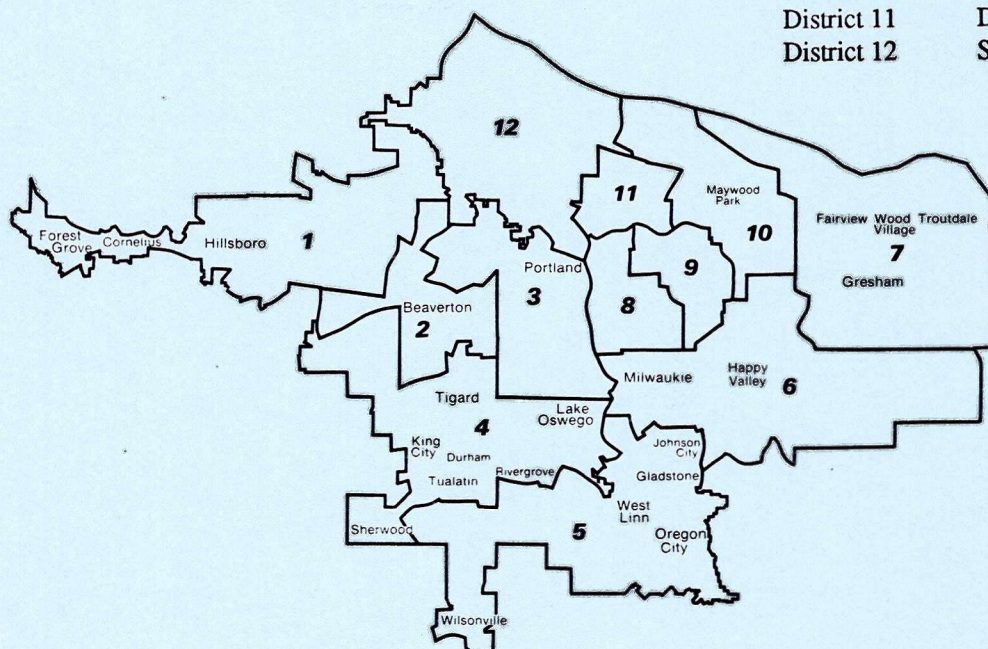
METRO

The Metropolitan Service District, your regional government, handles regionwide concerns in the urban areas of Clackamas, Multnomah and Washington counties. Metro is responsible for solid waste management, operation of the Metro Washington Park Zoo, transportation and land-use planning, urban growth boundary management, technical services to local governments and, through the Metropolitan exposition - Recreation Commission management of the Oregon Convention Center, Memorial Coliseum, Civic Stadium and Portland Center for the Performing Arts.

Executive officer
Rena Cusma

Councilors by district are:

District 1	Susan McLain
District 2	Lawrence Bauer
District 3	Jim Gardner
District 4	Richard Devlin
District 5	Tom DeJardin
District 6	George Van Bergen
District 7	Ruth McFarland
District 8	Judy Wyers
District 9	Tanya Collier
District 10	Roger Buchanan
District 11	David Knowles
District 12	Sandi Hansen



PREFACE

The Code of the Metropolitan Service District includes all general ordinances adopted and not repealed by the Board of the Metropolitan Service District prior to January 1, 1979 and by the Council of the Metropolitan Service District from January 1, 1979 to June 30, 1991.

At the end of each Code section is a notation in parentheses of the ordinance and ordinance section which adopted and/or amended Code language. At the end of the Code is a table listing all ordinances adopted up to June 30, 1991. If codified, the table gives the location of each section of each ordinance in the Code. Ordinances repealed prior to June 30, 1991 or otherwise not codified are noted in the table.

The Code is periodically revised as ordinances are adopted by the Council. Revised pages are noted at the lower right with the revised date. Report any errors to the Clerk of the Council at 221-1646, ext 206.

To obtain a copy of the Metro Code, contact the Clerk at extension 206. A \$15.00 fee is required to cover publishing and revisions costs.

CODE OF THE METROPOLITAN SERVICE DISTRICT
JUNE 1991 EDITION

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TITLE I

GENERAL PROVISIONS

CHAPTERS:

1.01 Code Adoption and Application

CHAPTER 1.01

CODE ADOPTION AND APPLICATION

SECTIONS:

1.01.001	Code Adoption
1.01.003	Code Revisions
1.01.010	Title, Citation, Reference
1.01.020	Reference Applies to Amendments
1.01.030	Codification Contents
1.01.040	Definitions
1.01.050	Grammatical Interpretation
1.01.060	Construction
1.01.070	Title, Chapter and Section Headings
1.01.080	Effect of Code on Past Actions and Obligations
1.01.090	Repeal Shall Not Revive Any Ordinances
1.01.100	Effective Date
1.01.110	Violations and Penalties
1.01.120	Severability
1.01.130	Repealer

1.01.001 Code Adoption: The "Code of the Metropolitan Service District" dated July 1983 is hereby adopted.

(Ordinance No. 83-157, Sec. 1)

1.01.003 Code Revisions: The Code may be revised and republished by the Executive Officer from time to time as necessary but not less often than annually. Such revisions shall include subsequently adopted general ordinances appropriate for codification pursuant to generally accepted standards for the codification of ordinances of Oregon municipal corporations.

(Ordinance No. 83-157, Sec. 2)

1.01.010 Title, Citation, Reference: This Code shall be known as the "Code of the Metropolitan Service District" and it shall be sufficient to refer to this Code as the "Code of the Metropolitan Service District" in any prosecution for the violation of any provisions thereof or in any proceeding at law or equity. It shall also be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction of, or repeal of the "Code of the Metropolitan Service District." Further reference may be had to the titles, chapters, sections and subsections of the "Code of the Metropolitan Service District," and such reference shall apply to that numbered title, chapter, section or subsection as it appears in this Code.

(Ordinance No. 83-157, Sec. 3)

1.01.020 Reference Applies to Amendments: Whenever a reference is made to this Code as the "Code of the Metropolitan Service District" or to any portion thereof, or to any ordinance of the Metropolitan Service District, the reference shall apply to all amendments, corrections and additions thereto.

(Ordinance No. 83-157, Sec. 4)

1.01.030 Codification Authority: This Code consists of all the general, regulatory and penal ordinances of the Metropolitan Service District as they exist on the date of this ordinance and as they may be adopted from time to time.

(Ordinance No. 83-157, Sec. 5)

1.01.040 Definitions: The following words and phrases whenever used in this Code shall be construed as defined in this section unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

(a) "Council" means the Council of the Metropolitan Service District of the Portland metropolitan area.

(b) "District" means the Metropolitan Service District of the Portland metropolitan area and all of the land and territory included within the boundaries of the Metropolitan Service District of the Portland metropolitan area as established by ORS 268.125 and as may be amended by annexation or withdrawal.

(c) "Executive Officer" means the Executive Officer of the Metropolitan Service District.

(d) "Metro" means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

(e) "Metropolitan Area" means the Oregon portion of a standard metropolitan statistical area designated by an agency of the United States.

(f) "Person" means any individual, public or private corporation, industry, partnership, association, firm, trust, estate, city, county, special district or local governmental unit and any other legal entity.

(g) "State" means the State of Oregon.

(Ordinance No. 83-157, Sec. 6)

1.01.050 Grammatical Interpretation: The following grammatical rules shall apply in this Code:

- (a) Gender. Any gender includes the other gender.
- (b) Singular and Plural. The singular number includes the plural and the plural includes the singular.
- (c) Tenses. Words used in one tense include any other tense as the context may require.
- (d) Use of Words and Phrases. Words and phrases used in this Code and not specifically defined shall be construed according to the context and approved usage of the language.

(Ordinance No. 83-157, Sec. 7)

1.01.060 Construction: The provisions of this Code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice.

(Ordinance No. 83-157, Sec. 8)

1.01.070 Title, Chapter, Section Headings: Title, chapter and section headings contained herein shall not be deemed to govern, omit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

(Ordinance No. 83-157, Sec. 9)

1.01.080 Effect of Code on Past Actions and Obligations: Neither the adoption of this Code or the repeal or amendment hereby of any other code, ordinance or part or portion of any ordinance shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee, or penalty due and unpaid at said effective date under such Code or ordinances, nor be construed as affecting any of the provisions of such Code or ordinances relating to the collection of any such license, fee, or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed, or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect. When a requirement or obligation under a prior Code or ordinance superseded by this Code is continued by this Code in substantially similar terms, the requirement or obligation and any time limit fixed by the prior Code or ordinance, or by official act or notice thereunder shall continue, and time shall be computed, in accordance with the terms of the prior ordinance, act or notice.

(Ordinance No. 83-157, Sec. 10)

1.01.090 Repeal Shall Not Revive Any Ordinances: The repeal of an ordinance shall not affect the repealing clause of such ordinance or revive any ordinance which has been repealed.

(Ordinance No. 83-157, Sec. 11)

1.01.100 Effective Date: This Code shall be effective upon the date of adoption.

(Ordinance No. 83-157, Sec. 12)

1.01.110 Violations - Penalty:

(a) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this Code. Any person violating any provision or failing to comply with any requirement of this Code, unless provision is otherwise made herein, shall upon conviction thereof, be punished by a fine of not more than Five Hundred (\$500), or by imprisonment for a period of not more than thirty (30) days in a county jail, or by both such fine and imprisonment. In addition, property shall be forfeited and permits or licenses may be suspended or revoked as provided in this Code.

(b) Any act or omission made unlawful under this Code shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing such act or omission.

(Ordinance No. 32-157, Sec. 13)

1.01.120 Severability: If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code.

(Ordinance No. 83-157, Sec. 14)

1.01.130 Repealer: Ordinance No. 30 is hereby repealed and the Code adopted thereby is hereby superseded by the Code adopted herein.

(Ordinance No. 83-157, Sec. 15)

TITLE II

ADMINISTRATION AND PROCEDURES

CHAPTERS:

- 2.01 Council Organization and Procedure
- 2.02 Personnel
- 2.03 Civil Penalties
- 2.04 Public Contract Procedures
- 2.05 Contested Case Procedures
- 2.06 Investment Procedures
- 2.07 One Percent for Art Program
- 2.08 Office of General Counsel
- 2.09 Contractor's Business License Program
- 2.10 Voters' Pamphlet
- 2.11 Office of Government Relations

CHAPTER 2.01

COUNCIL ORGANIZATION AND PROCEDURE

SECTIONS:

2.01.001	Definitions
2.01.010	Officers
2.01.020	Clerk of the Council
2.01.030	Regular Meetings
2.01.040	Special Meetings
2.01.050	Emergency Meetings
2.01.060	Notice and Agenda
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2.01.140	Committees of the Council
2.01.150	Local Government Advisory Committees
2.01.160	Other Advisory Committees
2.01.170	Per Diem and Expenditure Reimbursement Guidelines
2.01.180	Procedures for Appointing a Person to Fill a Vacancy on the Metro Council
2.01.190	Appointment Process, Qualifications and Terms of Office for Boundary Commission Members

2.01.001 Definitions: As used in this chapter the following terms shall have the meanings indicated:

(a) "Adoption" means the act of the Council to approve a motion to adopt an ordinance or resolution.

(b) "Clerk" means Clerk of the Council.

(c) "Final adoption" means 1) for an ordinance subject to veto by the Executive Officer the time and date an ordinance passes the five working days veto period without being vetoed or the act of the Council to override an Executive Officer veto of an ordinance; or 2) for an ordinance not subject to the Executive Officer's veto the date of adoption by the Council.

(d) "Quorum" means the majority of the Council or a committee.

(Ordinance No. 88-241, Sec. 1)

2.01.010 Officers:

(a) The Council shall, at its first meeting after the first Monday in January of each year, elect one Councilor to serve as its Presiding Officer for the ensuing year. The newly elected Presiding Officer shall appoint at the same meeting a Deputy Presiding Officer. The affirmative vote of the majority of the Council (7) is required to elect the Presiding Officer.

(b) The Presiding Officer will preside at all meetings of the Council and will preserve order and decorum. The Presiding Officer is authorized to sign all documents memorializing Council's action on behalf of the Council. The Presiding Officer will have a vote on each matter before the Council, but will not make motions unless first relinquishing the position of Presiding Officer for the purpose of making such motion.

(c) The Deputy Presiding Officer shall be the Presiding Officer in the absence or incapacity of the Presiding Officer, and will have the authority and perform the duties of the Presiding Officer.

(d) In the absence or incapacity of the Presiding Officer and the Deputy Presiding Officer, the Presiding Officer may designate a Councilor to act as the temporary Presiding Officer.

(e) The Presiding Officer or temporary Presiding Officer may be removed by the Council upon the affirmative vote of two-thirds of the Councilors (8).

(Ordinance No. 79-65, Sec. 1; amended by Ordinance No. 88-241, Sec. 1)

2.01.020 Clerk of the Council: The Clerk of the Council, or a qualified alternate designated by the Presiding Officer, shall act as agent of record for the District, shall act as recording secretary for the Council, shall be present at each meeting of the Council and shall provide that the proceedings be recorded as specified in Section 2.01.090(B). Sound recordings shall be made of each meeting. Equipment malfunction shall not be a reason to postpone the meeting and shall not negate the minutes. The Council Clerk may temporarily interrupt Council proceedings in the event of equipment malfunction, changes of tapes or other cause of short-term loss of recording. The Clerk shall also maintain a journal of Council proceedings that shall be available to the public during regular office hours.

(Ordinance No. 79-65, Sec. 2; amended by Ordinance No. 88-241, Sec. 1)

2.01.030 Regular Meetings: The Council shall meet regularly on the second and fourth Thursdays of each month at a time

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designated by the Presiding Officer. Regular meetings shall be held at a place designated in the published agenda of the meeting. Regular meetings may be adjourned to a specific time and place before the day of the next regular meeting. Published notice of the time and place of an adjourned meeting is not required. Matters included on the agenda of a regular meeting that is adjourned to a later date need not be republished. New matters to be considered at the adjourned meeting shall be published in the same manner as the agenda for a regular meeting.

(Ordinance No. 79-65, Sec. 3; amended by Ordinance No. 80-87, Sec. 1; amended by Ordinance No. 84-176, Sec. 1)

2.01.040 Special Meetings: The Presiding Officer or a majority of the Council (7) may call a special meeting of the Council provided that at least 24 hours notice is given to the Council and the general public. The agenda shall be limited to the purpose for which the meeting is called. Except for the provisions of this section, special meetings are subject to the same rules as regular meetings. If possible, the agenda and time and place of the meeting should be published in a newspaper of general circulation in the District. If publication is not possible, the provisions for notifying the public of emergency meetings should be followed.

(Ordinance No. 79-65, Sec. 4)

2.01.050 Emergency Meetings: In case of an actual emergency, the Presiding Officer or a majority of the Council may call an emergency meeting of the Council upon such notice as is appropriate to the circumstances. The agenda shall be limited to the purposes for which the meeting is called. To the extent possible, telephone calls and news released to the media and interested persons should be made to give public notice of the agenda and time and place of meeting.

(Ordinance No. 79-65, Sec. 5)

2.01.060 Notice and Agenda:

(a) An agenda that sets forth the time, date, and place of the meeting, that includes a brief description of the ordinances and other matters to be considered, and that states that copies of ordinances are available at the office of the Metropolitan Service District shall be published in a newspaper of general circulation within the District no more than ten (10) nor less than four (4) days before a regular meeting of the Council. If an Executive Session will be held, the Notice shall state the specific provision of the law authorizing the Executive Session.

(b) The Presiding Officer shall establish the agenda from the agenda items submitted by the Councilors, Council committees

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or the Executive Officer. The Presiding Officer may, at his or her discretion, determine the time by which agenda items must be submitted for inclusion in the next succeeding agenda and shall notify the Councilors, Council committees and the Executive Officer of such due dates.

(c) All ordinances and resolutions shall be referred to the Presiding Officer. With the exception of matters described in (d) of this section, the Presiding Officer shall refer each ordinance and resolution to an appropriate committee of the Council. Notice of such referral shall be in writing and distributed to each Councilor and the Executive Officer.

(d) The following matters shall be considered and acted upon by the Council as a whole:

- (1) Any ordinance or resolution placed on the agenda for any emergency meeting of the Council as authorized by section 2.01.050;
- (2) Any order, final order or ordinance proposed for Council action as a result of a contested case proceeding as provided in chapter 2.05 of the Metro Code; or
- (3) Any action of the Metropolitan Exposition-Recreation Commission placed on the Council agenda as provided by section 6.01.080 of the Metro Code.

(Ordinance No. 79-65, Sec. 6; amended by Ordinance No. 84-176, Sec. 2; and Ordinance No. 88-241, Sec. 1)

2.01.070 Ordinances:

(a) The legislative action of the Metropolitan Service District shall be by Ordinance.

(b) Except as provided in subsection (g) of this section, before an ordinance is adopted, it shall be read during two regular meetings of the Council on two different days at least six (6) days apart. The reading shall be full and distinct unless at the meeting:

- (1) A copy of the ordinance is available for each person who desires a copy; and
- (2) The Presiding Officer directs that the reading be by title only.

(c) Ordinances may be introduced for Council consideration by the Council, a Councilor, a committee of the Council or the

Executive Officer. The Council by resolution shall adopt procedures for introduction and consideration of ordinances.

(d) Except as provided in subsection (1) of this section, the affirmative vote of the majority of the members of the Council (7) is required to adopt an ordinance. A roll call vote shall be taken on all ordinances. Any ordinance which receives six or more Nay votes shall be defeated and shall be filed and receive no further consideration. Any ordinance voted upon and not defeated shall be continued to the next regular meeting.

(e) Within two working days of adoption, any ordinance subject to the Executive Officer's veto shall be enrolled and transmitted to the Executive Officer for veto consideration.

(f) The Executive Officer shall veto an ordinance by filing a written and signed message with the Clerk no later than 5:00 p.m. of the fifth working day following adoption of the ordinance. If the Clerk has not received such veto message within the prescribed time then the ordinance shall be considered finally adopted.

(g) The Council may override an Executive Officer veto by an affirmative vote of eight members of the Council at the next regular meeting of the Council, but not later than 30 calendar days after the Executive Officer's veto. The vote to override an Executive Officer veto shall be the first item of business on the Council's agenda and a roll call vote shall be taken on all considerations of an override to a veto.

(h) Ordinances adopted by the Council which are not legislative in nature as determined by the General Counsel shall not be subject to the Executive Officer's veto.

(i) Unless otherwise specified by the Council in the ordinance, an ordinance shall become effective on the 90th day after its adoption. If an ordinance is vetoed by the Executive Officer and the veto is overridden by the Council, the date of adoption shall be the date on which the veto is overridden. Except as provided in ORS 268.465 and 268.507, the Council by a majority vote of its members may declare that an emergency exists in which case an ordinance may take effect immediately or in less than 90 days. The Council by a majority vote of its members may prescribe that an ordinance take effect later than the 90th day after its adoption. If the Council refers an ordinance to the electors, the ordinance shall become effective on the 30th day after its approval by a majority of the electors voting on the measure or on a later date specified in the ordinance. If a referendum petition, other than a petition referring an ordinance declaring an emergency, is filed with the filing officer not later than the 90th day after the adoption of the ordinance and before the ordinance takes effect, the effective date of the

ordinance shall be suspended. An ordinance referred by a proper referendum petition shall become inoperative and shall not take effect if a minority of the electors voting on the measure reject the ordinance.

(j) Within seven (7) days after adoption or final adoption of an ordinance, the enrolled ordinance shall be:

- (1) Signed by the Presiding Officer;
- (2) Attested by the person who served as Recording Secretary of the Council at the meeting at which the Council adopted the ordinance; and
- (3) Filed in the records of the District.

(k) If required by law a certified copy of each ordinance shall be filed with the Division of Courts Process of Multnomah County, and the County Clerk for Washington and Clackamas counties.

(l) Pursuant to ORS 198.550(3), an ordinance to meet an emergency may be introduced, read once and put on its final passage at a regular or special meeting, without being described in a published agenda, if the reasons requiring immediate action are described in the ordinance. The unanimous approval of all members of the Council at the meeting, a quorum being present, is required to adopt an emergency ordinance. Failing such approval, an emergency ordinance shall be considered pursuant to subsections 2.01.070(b) and (c) above. Emergency ordinances may be subject to the veto of the Executive Officer as described in subsections (e), (f) and (g) of this section and shall have an effective date as described in subsection (i) of this section.

(Ordinance No. 79-65, Sec. 7; amended by Ordinance No. 88-241, Sec. 1; and Ordinance No. 91-407A, Sec. 1)

2.01.080 Resolutions:

(a) All matters other than legislation and rules coming before the Council and requiring Council action shall be handled by resolution.

(b) Excluding procedural matters, the affirmative vote of a majority of the Council present and voting, a quorum being present, is required to adopt a resolution. Procedural matters shall be subject to Robert's Rules of Order, newly revised, unless chapter 2.01 of this Code provides otherwise.

(c) Resolutions shall become effective upon adoption unless a later date is specified therein.

(d) The Council by resolution shall adopt procedures for introducing and considering resolutions.

(Ordinance No. 79-65, Sec. 8; amended by Ordinance No. 88-241, Sec. 1)

2.01.090 Conduct of Meetings:

(a) A quorum of the Council is seven (7) members. If a quorum is present, the Council may proceed with the transaction of its business.

(b) Minutes of each meeting shall be prepared by the Clerk of the Council, and shall include at least the following information:

- (1) All members of the Council present;
- (2) All motions, proposals, resolutions, orders, ordinances and rules proposed and their dispositions;
- (3) The results of all votes, and the vote of each Councilor by name; and
- (4) The substance of any discussion on any matter.

(c) Minutes of Executive Sessions may be limited consistent with ORS 192.660.

(d) The written minutes shall be available to the public within a reasonable time after the meeting, and shall be maintained as a permanent record of the actions of the Council by the Clerk of the Council.

(e) The Council shall by resolution adopt rules establishing procedures governing conduct of debate on matters considered by the Council at Council meetings.

(f) Council members present, but not voting or not specifically abstaining, shall be counted as voting with the majority. In the event that there is no such majority, such members shall be counted as abstaining.

(g) Except for ordinances and rules, the Presiding Officer may order the unanimous approval of any matter before the Council unless there is an objection from one or more Councilors. If there is an objection, then a voice vote shall be taken, unless the objecting Councilor requests a roll call vote and at least two (2) Councilors concur in such request, in which case a roll call vote shall be taken. At each meeting, the Clerk of the Council shall rotate the order for each roll call vote so that

the Councilor who voted first shall vote last on the next roll call vote.

(h) In the event a matter is the subject of a voice vote or a roll call vote, after the vote is taken the Presiding Officer shall announce the result of the votes. Prior to proceeding to the next item on the agenda, or if the item voted upon is the last item on the agenda before adjournment, any member may request that the Clerk of the Council change their vote in which case the change in vote shall be announced by the Presiding Officer and the result of the votes as modified shall also be announced. Upon commencement of the next agenda or adjournment, as the case may be, all votes shall become final and may not be further changed without the unanimous consent of the Council.

(i) Any matter not covered by this chapter or a rule adopted by the Council shall be determined by Robert's Rules of Order, newly revised. The Council may by a positive vote of eight (8) members authorize the suspension of any rule adopted by the Council.

(j) All meetings of the Council, its committees and advisory committees shall be held and conducted in accordance with the Oregon Public Meetings law.

(Ordinance No. 79-65, Sec. 9; amended by Ordinance No. 89-288; and Ordinance No. 91-407A, Sec. 2)

2.01.100 Adoption and Amendment of Rules: No standing rule of procedure of the Council shall be adopted, amended, or rescinded except upon the affirmative vote of a majority of the members of the Council (7).

(Ordinance No. 79-65, Sec. 10)

2.01.110 Reconsideration:

(a) When a matter has been adopted or defeated, any Councilor voting on the prevailing side may move for reconsideration of the matter.

(b) Notice of the intention to move for reconsideration of an ordinance or rule must be given orally by the Councilor who intends to make the motion prior to adjournment on the same day on which the vote to be reconsidered was taken. Notice of the intention to move for reconsideration of other matters should be made to the Presiding Officer prior to or at the next meeting.

(c) Motion to reconsider shall be made and voted on not later than the next regular meeting after the meeting on which the vote to be reconsidered was taken. The motion for reconsideration has precedence over any other motion.

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(d) A motion for reconsideration must receive the affirmative vote of a majority of the Council (7) in order to be adopted.

(e) There shall be only one (1) reconsideration of any final vote even though the action of Council reverses its previous action.

(Ordinance No. 79-65, Sec. 11)

2.01.120 Communications from the Public: Communications from the public both for matters on the agenda and matters not on the agenda may be allowed by the Council; provided, however:

(a) Persons addressing the Council shall do so from the rostrum upon first gaining recognition of the Presiding Officer and after stating name and address.

(b) To facilitate the orderly transaction of business, the Presiding Officer may limit the time, order and number of appearances in accordance with rules establishing procedures adopted by resolution by the Council.

Ordinance No. 79-65, Sec. 12; amended by Ordinance No. 91-407A, Sec. 3)

2.01.130 Order of Business:

(a) The general order of business for the Council shall be prescribed by resolution.

(b) Questions relating to the priority of business shall be decided without debate. The general order of business shall not be varied except upon the affirmative vote of a majority of the Council present and voting, a quorum being present.

(c) A consent agenda shall be presented for the consideration and vote of the Council only at regular meetings. Items may be placed on the consent agenda pursuant to rules establishing criteria adopted by the Council by resolution. Copies of the consent agenda shall be printed and distributed to the Council prior to consideration.

(d) Before calling for the vote on the consent agenda, the Presiding Officer shall ask if any Councilor objects to any matter on the consent agenda. If any matter on the consent agenda is objected to by a member of the Council, that matter shall be removed from the consent agenda and placed upon the regular agenda of the Council at a time or place determined by the Presiding Officer.

(Ordinance No. 79-65, Sec. 13; amended by Ordinance No. 80-87, Sec. 2; and Ordinance No. 91-407A, Sec. 4)

2.01.140 Standing Committees of the Council:

(a) The Council may establish standing committees as it deems necessary.

(b) Members of all standing committees shall be appointed by the Presiding Officer subject to confirmation of the Council. The first named shall be the Chair and the second named shall be the Vice Chair.

(c) A majority of the members of the standing committee shall constitute a quorum for the transaction of business before the committee. Except as otherwise provided in this chapter, or rules adopted by the Council, all standing committees of the Council shall be governed by Robert's Rules of Order, newly revised.

(d) All standing committees shall meet at the call of the Chair or upon the request of a majority of the members of the Committee.

(e) The purposes of standing committees of the Council are to:

- (1) Make studies of and inquiries into areas of concern and interest of the Council.
- (2) Report information to the Council.
- (3) Prepare and submit recommendations, proposals and ordinances to the Council.

(f) Unless otherwise specifically provided, standing Committees of the Council shall have the power to:

- (1) Hold meetings at such times and places as the committee considers expedient.
- (2) Hold public hearings and take testimony.
- (3) Make findings, conclusions and recommendations.
- (4) Draft and prepare resolutions and ordinances for consideration by the Council.
- (5) Appoint task forces and committees to advise the committees of the Council, subject to Council approval.

(g) Standing committees shall conduct business according to the following rules:

- (1) A quorum of the committee is necessary to take action on any matter before the committee;
- (2) Any matter before a committee may be decided by a majority of a quorum;
- (3) Each committee member shall have one (1) vote and the Chair may vote and discuss any issue before the committee without relinquishing his or her position as Chair;
- (4) Any member may make a motion for action by the committee and a second is not necessary for committee consideration of the motion;
- (5) Comment from members of the public appearing at the meeting shall be solicited prior to the committee taking action on any matter before it. The Chair may set time limits for public comment on matters before the committee; and
- (6) A committee may go into Executive Session for the purposes and following procedures prescribed by law.

(h) A standing committee may take the following action on an ordinance or resolution:

- (1) Refer the ordinance or resolution to the Council or another Committee, if it has received a subsequent referral by the Presiding Officer, either as originally submitted or as amended, with a recommendation for approval or with no recommendation; or
- (2) Table the ordinance or resolution; or
- (3) Continue the ordinance or resolution to another committee meeting.

Any ordinance or resolution which remains in a standing committee over six (6) months from the date it was introduced shall be considered to be defeated and shall be filed with the Council Clerk and receive no further consideration. By majority vote of a quorum of the Council or by action of the Presiding Officer any matter referred to a standing committee may be removed from the committee and reassigned to another committee or be considered by the Council at a subsequent meeting.

Consideration of such action shall take place under the "Councilor Communication" agenda item.

(i) The term for a committee member shall be one (1) year. Except for filling vacancies, committee appointments shall be made in January of each year.

(j) No committee will incur any indebtedness or hire any personnel without the express approval of the Council.

(k) The Chair, the Vice Chair or committee members may be removed from committee assignment(s) upon the affirmative vote of the majority of the Council (7). Consideration of such action shall take place under the "Councilor Communication" agenda item.

(Ordinance No. 79-65, Sec. 14; amended by Ordinance No. 88-241, Sec. 1 and Ordinance No. 91-407A, Sec. 5)

2.01.150 Local Government Advisory Committees:

(a) The Council shall appoint such advisory committees comprised of local government officials from the metropolitan area and any other areas receiving services from the District as may be necessary to assist the Council in the performance of its duties. The number of members and term for each committee so appointed shall be established by the Council.

(b) Each member shall have one (1) vote and the Chair may vote on and discuss any matter coming before the committee.

(c) Unless otherwise specifically provided, local government advisory committees shall have a power to:

- (1) Select a Chair and a Vice Chair.
- (2) Hold meetings at such times and places as the committee considers expedient.
- (3) Prepare and submit proposals and recommendations to the Council.
- (4) Perform other functions assigned by the Council.

(d) A majority of the members of the committee shall constitute a quorum for the transaction of business before the committee. Except as otherwise provided in this chapter, all committees of local government officials shall be governed by Robert's Rules of Order, newly revised.

(e) All committees shall meet at the call of the Chair or upon the request of a majority of the members of the committee or

upon the request of the Council. All meetings of the committee shall be subject to the Oregon Public Meetings law.

(Ordinance No. 79-65, Sec. 15)

2.01.160 Other Advisory Committees: The Presiding Officer may appoint other advisory committees or task forces as necessary to assist the Council in the performance of its duties. The purposes and powers of each advisory committee or task force shall be expressly stated at the time of appointment. Advisory committees shall serve at the pleasure of the Presiding Officer.

(Ordinance No. 79-65, Sec. 16; amended by Ordinance No. 88-241, Sec. 1.)

2.01.170 Per Diem and Expenditure Reimbursement Guidelines: The Council by resolution shall adopt guidelines for the payment of per diem to Councilors and the reimbursement of Councilors and Council employees for expenses incurred in the conduct of business of the District. The guidelines shall specify the amount of the per diem payment, authorized expenditures, and procedures for the request and approval of per diem and expenditure reimbursement requests.

(Ordinance No. 89-289, Sec. 1.)

2.01.180 Procedures for Appointing a Person to Fill a Vacancy on the Metro Council:

(a) Whenever a vacancy occurs on the Council more than twenty (20) days prior to the next general election day, the Council shall commence a process to fill the vacancy by appointment by a majority vote of the remaining members of the Metro Council.

(b) The appointment process shall include the following:

- 1) Notification of the appointment process in a newspaper of general circulation in the District, in local newspapers which serve the Council subdistrict, and other journals, publications and circulars deemed appropriate at least three weeks prior to the appointment.
- 2) Notification of the appointment process to official neighborhood organizations, cities, civic groups, and other recognized groups with territory within the vacant Council sub-district at least three weeks prior to the appointment.

- 3) Distribution of a Council appointment application to interested citizens at least two weeks prior to the appointment.
- 4) Conduct of a public hearing in the vacant district before a subcommittee of the Council appointed by the Presiding Officer. The subcommittee shall report all testimony received to the full Council.
- 5) Conduct of interviews with applicants for the vacant position before the Council.

(c) The Council shall in a public meeting appoint the person to fill the vacancy from a list of applicants who have been nominated and seconded by Councilors. Voting for the person shall be by a written signed ballot. The Clerk of the Council shall announce the results of each ballot following the vote and shall record the result of each Councilor's ballot. Any applicant who receives a majority of the votes by the remaining members of the Council shall be elected to the vacant position. If no applicant receives a majority vote of the Council on the first ballot, the Council shall continue to vote on the two applicants who receive the most votes until an applicant receives a majority vote of the Council.

(Ordinance No. 90-322A, Sec. 2)

2.01.190 Appointment Process, Qualifications and Terms of Office for Boundary Commission Members:

(1) As provided by Oregon Law;

(a) The Portland Metropolitan Area Local Government Boundary Commission shall have a number of members that is equal to the number of Councilors of the Metropolitan Service District.

(b) The members of that Boundary Commission shall be appointed by the Executive Officer of the Metropolitan Service District. The Executive Officer shall appoint members of a Boundary Commission from a list of individuals nominated by the Councilors of the District. Each Councilor shall nominate no fewer than three nor more than five individuals for appointment to the Boundary Commission. When first appointing all the members of Boundary Commission, the Executive Officer shall appoint one individual from among those nominated by each Councilor. Thereafter, as the term of a member of a Boundary Commission expires or as a vacancy occurs, the Executive Officer shall appoint an individual nominated by the Councilor or a successor who nominated the Boundary Commission member whose term has expired or who vacated the office. The Executive Officer shall endeavor to appoint members from various cities, counties

and districts so as to provide geographical diversity of representation on the Boundary Commission.

(c) To be qualified to serve as a member of a commission, a person must be a resident of the area subject to the jurisdiction of the commission. A person who is an elected or appointed officer or employee of a city, county or district may not serve as a member of a commission. No more than two members of a commission shall be engaged principally in the buying, selling or developing of real estate for profit as individuals, or receive more than one-half of their gross income as or be principally occupied as members of any partnership, or as officers or employees of any corporation, that is engaged principally in the buying, selling or developing of real estate for profit. No more than two members of a commission shall be engaged in the same kind of business, trade, occupation or profession.

(d) A member shall be appointed to serve for a term of four years. A person shall not be eligible to serve for more than two consecutive terms, exclusive of:

(i) Any service for the unexpired term of a predecessor in office.

(ii) Any term less than four years served on the commission first appointed.

(2) The terms of office of members of the Boundary Commission appointed prior to 1991 shall be as follows:

(a) Members appointed from nominations made by Councilors representing Council Districts 2, 6 and 8 shall serve from July 1, 1988 to January 1, 1992;

(b) Members appointed from nominations made by Councilors representing Council Districts 1, 5 and 7 shall serve from July 1, 1988 to January 1, 1993;

(c) Members appointed from nominations made by Councilors representing Council Districts 3, 10 and 11 shall serve from January 1, 1990 to January 1, 1994; and

(d) Members appointed from nominations made by Councilors representing Council Districts 4, 9 and 12 shall serve from January 1, 1990 to January 1, 1995.

(Ordinance No. 91-409, Sec. 1)

CHAPTER 2.02

PERSONNEL RULES

SECTIONS:

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2.02.275	Zoo Visitor Services Employees
2.02.280	Ethical Requirements for Employees, Officers, Elected and Appointed Officials
2.02.285	Smoking Policy

2.02.005 Purpose: The purpose of this chapter is to provide systematic and equitable procedures and regulations relating to the hiring, compensation, hours of work, leave, safety, training, working conditions, promotions, transfer, discipline, removal and other matters affecting the status of employees of Metro. This chapter is provided to maintain uniformity and equity in personnel matters, and to encourage each employee to give his/her best service to the organization and citizens served by Metro.

(Ordinance No. 81-116, Sec. 1)

2.02.010 Administration of the Rules: Except as provided in subsection (d) below the Executive Officer shall be responsible for:

(a) Administering or delegating the administration of all the provisions of this chapter;

(b) Reviewing and recommending to the Council necessary changes to this chapter;

(c) Publishing a Personnel Procedures Manual to implement the provisions of this chapter;

(d) Until such time as the Metropolitan Exposition-Recreation Commission adopts personnel rules pursuant to the authority granted by Section 6.01.040(h), the Commission shall be responsible for the administration of these Personnel Rules for employees of the Commission. After the adoption of such rules by the Commission, the Commission shall administer its personnel system in accordance with its duly adopted personnel rules notwithstanding any provision of this chapter to the contrary. For this purpose the authority and duties of the Executive Officer referred to in this chapter shall reside with the Commission.

(Ordinance No. 81-116, Sec. 2; amended by Ordinance No. 87-232, Sec. 1; amended by Ordinance No. 89-325A, Sec. 3)

(Revised 1/2/92)

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(6/91)

2.02.015 Amendment: This chapter shall be amended solely by the Council. Administrative amendments which deal solely with correcting grammatical or typographical errors, or correcting position titles to reflect properly processed reclassifications and title changes, or correcting departmental name changes to accurately reflect current organizational structure may be approved by the Executive Officer. All proposed amendments dealing with policy and/or benefit changes will be required to be adopted by the Council. This ordinance shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for hiring and advancement, training and career development, job classification, salary administration, retirement, employee benefits, discipline, discharge and other related matters which are pertinent to the maintenance and effective operation of the Metropolitan Service District (Metro). Furthermore, this chapter shall be implemented and, if necessary, revised in a spirit of good faith, and shall be subject to review and comment by Metro employees prior to any amendment. If practical, proposed amendments shall be posted in each general work area ten (10) working days in advance of the Council meeting in which they are to be considered. Employee access to copies of the proposed amendments shall be provided by their distribution to all Directors of departments, Personnel Office and to the Chairman of the Employees Association, in addition to the posting required above. Employee responses, if any, shall be reported to Council coincidental with Council consideration of the proposed amendments.

(Ordinance No. 81-116, Sec. 3)

2.02.020 Separability: If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

(Ordinance No. 81-116, Sec. 4)

2.02.025 Variances: The Executive Officer shall have the power to vary or to modify the strict application of the provisions of this chapter in any case in which the strict application of said provisions would result in practical difficulties or unnecessary hardships on either the agency or employee or both. All approved variances shall be subject to Council ratification, and shall be reported to the Council in written summary form at the next regular meeting following the date of approval. The chairperson of the Employees' Advisory Committee shall receive a written summary of the variance prior to this meeting.

(Ordinance No. 81-116, Sec. 5)

2.02.030 Definitions: As used in this chapter, as well as in day to day personnel matters, the following terms shall have the meanings indicated:

- (1) "Administrative Leave" means leave with pay granted by the Executive Officer for employees who work in classifications which are exempt from overtime pay.
- (2) "Appointment" includes all means of selecting or employing any person to hold any positions subject to this chapter. Appointment does not include promotion.
- (3) "Anniversary Date" means the anniversary of the date on which an employee reached the Entry Merit Rate described in the Salary Plan for the position currently held.
- (4) "Appeal" means an oral or written request to a department head or the Executive Officer for reconsideration of a decision adverse to an employee's interests.
- (5) "Appointing Power" means the Executive Officer or his/her designee.
- (6) "Central Personnel File" means a file which contains complete personnel records of all Metro employees.
- (7) "Class" means a group of positions sufficiently alike in responsibilities and authorities to require similar qualifications.
- (8) "Class Specification" means a written description of each class of positions including a class title and a statement of objectives, duties, responsibilities, recruiting requirements and minimum qualifications as required by uniform selection guidelines. Positions, not individuals, are classified.
- (9) "Continuous Service" means uninterrupted employment with Metro. Reasonable absences due to sick leave, disability, layoffs, military leave or other approved leaves as provided for in this chapter, do not constitute an interruption in continuous service. Continuous service shall only apply to regular and regular part-time employees.

- (10) "Council" means the elected governing body of Metro.
- (11) "Days" means calendar days unless specifically provided otherwise.
- (12) "Demotion" means a transfer of an employee from a position in one class to a position in another class having a lower maximum salary rate. Demotion during probation in a promotive position does not reflect discredit upon the employee.
- (13) "Department" means a major functional unit of Metro.
- (14) "Department Head" means a person responsible for the administration of a department.
- (15) "Deputy Executive Officer" means the appointed Deputy Executive Officer selected by and responsible to the Executive Officer for the administration of the Metro organization.
- (16) "Disciplinary Action" means imposition of certain personnel actions (e.g., reprimand, warning, suspension, dismissal, reduction in pay or demotion) as a result of conduct in violation of this chapter.
- (17) "Dismissal" means the termination of employment of a regular employee for cause or of a probationary employee as specified in these rules.
- (18) "Division" means a major functional unit of a department.
- (19) "Division Head" means a person responsible for the administration of a division.
- (20) "Employee" means anyone who is salaried or who receives wages for employment with Metro.
- (21) "Examination" means a test for the purpose of evaluating an applicant for an employment vacancy. "Examination" includes completion of employment application forms.
- (22) "Executive Officer" means the elected Executive Officer of Metro.
- (23) "Exempt Position" means a position exempt from mandatory overtime compensation.

- (24) "Fiscal Year" means a twelve (12) month period beginning July 1, and ending June 30.
- (25) "Flex-time" means an alternative work schedule of a full-time salaried employee other than the regular 8:00 a.m. to 5:00 p.m., Monday through Friday, workday and workweek, but which includes the same number of total hours per pay period as other full-time positions. Approval of the supervisor is required.
- (26) "Full-time" means a position which has daily, weekly and monthly hours as established by the Council for full-time work.
- (27) "Grievance" means an oral or written expression of dissatisfaction with some condition of employment or management decision affecting such employment, submitted by an employee or group of employees for the purpose of obtaining adjustment of said cause of dissatisfaction.
- (28) "Hourly Rate" means the rate of compensation for each hour of work performed. It is determined by dividing the annual regular salary by the regular number of hours worked each year (2,080).
- (29) "Immediate Family" means the husband, wife, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, grandparents or any relative living in the employee's household.
- (30) "Interview" means a formal consultation to evaluate the qualifications of an employee or a prospective employee. The consultation includes the employee or prospective employee and the employer.
- (31) "Jobshare" means a full-time position designated by the Executive Officer which is or may be shared by two employees.
- (32) "Labor Organization" means the certified representative of employees in a recognized bargaining unit.
- (33) "Layoff" means a separation from employment because of organizational changes, lack of work, lack of funds or for other reasons not reflecting discredit upon the employee.

- (34) "Leave of Absence" means time off from work for reasons within the scope and purpose of this chapter and regulations upon prior approval of the Executive Officer.
- (35) "Merit Salary Increase" means an increase based on performance from one pay rate to a higher rate within the established merit salary range for the class or position occupied by the employee.
- (36) "Month" means one (1) calendar month.
- (37) "Nonoccupational Disability" means disability from an accident or sickness suffered or contracted by the employee which cannot be attributed to the performance of assigned duties with Metro.
- (38) "Occupational Disability" means disability from an accident or sickness suffered or contracted as a result of the performance of assigned duties.
- (39) "Open Competitive List" means a list of persons who have been found qualified by an open competitive recruitment and examination for the job classification for which they have applied and their level of qualification in that class.
- (40) "Overtime" shall be considered as time worked by an employee in excess of the scheduled workday or workweek for full-time employment (8 hours in one day or 40 hours in one week). If an employee is scheduled for a 10-hour and 4-day work week, the payment of overtime must be based on work in excess of 10 hours per day or 40 per week. (ORS 279.340)
- (41) "Part-time" means a position the daily, weekly or monthly hours of which are less than the hours established for full-time positions and which position is provided for in the annual budget.
- (42) "Pay Plan" means the compensation plan formally adopted by the Council annually as the Pay Plan for employees of Metro.
- (43) "Permanent Employee" means an employee appointed for more than six (6) months duration as provided for in the annual budget.
- (44) "Personnel Action" means any action taken with reference to appointment, compensation, promotion,

transfer, layoff, dismissal or other action affecting the status of employment.

- (45) "Personnel Manager" means the employee appointed by the Executive Officer to administer the provisions of this chapter.
- (46) "Personnel Procedures Manual" means a manual developed or to be developed by the Personnel Division and approved by the Executive Officer to implement the policies and provisions of this chapter.
- (47) "Position Number" means the line item number in the budget assigned to each position listed under Personal Services. Position number change means a change in the line item number in the budget assigned to each position listed under Personal Services. Such change may include a transfer from one division or department to another.
- (48) "Probationary Period" means a working test period during which an employee is required to demonstrate fitness for the position to which the employee is appointed, or promoted by actual performance of the duties of the position.
- (49) "Probationary Employee" means any employee serving during a period of probation.
- (50) "Promotion" means the change of an employee from a position in one classification to a position in another classification having a higher maximum salary rate.
- (51) "Promotional List" means a list of persons presently in the employ of Metro who have been qualified by promotional examination for appointment to a position in a particular class.
- (52) "Provisional Appointment" means an appointment, pursuant to this chapter, to a position in the absence of an open competitive list.
- (53) "Range" means a level in the Pay Plan. Each classification is allocated to one of the ranges in the Plan. "Range change" means the action of moving a classification from one pay range to another pay range. This action requires Council approval.

- (54) "Reclassification" means a change in classification of a position by raising it to a class with a higher rate of pay, or reducing it to a class with a lower rate of pay, or changing it to another class at the same pay level. Based upon an evaluation of the duties currently assigned to an incumbent in an existing position or to be assigned for a vacant position, relative to the duties associated with other positions in the appropriate classes.
- (55) "Reemployment" means the appointment of a former employee to a position in a class where the employee held regular status.
- (56) "Regular Employee" means an employee who has successfully completed the required probationary period occupying or appointed to a full-time or part-time position which is included in the Classification and Compensation Plan for regular employees and which position is provided for in the annual Budget.
- (57) "Reinstatement" means the return of an employee to a previous position following an approved leave of absence or when ordered by the Executive Officer or a court of competent jurisdiction.
- (58) "Resignation" means voluntary separation from employment.
- (59) "Separation" is the cessation of employment with Metro. This action does not reflect discredit upon the employee.
- (60) "Status" refers to the rank of the employee relative to the probation period.
- (61) "Suspension" means the temporary separation of an employee from employment with Metro.
- (62) "Temporary Employee" means an employee appointed to perform a specific task or to participate in a series of projects for a period not to exceed 1,040 hours over a six (6) month period. This definition excludes interns, work-study students, and CETA employees, or similar federal and state employment programs.
- (63) "Termination" means the employee is relieved of the duties of a position which had a specified duration or existed for a period of need.

- (64) "Transfer" means a change of an employee from one position to another in the same class, or to a position in a comparable class within the same salary range (subject to rule on appointment) and may include a change from one department or geographic location to another.
- (65) "Underfill" refers to the affirmative action appointment of a candidate to a position in a classification for which the candidate does not possess the minimum experience qualifications for the purpose of allowing the candidate to gain the necessary experience to qualify. Underfill applies to internal promotional opportunities only.
- (66) "Voluntary Demotion" means a demotion requested by an employee in order to retain employment when a layoff is imminent or for other reasons where the action is entirely voluntary on the part of the employee.
- (67) "Workday" means the regularly scheduled 8-hour workday from 8:00 a.m. to 5:00 p.m. with one (1) hour off for lunch except where flexible hours are approved by the supervisor. "Flexible hours" in this context are those hours scheduled as an alternative to the regular 8:00 a.m. to 5:00 p.m. workday. "Workday" or "working days" as used in this chapter in relation to notice and filing requirements shall mean business days rather than days actually worked.
- (68) "Workweek" means the regularly scheduled forty (40) hour workweek from Sunday through Saturday.

(Ordinance No. 81-116, Sec. 6)

2.02.035 Legal Interpretations: When it is found necessary to seek a legal opinion as to the interpretation or intent of this chapter, it shall be incumbent upon the Executive Officer to respond to said requests as soon as is practicable.

(Ordinance No. 81-116, Sec. 7)

2.02.040 Appointment:

(a) All promotions and appointments to vacancies shall be made solely on the basis of merit, efficiency and fitness. These qualities shall be job-related and shall be determined through careful and impartial evaluation of the following:

- (1) The duties and responsibilities to be performed;
- (2) The applicant's level of training relative to the requirements of the position;
- (3) The applicant's level of education relative to the requirements of the position;
- (4) The applicant's level and amount of experience relative to the requirements of the position;
- (5) The results of an oral interview and examination; and
- (6) The results of reference checks.

(b) Except for purposes of Affirmative Action, no question in any examination, in any application form, or by any Metro employee, official or department head shall be so framed as to attempt to elicit information concerning race, color, ancestry, national origin, sex, sexual orientation or political or religious affiliation.

(c) All statements submitted on the employment application or attached resume shall be subject to investigation and verification prior to appointment.

(d) Regular and temporary full-time employees are encouraged to apply for any vacant position for which they are qualified. Temporary full-time employees must have completed a competitive selection process and have been employed at least three (3) months to be considered for in-house promotional hiring preference. All applications will be considered without prejudice to their present positions. Regular, regular part-time and temporary full-time employees will be given first consideration in filling a vacant position. If the position is not filled as a result of promotional recruitment, recruitment outside the agency will commence. Notice of promotional recruitment shall be posted not less than five (5) working days to allow for receipt of applications. Promotional applicants will be provided with a written response on the status of their application by the division or department head in whose division the vacancy exists before outside recruitment is commenced.

(e) Pursuant to the terms and intent of ORS 268.180(5), ORS 268.210 and ORS 268.215, all appointments of employees shall be the sole responsibility of the Executive Officer subject to this chapter. However, because the duties associated with certain positions include an independent and concurrent policy impact on both the Council and the Executive Officer, the appointment or promotion of persons to fill the following positions must be

confirmed by a majority of the Council prior to the effective date of each such appointment or promotion:

- (1) General Counsel
- (2) Government Relations Officer (lobbyist)
- (3) Public Affairs Director
- (4) Deputy Executive Officer
- (5) Solid Waste Director
- (6) Zoo Director
- (7) Convention Center Project Director
- (8) Planning & Development Director
- (9) Transportation Director
- (10) Director of Finance & Management Information
- (11) Director of Regional Facilities

(Ordinance No. 91-378A, Sec. 5)

(f) "Provisional Appointment" means an appointment, pursuant to this chapter, to a position in the absence of a list of eligibles. Provisional appointments cannot exceed ninety (90) days. A person appointed provisionally is eligible to compete for the position when recruitment is opened during the aforementioned ninety (90) day period.

(Ordinance No. 81-116, Sec. 8; amended by Ordinance No. 84-183, Sec. 1; amended by Ordinance No. 87-218, Sec. 1; and Ordinance No. 88-255, Sec. 1)

2.02.045 Probationary Period:

(a) Except as provided in subsection (b) of this section, all original appointments and promotions to regular and regular part-time positions shall be subject to a standard probationary period of six (6) consecutive months of service. Such period shall not apply to transferees who are transferred after satisfactory completion of their probationary period.

(b) In cases where a probationary employee is transferred prior to the end of the probationary period, or where a period longer than six (6) months is necessary to demonstrate an employee's qualifications, the probationary period may be extended by the Executive Officer; however, no probationary period shall be extended beyond twelve (12) months from the date of appointment. The employee shall be notified in writing of any extension and the reasons therefore.

(c) During the probationary period the employee shall not be eligible for vacation leave but shall earn vacation credit during probation to be taken after probation.

(d) During the probationary period, the employee will be provided with a work plan and guidance from the supervisor in

carrying out the plan. The employee's performance will be reviewed periodically to determine how the employee is progressing in meeting the performance standards of the particular position. Upon satisfactory completion of the probationary period, the employee shall be considered as having demonstrated qualifications for the position, shall gain regular status and shall be so informed on a Completion of Probationary Performance Evaluation rating form.

(e) In the case of an original appointment, a probationary employee may be terminated without cause at any time without hearing or appeal and without previous, lesser disciplinary action. The employee shall be given fourteen (14) days written notice of termination pursuant to Section 2.02.105(g).

(f) In the case of promotional appointments, the promoted employee may be demoted at any time during the probationary period, and be reinstated in a position in the class from which he/she was promoted, even though this may necessitate the layoff of the employee occupying the position.
(Ordinance No. 81-116, Sec. 9)

2.02.050 Attendance: Hours of Work:

(a) Employees shall be in attendance at their work in accordance with the sections of this chapter regarding hours of work, holidays and leaves of absence.

(b) Employees shall not absent themselves from work for any reason, other than those specified in this chapter authorizing sick leave, without making prior arrangements with their supervisor. Supervisors may authorize employees to work a flexible schedule which does not require continuous attendance during the workday or a report on each absence, when appropriate to the nature and level of the position.

(c) Any unauthorized absence of an employee from duty may be deemed to be an absence without pay and may be cause for disciplinary action. Absence without approval in excess of three (3) workdays shall constitute abandonment of position.

(d) Meals: All employees shall be granted a non-paid lunch period of one (1) hour during each full work shift subject to past practice. Whenever possible, such meal periods shall be scheduled in the middle of a shift.

(e) Rest Periods: A rest period of ten (10) minutes shall be permitted for all employees for each full half shift subject to the workload of the department. Such rest periods shall normally be on a scheduled basis so that activities of the department shall be staffed at all times.

(Ordinance No. 81-116, Sec. 10)

2.02.055 Job Share: Any full-time position may be designated as a job share position by the Executive Officer. Benefits for such position shall be apportioned between the position occupants in proportion to time worked by each; however, such apportioning may be altered upon written agreement of position occupants and approval by the Personnel Manager. In no event, however, shall the benefits of a job share position exceed the benefits of any other full-time position.

(Ordinance No. 81-116, Sec. 11)

2.02.060 Personnel Records:

(a) The Executive Officer shall cause a personnel record to be established for each employee and maintained in the Metro Personnel Division.

(b) The personnel record shall show the employee's name, title of position held, the department to which assigned, salary, change in employment status, training received and such other information as may be considered pertinent.

(c) A Personnel Action notice shall be used as the single document to initiate a Personnel Action and to update personnel records. Any document filed in the employee's record relating to salary, benefits, performance or work conditions of the employee shall be duplicated and sent to the employee. Personnel Action notices are signed by the department head, Personnel Manager and, when required, the Executive Officer and Deputy Executive Officer.

(d) Employee personnel files are public records with the exception of the employment application, disciplinary actions, performance evaluations and references from prior employers. These excluded documents are considered confidential and are accessible only to the employee concerned, the employee's supervisor, the department head, the Personnel Manager, the Director of Management Services, General Counsel and the Executive Officer. An employee may be denied access to references from prior employers if the employer so stipulates. The employee shall be notified as to all persons having access to their personnel records and the reasons for such access. Authorization by the employee shall be required before anyone other than pre-selected officials is given access to the employee's personnel file. Additional pre-selected officials may be identified by the Executive Officer and placed on file in the Personnel Office. The employee may authorize in writing his/her representative to gain access to his/her file, and such authorization shall be filed with the Personnel Office.

(e) Letters of reprimand shall not be used in any subsequent evaluation or disciplinary proceeding involving the employee after the next regularly scheduled evaluation and in the absence of a recurrence of a similar infraction, such letters shall then be removed from the employee's personnel record, at the request of the employee.

(Ordinance No. 81-116, Sec. 12)

2.02.065 Transfers:

(a) All vacant positions are subject to normal recruitment procedures. Involuntary Transfer: If a transfer is without the consent of the employee, the employer must give the employee ten (10) days prior notice. Upon written request of the employee, the Personnel Manager may investigate the transfer to determine if it is being made for reasons other than the good of the service. Transfers must be completed with no more than a ten (10) day break in service.

(b) Disability Reassignment: As an alternative to appointment from an open competitive or promotional list, a position may be filled for the duration of an employee's disability (temporarily or permanently) by the reassignment of a regular or probationary employee to another position upon request, with the consent of the Executive Officer and department heads involved and the Personnel Division, if the employee is unable to perform the duties of the position because of an on-the-job accident or disability. An employee so disabled may be reassigned to a position in a different classification, if it is determined by the Personnel Manager that the employee is both capable and qualified to perform the duties of the new position.

(Ordinance No. 81-116, Sec. 13)

2.02.070 Layoff:

(a) If there are changes of duties in the organization, lack of work or lack of funds, the Executive Officer may lay off employees; however, the Executive Officer shall first make every reasonable effort to retain those employees. When layoffs are required, and except as required in 2.02.045(f), the Executive Officer shall base the decision on relative merit, and shall give due consideration to seniority only where the employees' qualifications and ability are relatively equal. Regular employees not on probation shall be given a minimum of two (2) weeks written notice of their layoff from Metro employment.

(b) Laid off employees shall be placed on a layoff list and shall have rehired preference for the position within the classification from which they were laid off for one (1) year following layoff.

(Ordinance No. 81-116, Sec. 14)

2.02.075 Resignation: To resign in good standing any employee voluntarily terminating employment shall give a minimum of two (2) weeks written notice of resignation, unless because of extenuating circumstances the department head agrees to permit a shorter period of notice. The resignation shall provide an effective date which shall be the last day actually worked. All compensatory time and vacation leave credit earned shall be paid. Such time and leave credit shall not be used to extend the term of employment to earn additional benefits.

(Ordinance No. 81-116, Sec. 15)

2.02.080 Travel Expense: When employees are required to travel on official business, Metro will pay the actual cost of travel and the actual cost of meals or per diem as set by the Executive Officer, whichever is less. No such payment shall be made without receipts for actual expenses. Reimbursement for expenses incurred shall be determined and paid as follows:

(a) Travel on official business by a single individual should be via public carrier or Metro-owned vehicle. If the employee is authorized to use a private vehicle, mileage shall be paid at the same rate set by the Council for Councilors. This rate includes insurance, but not storage expense of the vehicle, which is an eligible expense.

(b) When travel by Metro-owned vehicle or by public carrier is practical, but the employee elects to use the employee's own vehicle, the employee shall not be reimbursed.

(c) Reimbursement for travel and subsistence on official trips outside the metropolitan area by bus, train or airplane shall only be the amount of actual and reasonable expense incurred during the performance of official duty as a Metro employee for the benefit of Metro. Metro will pay the actual costs of travel and meals or per diem as set by the Executive Officer. The actual cost of conference registration fees will be paid. The actual costs of accommodations will be paid as well as taxi or bus fare. Metro will not pay for first class air travel unless tourist class is not available. Airline tickets should be ordered and paid for directly by Metro. Advances for anticipated trip costs may be made upon approval of the Executive Officer or the person designated by the Executive Officer.

(Ordinance No. 81-116, Sec. 16; Ordinance No. 90-334)

2.02.085 Employee Organizations and Representation: Employees of Metro shall have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on

matters relating to wages, hours and working conditions in accordance with the Oregon Revised Statutes and Regulations of the State Employment Relations Board. Employees may form an Employee Advisory Committee to the Executive Officer for the purpose of providing employee input on matters relating to wages, fringe benefits, working hours and working conditions. All meetings and communications should be documented and recorded for both parties. An Advisory Committee spokesperson, designated by the Metro Employees' Association, may respond to Executive Officer requests for information and input on employee issues during working hours.

(Ordinance No. 81-116, Sec. 17)

2.02.090 Political Activity:

(a) Nothing contained within this chapter shall affect the right of the employee to hold membership in and to support a political party, to vote as they choose, to privately express their opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings. An employee must exercise all due caution in such activities to prevent public misunderstanding of such actions as representing Metro, or to bring discredit to Metro, the Council, Executive Officer or his/her supervisor.

(b) No official, employee or any other person shall attempt to coerce, command or require any Metro employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(c) No public employee shall solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job during working hours. However, nothing in this section is intended to restrict the right of a public employee to express personal political views.

(Ordinance No. 81-116, Sec. 18)

2.02.095 Nepotism:

(a) No appointing authority shall make, approve or continue the employment, appointment, promotion or transfer of an otherwise eligible candidate or employee to a position in which the candidate or employee would be subject to or responsible for the direct or indirect supervision or review, including personnel evaluation, salary or position changes, discipline and any other personnel action, of a person related as closely as a first cousin, whether the relationship is by blood or through marriage, and shall include husbands of sisters-in-law and wives of

brothers-in-law. Any candidate or employee employed, appointed, promoted or transferred to a position in violation of this rule shall be immediately transferred or terminated from such position. These provisions shall not apply to any person appointed prior to date of adoption of this chapter.

(b) No relative shall be employed if such action would constitute a violation of any law of the state of Oregon, or of the United States, or any rule promulgated pursuant thereto with which Metro is required to comply.

(Ordinance No. 81-116, Sec. 19)

2.02.100 Preamble--Conduct, Discipline, Termination and Appeal:
Nothing contained in this chapter precludes a supervisor from having private discussions with employees. In fact, discipline is often avoided by private conversations between the supervisor and employee. These discussions may be in the form of oral counseling, instruction and/or reprimand. However, these discussions are not subject to the grievance procedure unless the employee is notified at the time of the discussion that it constitutes an oral, or subsequently written, reprimand and may be used against the individual in future disciplinary actions. If the employee is so notified, the supervisor involved is to properly record the conversation and provide a copy of this record to the employee so as to provide a basis for the employee to pursue the matter through the grievance procedure.

(Ordinance No. 81-116, Sec. 20)

2.02.105 Disciplinary Action:

(a) Disciplinary actions or measures shall include only the following: oral or written reprimand, suspension, demotion and dismissal from employment. Disciplinary action shall be for just cause and will be subject to the grievance procedure. Oral reprimands will not be used as the basis for subsequent disciplinary action unless the employee is so notified at the time of reprimand, and if notified, the matter will be subject to the grievance procedure. If Metro has reason to reprimand an employee, it shall be done in a manner that is least likely to embarrass the employee before other employees or the public.

(b) It shall be the duty of all employees to comply with and to assist in carrying into effect the provisions of this chapter. Except as provided in Section 2.02.045, no employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by this chapter.

(c) Any of the following may constitute grounds for disciplinary action:

- (1) Abandonment of position;
- (2) Absence from duty without leave;
- (3) Abuse of leave privileges;
- (4) Below standard work performance;
- (5) Discourteous treatment of the public or other employees;
- (6) Intoxication during working hours;
- (7) Fraud in securing appointment or promotion;
- (8) Insubordination;
- (9) Misuse of Metro property, funds or records;
- (10) Neglect of duty;
- (11) Willful deceit;
- (12) Any conviction by a court of law which would be incompatible with the work performed for Metro by the affected employee;
- (13) Violation of Metro ordinances and regulations and directives.

(d) Any of the following types of disciplinary action may be utilized. It is appropriate, though not necessary in every circumstance, that the following steps be taken progressively. Reasons for each disciplinary action should be documented before action is taken unless extenuating circumstances exist.

- (1) Oral Reprimand: Oral reprimand is notice by a supervisor to an employee that his/her behavior or performance must be improved. It defines areas where improvement is needed, sets goals, and informs the employee that failure to improve may result in more serious action. The supervisor shall record the date and content of the oral reprimand, and such record shall be placed in the employee's personnel file. This record shall be removed when successful corrective action is completed.
- (2) Written Reprimand: Written reprimand is formal notice by a supervisor to an employee that his/her performance or behavior must be improved. A written reprimand must be approved by the

department head. It contains the same elements as the oral reprimand. When appropriate, it should be used in conjunction with a plan for individual improvement. A copy of the written reprimand and plan for individual improvement is placed in the employee's personnel record. This copy shall be removed when successful corrective action is completed.

- (3) Suspension: Suspension without pay should be used when other disciplinary measures have failed or when it is necessary that the employee not remain on duty. Suspensions shall not require advance notice and may be effected immediately. Within two (2) working days, Metro shall send a notice to the suspended employee at his or her last known address describing the circumstances of the suspension, the reason for the suspension, the length of the suspension, the date or the circumstances under which the employee may return to work. A duplicate copy of the written notice shall be placed in the employee's personnel file by the Personnel Manager. Dismissal may be the next step of disciplinary action.
- (4) Demotion: Demotion, both in pay and to a lower classification may be used as a form of discipline when discharge is not warranted or when the supervisor believes that the employee has the potential for correcting conduct. Such action shall be subject to the rules governing demotions.
- (5) Dismissal: Dismissal shall require advance notice as provided under Section 2.02.105(g). Where it is deemed necessary that the employee be separated immediately, the notice of dismissal may simultaneously provide for suspension under subsections (d)(3) and (f) of this section.

(e) The power to demote or dismiss is granted solely to the Executive Officer and may not be delegated except in an emergency.

(f) The Executive Officer or his/her designee shall give an employee whose suspension is sought written notice in person or by mailing to the employee's last known address of the proposed action stating any and all reasons, specifically and in detail, for the proposed action. The notice becomes a permanent part of the employee's personnel record. Notice of suspension may be made after the suspension is effected where it is deemed necessary that the employee be separated immediately. The employee shall have three (3) working days for answering the

notice of proposed suspension and for furnishing written support of his/her answer. The employee is entitled to answer the notice personally or in writing, or both. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might affect the final decision, but does not include the right to a formal hearing with examination of witnesses. When the employee requests an opportunity to answer personally, the Executive Officer shall appoint a representative or representatives to hear his/her answer. The representative or representatives designated to hear the answer shall have authority to recommend what final decision should be made and the Executive Officer shall consider such recommendations. The Executive Officer shall give a written decision on the answer within two (2) workdays. The written answer and decision become a permanent part of the employee's personnel record. The above procedures shall apply even when an employee has been suspended prior to the beginning of the three (3) day answering period.

(g) Except as provided in Section 2.02.045(e), the Executive Officer shall give an employee whose dismissal is sought at least fourteen (14) days written notice in person or by mailing to the employee's last known address of:

- (1) The proposed dismissal;
- (2) Any and all reasons, specifically and in detail, for the proposed dismissal;
- (3) The employee's right to file a grievance pursuant to Section 2.02.110 of this chapter; and
- (4) The employee's right to a hearing pursuant to contested case rules.

This notice becomes a permanent part of the employee's personnel record. If the employee wishes to file a grievance, such grievance shall be submitted pursuant to Section 2.02.110. If the employee wishes to request a contested case hearing, such request shall be submitted pursuant to District rules on contested cases. If an employee requests a contested case hearing, the employee's right to file a grievance shall be deemed waived and any pending grievance for dismissal shall be terminated.

(h) Employees who are affected by a disciplinary action may initiate a grievance under the provisions of Section 2.02.110.

(i) Employees may, at their expense, be represented by an attorney or otherwise, in answering to a notice of suspension or dismissal.

(Ordinance No. 81-116, Sec. 21)

2.02.110 Grievance Procedure:

(a) The Executive Officer shall promptly consider and equitably adjust employee grievances; however, informal adjustment of grievances between supervisors and employees is encouraged. Grievances may be submitted by any employee or group of employees. Any party in the grievance procedure may seek the advice and assistance of the Employees Association.

(b) The following steps shall be followed in submitting and processing a grievance:

Step 1: The aggrieved employee or group of employees shall orally present the grievance to the immediate supervisor within fifteen (15) working days of the employee's awareness of its occurrence. The fifteen (15) day filing period may be extended upon approval of the Manager of Personnel. The supervisor shall give his/her reply within five (5) working days of the date of presentation of the grievance, not including the date of presentation.

Step 2: If the grievance is not settled in Step 1, then it shall be submitted in writing dated and signed by the aggrieved employee or group of employees to the department head within five (5) working days after the immediate supervisor's oral reply is given, not including the day the reply is given. The department head shall reply in writing to the grievance within five (5) working days of the date of the presentation of the written grievance, not including the day of its presentation. If the department head is the immediate supervisor, Step 2 should be eliminated.

Step 3: If the grievance is not settled in Step 2, it shall be submitted in writing by the aggrieved employee or group of employees to the Personnel Manager within five (5) working days after the department head's reply is given. The Personnel Manager shall reply in writing within five (5) working days of the date of presentation of the grievance, not including the day of presentation.

Step 4: If the grievance is not settled in Step 3, then it shall be submitted in writing by the aggrieved employee or group of employees to the Executive Officer within five (5) working days after the Manager of Personnel's written reply is given, not including the day such reply is given.

In lieu of submitting the grievance directly to the Executive Officer, the employee may opt to submit the grievance to a committee of three individuals, either Metro or non-Metro employed, appointed in the following manner:

(a) The aggrieved employee shall appoint one representative;

(b) The Executive Officer shall appoint one representative; and

(c) The employee and the Executive Officer shall appoint one member mutually acceptable.

The Personnel Manager shall be responsible for establishing an equitable and efficient method of selecting a representative acceptable to the Executive Officer and to the employee. The committee shall meet and hear evidence and forward its findings and recommended decision to the Executive Officer and employee. After consideration of the recommendation of the committee, the Executive Officer shall render a decision within five (5) working days after receipt of the committee's findings and recommendation. If the employee opts to submit the grievance directly to the Executive Officer rather than to the committee, the Executive Officer shall render a decision within five (5) working days after receipt of the grievance. The decision of the Executive Officer shall be final and binding on the employee or group of employees.

(c) Any grievance not taken to the next step within the prescribed number of days after receipt of a decision shall be considered settled.

(d) If the appropriate course of action fails to meet or to answer any grievance within the time limits prescribed for such action by this section, such grievance shall automatically advance to the next Step.

(e) The time limits prescribed in this section for the initiation and completion of the Steps of the grievance procedure may be extended by mutual consent of the parties involved. Likewise, any Step in the grievance procedure may be eliminated by mutual consent. Mutual consent shall be indicated in writing and shall be signed by all parties involved. Time limits may be extended unilaterally one (1) time by each party in each step for five (5) days in cases of documented emergencies.

(f) No employee or group of employees shall be disciplined or discriminated against in any way because of the employee's proper use of the grievance procedure.

(g) In cases of suspension, demotion or dismissal resulting in loss of pay or benefits, which action is subsequently reversed through the grievance procedure, said loss shall be reimbursed by Metro following the successful grievance action and notices of such suspension, demotion or dismissal shall be purged from the employee's personnel file.

(Ordinance No. 81-116, Sec. 22)

2.02.115 Position Classification Plan:

(a) A Position Classification Plan covering Regular, Regular Part-Time, and Temporary Employees shall be adopted, and may be amended by the Council to provide an equitable and logical arrangement of job classifications which will facilitate the identification, compensation and filling of positions.

(b) The Classification Plan shall consist of positions in Metro defined by class specifications, and identified by the class titles. The Classification Plan shall be developed and maintained so that all positions substantially similar with respect to duties, responsibilities, authority and character of work are included within the same class, and that the same schedules of compensation may be made to apply with equity under like working conditions to all positions in the same class.

(c) Copies of the Classification Plan shall be made accessible to employees by distribution to all department directors, the Chairperson of the Employees Association and the Personnel Office.

(Ordinance No. 81-116, Sec. 23)

2.02.120 Titles and Specifications:

(a) The Position Classification Plan shall include titles for the various classifications as a guide toward equal pay for equal work. Classification titles shall be used in all personnel, budget and financial records.

(b) Each position shall be allocated to an appropriate class on the basis of the duties and responsibilities of the position.

(c) The Classification Plan shall include a Class Specification containing the class title, the class code, the principal duties, the knowledge and abilities required as minimum qualifications and the education, training and/or experience required for successful performance in the job. Classification titles and code numbers may be changed by the Executive Officer. Changes in the duties and minimum qualifications require Council approval.

(Ordinance No. 81-116, Sec. 24)

2.02.125 New Positions: New positions are authorized by the Council. Any positions added to the Budget require Council approval. Procedures for processing requests for new positions shall be contained in the Personnel Procedures Manual.

(Ordinance No. 81-116, Sec. 25)

2.02.130 New Classifications: New classifications are authorized by the Council. Any new classification added to the classification plan requires Council approval. Procedures for processing requests for new classifications shall be contained in the Personnel Procedures Manual.

(Ordinance No. 81-116, Sec. 26)

2.02.135 Reclassifications of Existing Positions: Reclassification of an existing position from one existing classification to another existing classification may be approved by the Executive Officer provided the reclassification can be accomplished with the limitations of the current budget. Procedure for processing requests for reclassifications of existing positions shall be contained in the Personnel Procedures Manual.

(Ordinance No. 81-116, Sec. 27)

2.02.140 Effect on Incumbents of Positions Being Reclassified:

(a) Should a permanent incumbent of a position that has been reclassified upward not qualify for the new class, upon continuing approval of the appointing authority, the incumbent may remain in the position.

(b) When a position is reclassified downward, upon continuing approval of the appointing authority, a permanent incumbent may remain in the position in his/her former class by overfilling for a period not to exceed six (6) months from the effective date of the reclassification. If, at the expiration of the six (6) month period, the incumbent still remains in the position, the employee, at his/her option, shall either take a voluntary demotion to the new class, or be laid off.

(c) When a group of positions in the same class are reclassified downward as a part of an agency-wide class study, the rates of the incumbents in the positions shall be continued and no change in salary shall occur until the annual adjustments to the Pay Plan bring the employees' rates in the new class within the new range. At that time, incumbents will become eligible for salary adjustments.

(Ordinance No. 81-116, Sec. 28)

2.02.145 Pay Plan:

(a) The Executive Officer shall prepare a Pay Plan for regular, regular part-time, and temporary employees which shall prescribe a minimum and a maximum range of pay appropriate for each class. Said Plan shall be approved by the Council. The Pay Plan shall identify the status of each position relating to overtime compensation.

(b) The rate or range for each class shall equitably reflect the difference in duties and responsibilities, and shall be related to compensation for comparable positions within the same job market.

(c) The Pay Plan shall be made accessible by the Personnel Office to employees by distribution to all department directors and the Employees Association.

(Ordinance No. 81-116, Sec. 29)

2.02.150 Analysis of Pay Plan: The Executive Officer shall study Metro employee compensation at least once annually. Said study may cover such items as changes in the Consumer Price Index and salaries and benefits received by employees in the labor market. The Executive Officer will report the findings of said study at least once annually to the Council with recommended actions.

(Ordinance No. 81-116, Sec. 30)

2.02.155 Administration of Pay Plan: Upon initial appointment to a position, each employee should receive a salary at the beginning step of the salary range for the class to which the position is allocated. Appointment at the beginning step should be the rule, with appointments above that level being the exception for outstanding qualifications and experience, and subject to approval of the Executive Officer.

(Ordinance No. 81-116, Sec. 31)

2.02.160 Salary Administration Guidelines:

(a) The salary plan is designed to allow an employee the opportunity for growth and adjustment to a new position, and to earn salary increases on a planned basis. Except as provided in subsections(d)(4) and (d)(12) of this section, or as a result of a change pursuant to other sections of these rules, employees' current salary shall be used to calculate merit increases and cost of living adjustments shall be cumulative.

(b) All salary increase personnel actions require the supervisor's recommendation, and the approval of the department head and Personnel Manager prior to providing such increase to the employee.

(c) Payroll procedures and policies are established and maintained by the Manager of Accounting.

(d) Administrative Procedures:

- (1) Employees hired or promoted at the beginning step of a salary range or between the beginning step and the entry merit rate are eligible to receive a salary increase to the entry merit rate after successful completion of six (6) continuous months of probationary service. When an employee is appointed above the entry merit rate he/she is not eligible for a salary increase for one year, unless the Executive Officer approves an extra meritorious salary increase.
- (2) The First Step increase of five (5) percent to the entry merit rate is initiated by Personnel on the appropriate dates unless the department head provides Personnel with a negative performance evaluation and a request to temporarily withhold said increase. This does not absolve the appointing authority from performing an evaluation at the point the employee reaches the entry merit rate.
- (3) After an employee has reached the entry merit rate, he/she is eligible for annual salary increases in one (1) percent increments up to and including the maximum salary shown for the assigned salary range. Criteria for providing the increases are in the following subsections.
- (4) The Incentive Salary Rate of 1 percent to 3 percent is to be administered by the Executive Officer in conjunction with the Personnel Manager and the appropriate department head. This salary rate is to be used to reward outstanding employees and/or to assist in retaining employees. Incentive salary increases require the approval of the Executive Officer.
- (5) All merit increases have to be authorized and approved by the department head and reviewed by the Personnel Manager prior to implementation. A decision to withhold a salary increase will be

communicated to the employee in writing by the department head.

- (6) Salary increases (except as noted in subsection (d)(2) of this section) must be submitted to the Personnel Division with an employee evaluation form. Department heads shall make every effort to complete the employee's evaluation by the employee's anniversary dates. If the evaluation is not completed by that date, any merit increase assigned shall be retroactive to that date.
- (7) The Merit Rate is the rate which is set annually by the Council according to agency salary policies relating to comparable and competitive rates of pay found in the labor market for similar work, and which rate reflects the impact of the cost of living for the Portland metropolitan area. When the Maximum Merit Rate is adjusted, the entire salary range must be adjusted and the individual's salary should be adjusted by the same rate. This adjustment will maintain the internal balance between salary ranges for each class and maintain the employee's salary within the assigned salary scale.
- (8) It will be general practice to hire new employees at the beginning Step, but promoted employees may be assigned a salary within the appropriate range in line with Metro Personnel Rules and policies.
- (9) Criteria to be considered in recommending and granting merit salary increases should include but not be limited to:
 - Length of service
 - Competency
 - Growth in handling job responsibilities
 - Attitude
 - Specific actions toward self-improvement
 - Recognition of excellence
 - Productivity increases of tangible quantities and qualities
 - Creative and innovative contributions
 - Cost and budgetary savings realized
- (10) This criteria shall apply to salary increases given in the merit range of the salary schedule. The Personnel Manager shall review the supervisor's and department head's merit salary increase actions, and shall assure that the criteria on the performance evaluation forms are

followed. Employees will be considered for merit increases upon the anniversary date on which they reached the entry merit rate for the position currently held.

- (11) When an employee is promoted or reclassified to a position in a classification with a higher maximum salary rate, the employee shall be placed on the beginning step of the salary range or receive an adjustment of 5 percent, whichever is greater. Appointment at the beginning step or an adjusted 5 percent rate should be the rule, with appointments above that level being the exception for outstanding qualifications and experience and subject to the approval of the Executive Officer. If such 5 percent increase places the employee between the beginning step and the entry merit rate, the employee will be placed at the entry merit rate after completion of six (6) months of satisfactory service.
- (12) The Executive Officer, upon request by the department head and supported with proper documentation of all relevant issues, may reduce an employee's merit salary. Such decrease shall be no more than five (5) percent the amount awarded on the last anniversary date and in no case shall go below the entry merit rate for the classification in which the employee is working. The salary decrease will occur on the employee's anniversary date in conjunction with a performance evaluation. An evaluation shall be made of the employee's performance after six (6) months with the opportunity to reinstate the merit increase if performance warrants it. All such reductions shall be subject to the Grievance Procedure.

(e) Management of Incentive Range: The Incentive Range of 3 percent is managed exclusively by the Executive Officer. Request for incentive increases by department heads should be written and sent directly to the Executive Officer. The major use of this part of the salary plan should be for outstanding performance, retention and/or assignment of an additional project of agency-wide importance. Other reasons as deemed appropriate by the Executive Officer can be applied. This increase is to be for no longer than one year. The Personnel Manager shall assist the Executive Officer with the implementation and management of this provision.

(Ordinance No. 81-116, Sec. 32)

2.02.165 Payroll Procedures:

(a) Metro employees shall be paid according to the Pay Plan adopted by the Council. Adjustments to the Pay Plan may be made upon recommendation of the Executive Officer and approval by the Council.

(b) Employees shall be paid biweekly or monthly with a mid-month draw.

(c) Payday shall occur biweekly or semimonthly. In the event the normal payday falls on a holiday, payday shall occur the day before the holiday. If the normal payday falls on a Saturday or a Sunday, payday shall be the prior Friday.

(d) Payroll deductions will be made for income tax withholding, Workers' Compensation insurance and employee contributions to employee benefits, and may be made for the United Way Fund, payments to the Employee's Credit Union and other agencies as approved by the Executive Officer at the request of the employee.

- (1) Charitable solicitations of Metro employees while on the job during working hours shall be conducted in compliance with this section. No other solicitations of Metro employees while on the job during working hours by a charitable organization shall be permitted.
- (2) The Executive Officer with consultation of District employees shall by Executive Order establish rules and procedures to implement this section including procedures for applications, time and length of solicitation campaigns and payroll deductions. The procedures shall specify that all solicitations shall be made during a single campaign period lasting no longer than thirty (30) days and that employees may sign payroll deduction cards for charitable donations only during a two (2) week period following the end of the solicitation campaign period. The Executive Officer once each year shall certify all charitable organizations recognized by Metro for the purpose of conducting a fund drive among the employees of the District. The Executive Officer's action shall be based on the criteria stated in subsection (3) of this section.
- (3) Charitable organizations recognized to conduct a fund drive among Metro employees while on the job during working hours shall:

- (A) Be a fund-raising organization which raised funds for ten (10) or more charitable agencies.
- (B) Disburse funds only to agencies whose charitable activities are primarily in the geographical areas of the Metropolitan Service District and which have an office located within the District.
- (C) Be exempt from taxation under Internal Revenue Service Code Section 501(c)(3).
- (D) Be in compliance with the Charitable Trust and Corporation Act and the Oregon Solicitation Act (ORS 128.618 through 128.898). All charitable organizations who have made the required filings under such laws and have no enforcement action pending against them shall be presumed to be in compliance with such laws.
- (E) Have a policy prohibiting discrimination in employment and fund distribution with regards to race, color, religion, national origin, handicap, age, sex and sexual preference in the Charitable Organization and all its grantee agencies.
- (F) Provide an audited annual financial report to the Metropolitan Service District for distribution to its employees sixty (60) days prior to the charitable campaign.

- (4) Payroll deductions for employee charitable contributions shall be allowed only for charitable organizations in compliance with this Section.

(e) When the salary range for any classification is increased or decreased, individual employees salary rates shall be adjusted in proportion to the amount of increase or decrease without change in the employees established anniversary date.

(f) Bonus: A one-time award of a bonus of up to \$300 may be made by the Executive Officer, upon written recommendation of the employee's supervisor and department head supported by facts establishing reasonable justification for the award. A bonus award shall not be made in lieu of an employee's annual merit salary increase.

(Ordinance No. 81-116, Sec. 33; amended by Ordinance No. 89-302A, Sec. 1, 2, 3 and 4)

2.02.170 Overtime Compensation:

(a) Overtime may be allowed, and overtime compensation shall be paid, both pursuant to ORS 279.340 and 279.342, and pursuant to this section. Compensation for overtime shall be paid only to employees who are not exempted from the provision of ORS 279.340 by ORS 279.342.

(b) Except as a result of shift rotation, overtime shall be considered time worked by an employee in excess of the scheduled workday or workweek for full-time employment. Time worked beyond their regular schedules by employees on schedules of less than full-time shall be considered as additional time worked rather than overtime until such time exceeds the regular schedules for full-time employment.

(c) Department and division heads shall assign to each employee regular work duties and responsibilities which normally can be accomplished within the established workday and workweek. No overtime shall be worked by nonexempt employees without the approval of the department head or his/her designee.

(d) Exempt employees who work more than forty (40) hours in one week shall be eligible for equal time off not to exceed eight (8) hours in one week upon approval of their supervisor and provided it can be accommodated with their workload.

(e) Working during the lunch hour and during coffee breaks is not considered as overtime and no overtime payment shall be made for such time worked as defined in ORS 279.340; provided however that if a non-exempt employee is required by the supervisor to work through the lunch hour, he or she shall be entitled to leave work at the conclusion of eight (8) hours work or be eligible for overtime compensation pursuant to the provisions of this section.

(f) No person shall be discriminated against or disciplined for refusing to work overtime where in the opinion of the department head another qualified employee is available to perform the work.

(g) Designation of eligibility for overtime compensation shall be included in the pay plan for each position and revised annually based on the duties and responsibilities outlined in the class specification.

(h) For the purposes of computing overtime, hours worked shall include observed holidays, vacation leave, compensatory time, paid sick leave and time on the job.

(i) Compensation for authorized overtime shall be at the rate of time-and-one-half and may be paid either in cash if budgeted funds are available or as compensatory time off at the discretion of the department head. Compensatory time must be taken as leave within six (6) months or paid in cash within the fiscal year that it is earned. Such payment shall be at the employee's rate of pay being earned at the time of payment. When a non-exempt employee is terminated, the employee shall be given cash compensation for the overtime the employee has accrued.

(j) When cash payment for overtime is authorized, such payment shall be made no later than the next pay day following the pay period in which the overtime is worked.

(k) Overtime worked shall not be used to earn employee benefits or to serve out probation or merit increase periods. Compensatory time off in lieu of overtime pay will be counted as regular time worked in computing wages and toward earning employee benefits and to serve out probation and merit increase periods.

(Ordinance No. 81-116, Sec. 34)

2.02.175 Holidays:

(a) Probationary, regular and regular part-time employees of Metro shall be entitled to the following designated holidays listed with pay:

- (1) New Years Day;
- (2) Washington's Birthday;
- (3) Memorial Day;
- (4) Independence Day;
- (5) Labor Day;
- (6) Veterans Day;
- (7) Thanksgiving Day;
- (8) Christmas Day;
- (9) Two floating holidays are allowed each fiscal year on days of each employee's choice, subject to schedule approval of the supervisor. Employees hired after January 1 of each fiscal year shall be entitled to one such holiday in that fiscal year. For purposes of this section, a floating holiday is any day chosen by the employee and approved by the supervisor which would otherwise be a regular scheduled work day. The floating holidays must be taken by the employee within the fiscal year in which they accrue. If the employee's supervisor does not schedule the holiday leave prior to the last week of the fiscal year, the employee shall be allowed to take the holiday leave within the last week of the fiscal year. The employee may

determine which day of the last week he/she will be absent. Such absence will not reflect discredit on the employee.

(b) If any such holiday falls on a Sunday, the following Monday shall be given as that holiday. If any such holiday falls on a Saturday, the preceding Friday shall be given as a holiday.

(c) Holidays which occur during vacation or sick leave shall not be charged against such leave.

(d) Additional days designated by the Congress of the United States as legal holidays for all citizens shall be observed by Metro.

(Ordinance No. 81-116, Sec. 35)

2.02.180 Vacation:

(a) The following provisions are applicable to non-represented regular and non-represented regular part-time employees only. Appropriate contract provisions shall apply to those employees represented by an employee union.

(b) Subject to the provision on probation, all regular and regular part-time employees shall be granted annual vacation leave with pay.

(c) Regular and regular part-time employees who have been employed by Metro for more than six (6) consecutive months may be granted accrued vacation leave by approval of the department head or his/her designee. Department head vacations shall be approved by the Executive Officer. Special consideration of vacation needs of employees can be considered by the department head or the Executive Officer upon request.

(d) Employees shall not accumulate more than 250 hours of vacation leave. Additional hours may be accrued with the written approval of the Executive Officer. Such written authorization shall be filed in the Personnel Office.

(e) Any employee who is about to lose vacation credit because of accumulation limitations may, by notifying the department head five (5) days in advance, absent themselves to prevent loss of this time. Such action taken by the employee shall not constitute a basis for disciplinary action or loss of pay. Vacation leave shall not accrue during a leave of absence without pay, or educational leave with pay, the duration of which exceeds fifteen (15) consecutive calendar days. Any employee who is granted a leave of absence without pay shall first be scheduled for any vacation leave and/or compensatory time that has accrued to the employee before commencing leave without pay.

(f) Department heads or their designees shall schedule vacation for their respective staff with consideration for seniority, the desires of the staff and for the work requirements of the department. Vacation schedules may be amended to allow the department to meet emergency situations.

(g) Any regular or regular part-time employee who resigns, retires, is laid off or dismissed from employment with Metro shall be entitled to immediate lump sum payment for accrued and unused vacation at his/her existing salary rate provided, however, that such lump sum payment shall not be made if separation occurs prior to the completion of the initial probationary period including any extensions.

(Ordinance No. 81-116, Sec. 36; amended by Ordinance No. 91-426, Sec. 1)

2.02.185 Vacation Credit and Accrual Rate: The vacation credit and accrual schedules for regular and regular part-time employees are as follows:

<u>Total Years of Continuous Service</u>	<u>Accrual Rate Per Pay Period</u>	<u>Equivalent Annual Hours for Full-Time Employees</u>
Date of Hire through completion of 3 years	5.00 hours	120 hours
4 years through completion of 7 years	6.00 hours	144 hours
8 plus years through completion of 11 years	7.00 hours	168 hours
12 plus years	8.00 hours	192 hours

Regular part-time employees shall accrue vacation under the above schedule at a rate proportionate to the time worked per week.

(Ordinance No. 81-116, Sec. 37; amended by Ordinance No. 82-139, Sec. 1; Ordinance No. 91-426, Sec. 2)

2.02.190 Sick Leave:

(a) Regular employees shall earn sick leave with pay at a rate of 104 hours per year (.05 hours per hour worked); such sick leave shall accrue in an unlimited amount.

(b) Regular part-time employees shall earn sick leave with pay proportionate to the amount of time worked; such sick leave shall accrue in an unlimited amount.

(c) Employees are eligible to use sick leave for the following reasons:

- (1) Personal illness or physical disability;
- (2) Illness or physical disability in the employee's household requiring the employee to remain at home.
- (3) Medical appointments and office visits.

(d) Sick leave shall be charged as follows: Employees working a regular workweek shall be charged leave on the basis of one (1) day sick leave for each duty day absent; except when such absence is the result of quarantine, in which case no charge shall be made. Not less than one (1) hour of sick leave may be charged for any portion of workday missed due to sickness.

(e) Abuse of the sick leave privilege shall be cause for disciplinary action. An employee who is unable to report to work because of any of the reasons set forth in the above subsection of this section shall report the reason for his/her absence to his/her supervisor. Sick leave with pay may not be allowed unless such report has been made. The supervisor may require sick leave beyond three (3) days to be supported by a physician's statement attesting to the illness.

(f) Regular full-time employees who use twenty-four (24) hours or less of sick leave within one (1) fiscal year period shall accrue eight (8) additional hours of vacation leave in exchange for eight (8) hours of sick leave at the end of the fiscal year period. Regular part-time employees who use twenty-four (24) hours or less of sick leave within one fiscal year shall accrue four (4) additional hours vacation leave.

(g) Transfer of Leave Credits: Sick leave is provided as a benefit to each employee as insurance for periods of illness. Under normal circumstances benefits are not transferrable; however, upon request of an employee, the Executive Officer may authorize transfer of sick leave credits on a limited, carefully monitored basis when extenuating circumstances exist. Each request will be reviewed and approval granted on a case by case basis.

(Ordinance No. 81-116, Sec. 38; amended by Ordinance No. 82-139, Sec. 2)

2.02.195 Leave of Absence Without Pay:

(a) Disability Leave: Upon application, supported by a statement of a physician, a leave of absence will be granted

without pay for a period not to exceed six (6) months in cases of the physical disability of a regular or regular part-time employee. Any employee requesting such leave shall file such request in writing with the department head and attach thereto a statement of the attending physician. Such statement must indicate that the duration of leave requested is necessary for recovery from the disability. Such disabled employee, upon ceasing work, may use such vacation and sick leave as he/she may have earned, except that such vacation must have been regularly available to him/her during the calendar year, and the sick leave shall not exceed the amount which has been earned up to the time the leave of absence begins. The leave of absence without pay shall commence immediately upon completion of the vacation and sick leave. During the first three (3) months of disability leave, Metro shall continue to provide health, dental, life insurance, accidental death and dismemberment and long-term disability benefits, to the same extent provided other employees, and shall pay all appropriate premiums. If the leave extends beyond three (3) months, the employee may elect to continue such benefits for up to six (6) months from the date the leave began and, upon such election, the gross premiums for such extended coverage shall be paid by the employee. Such extension of coverage beyond the first three (3) months shall be subject to any restrictions in each applicable benefit policy or plan.

(b) Maternity Leave: All provisions in subsection (a) of this section relating to disability leave shall apply equally to regular and regular part-time employees who are disabled for reasons of pregnancy.

(c) Peace Corp Leave: Metro shall grant leaves of absence without pay for at least two years to any full-time salaried public officer or employee who serves, and while he/she serves, as a volunteer in the Peace Corps. Upon expiration of the leave the public officer or employee shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty, without loss of seniority or other employment rights, if any. Failure of the officer or employee to report within 90 days after termination of his/her service shall be cause for dismissal.

(d) All Other Leaves Without Pay: All regular, regular part-time and probationary employees may be granted leave of absence without pay and without employee benefits for a period not to exceed six (6) months provided such leave can be scheduled without adversely affecting the operations of Metro. Such leave may be extended in writing by the Executive Officer once up to an additional six (6) months. Requests for leave of absence without pay shall be in writing, shall be directed to the department head and shall contain reasonable justification for approval. Requests of ten (10) days or more shall require the approval of

the Executive Officer or his/her designee. The approved request shall be filed in the Personnel Division. The employee may elect to continue employee benefits, and upon such election, premiums for such extended coverage shall be paid by the employee. Such coverage shall be subject to any restriction which may exist in each applicable benefit policy or plan.

(Ordinance No. 81-116, Sec. 39)

2.02.200 Leave of Absence with Pay: Regular non-represented and regular part-time non-represented employees may request leave of absence with pay for the purposes specified in this section. Each request shall be approved by the Executive Officer on its merits and on the basis of the guidelines provided in this section. Approved requests shall be filed in the Personnel Division. All leaves of absence with pay under this section, for non-represented employees in the Council Department, shall have their leaves of absence with pay approved by the Presiding Officer of the Council. Appropriate contract provisions shall apply to those employees represented by an employee union.

(a) Compassionate Leave: In the event of a death in an employee's immediate family, the employee may be granted leave of absence with pay not to exceed three (3) working days. Time not worked because of such absence shall not affect accrual of vacation or sick leave.

(b) Funeral Participation: When an employee participates in a funeral ceremony, he/she may be granted one-half (1/2) day off to perform such duty. Time not worked because of such absence shall not affect accrual of vacation or sick leave.

(c) Witness or Jury Duty: When a Metro employee is called for jury duty, or is subpoenaed as a witness, he/she shall not suffer any loss of his/her regular compensation during such absence; however, the amount of compensation an employee receives for such duty shall be paid to Metro. Time not worked because of such duty shall not affect accrual of vacation and sick leave.

(d) Military Leave: An employee who has successfully completed the probationary period and who is a member of the National Guard, or of a reserve component of the Armed Forces of the United States, or of the United States Public Health Service, shall be entitled, upon application, to a leave of absence with pay for a period not exceeding fourteen (14) calendar days in any one (1) calendar year to perform temporary active or training duty. Such leave shall be granted without loss of time, or other leave, and without impairment of merit ratings or other rights or benefits to which he/she is entitled. Military leave shall be granted only when an employee receives bona fide orders to temporary active or training duty, and shall not be paid if the employee does not return to his/her position immediately

following the expiration of the period for which he/she was ordered to duty.

(e) Administrative Leave: An employee at the level of department/division head, or above, may be granted administrative leave in recognition of their exempt status. Other non-represented employees who work in classifications which are exempt from overtime pay may also be granted such leave at the discretion of their department/division head and with the approval of the Executive Officer or Presiding Officer of the Council, whichever is applicable. Such leave shall not be cumulative from year to year, shall be compensable only in the form of leave time, and shall not exceed forty (40) hours in a fiscal year. Time not worked because of such leave shall not affect accrual of vacation or sick leave.

(Ordinance No. 81-116, Sec. 40; amended by Ordinance No. 91-426, Sec. 3)

2.02.205 Conferences, Membership and Conventions: Attendance at conferences, conventions or other meetings at Metro's expense shall be authorized by the Executive Officer. Permission shall be granted on the basis of an employee's participation in or the direct relation of his/her work to the subject matter of the meeting. Members of professional societies may be permitted to attend meetings of their society when such attendance is considered to be in the best interests of Metro. Metro shall pay for professional or trade memberships for employees when deemed appropriate by the Executive Officer or his/her designee.

(Ordinance No. 81-116, Sec. 41)

2.02.210 Education Opportunities:

(a) All regular and regular part-time employees are encouraged to pursue educational opportunities which are directly related to the employee's work and which will enhance the employee's job-related skill level.

(b) Employees who register for courses which are judged to be of direct and significant benefit to Metro may receive some reimbursement for expenses incurred by the employee while taking approved courses. Procedures for application and amount awarded are contained in the Personnel Procedures Manual.

(c) Normally the cost of textbooks and technical publications required for such courses shall be the responsibility of the employee. If Metro purchases any of the textbooks and publications for such courses, said textbooks and publications shall become the property of Metro.

(Ordinance No. 81-116, Sec. 42)

(Revised 1/2/92)

2.02.215 Workers' Compensation Insurance:

(a) All employees shall be covered for medical expenses and disability benefits for injuries or illness resulting from employment.

(b) Payment of medical expenses and lost time disability benefits is determined by the insurance carrier, State Accident Insurance Fund, on the basis of the doctor's statement and the Workers' Compensation Insurance schedule of the State of Oregon.

(c) The cost of Workers' Compensation Insurance shall be paid by Metro with the exception of the employee contribution mandated by the Workers' Compensation Law of the State of Oregon.

(d) During an employee's absence due to an on-the-job injury or occupational illness, the employee may utilize sick leave or vacation credits to augment any benefits paid by the Workers' Compensation fund.

(Ordinance No. 81-116, Sec. 43)

2.02.220 Insurance and Retirement: All probationary, regular and regular part-time employees shall receive health, life, disability, vision and dental insurance, and shall be members of one of Metro's retirement plans. Job share positions are eligible for one set of benefits which are split between the two employees sharing the position. Continuous service as defined in this chapter shall apply in determining length of service for purposes of an employee's retirement plan, except as otherwise required by each such plan.

(Ordinance No. 81-116, Sec. 44)

2.02.225 Orientation: There shall be an orientation program. All new employees shall be provided with a copy of this chapter and insurance plans and Metro shall periodically provide them with orientation sessions.

(Ordinance No. 81-116, Sec. 45)

2.02.230 Exemptions: Notwithstanding any provision of this chapter, certain employees shall be exempt and shall not be subject to the following portions of this chapter:

- (a) Sections 2.02.040, 2.02.045 and 2.02.070.
- (b) Sections 2.02.100 through 2.02.110.
- (c) Sections 2.02.115 through 2.02.140.
- (d) Sections 2.02.145 through 2.02.170.

(Ordinance No. 81-116, Sec. 46)

2.02.235 Positions Exempt: The exemptions designated in Section 2.02.230 herein shall apply to the following positions:

- (a) Executive Aide to the Executive Officer (1).
- (b) Administrative Aide to the Executive Officer (1).

(Ordinance No. 81-116, Sec. 47)

2.02.240 Conditions of Exemptions: Notwithstanding exemptions provided in Section 2.02.230, employees in exempt positions (a) and (b) of Section 2.02.235 shall receive such salaries or compensation as may be determined by the Executive Officer, limited however, to budgeted funds allocated to the Executive Management Department for personnel designated in Section 2.02.235 of this chapter.

(Ordinance No. 81-116, Sec. 48)

2.02.245 Safety Program:

(a) Council Responsibility: The Council recognizes the need for the development of safe working conditions and practices for every job, and will promote the advancement of safety in design of buildings, offices, equipment, tools and other devices. The safety program, as adopted by the Council, shall be set forth in a separate document and made available throughout Metro facilities. Employees and supervisors are required to be familiar with the provisions of these safety regulations and policies.

(b) All supervisors will consider it an essential part of their job to administer the safety program.

(c) All employees are required as a condition of their employment to follow all established safety practices. An injury or illness sustained on the job must be immediately reported. The appropriate accident report form must be completed and sent to the State Industrial Accident Fund (SAIF) of the State of Oregon.

(Ordinance No. 81-116, Sec. 49)

2.02.250 Service Awards: The Executive Officer shall provide a service award program for Metro employees.

(Ordinance No. 81-116, Sec. 50)

2.02.260 Affirmative Action Policy:

(a) Policy Statement: The Council recognizes that it has a responsibility to provide equal employment opportunities regardless of race, color, national origin, religion, physical or

mental handicaps, sex or age, so as to eliminate waste in the utilization of human resources.

(b) Affirmative Action Program: The Council has adopted an affirmative action policy and program which is set forth in a separate document which is available throughout Metro facilities. All employees are encouraged to familiarize themselves with Metro's affirmative action policies.

(Ordinance No. 81-116, Sec. 53)

2.02.265 Temporary Employees:

(a) Temporary employees appointed prior to the effective date of this Ordinance shall be eligible for employee benefits according to the Metro Temporary Employment Program adopted August 1979.

(b) Definition: Temporary Employee: Any employee hired to perform a specific task or to participate in a series of specific projects for a period not to exceed 1,040 hours over a six (6) month period. This definition excludes interns, CETA, and Work Study students.

(c) Status of Temporary Employees: Temporary employment will be expected to terminate upon completion of the task or project. No commitments will be made by Metro to retain the employee past the termination date of the project in question. The term of employment may not exceed six (6) months without approval of the Executive Officer who may grant up to a six (6) month extension provided, however, accrued hours shall not exceed 2,080 over a twelve (12) month period. Continuation of employment beyond one (1) year may only occur upon appointment to a regular position authorized under a currently approved budget.

(d) Benefits: Benefits required by law such as Workers' Compensation and Social Security will be paid for all temporary employees. Temporary employees are allowed vacation leave and sick leave according to the same rules as regular employees. No additional benefits will be paid to temporary employees except for designated holidays as provided for in this chapter.

(e) A newly employed temporary employee shall receive pay for an observed holiday if the employee has worked at least 30 consecutive work days prior to the occurrence of a legal holiday or if the employee has worked all of the working days of the month in which the holiday occurs; and a temporary employee leaving Metro employment will receive a paid holiday for any legal holiday provided the employee has worked five consecutive days or more beyond the occurrence of the said legal holiday.

(f) Eligibility for Regular Employment: Temporary employees will be allowed to compete for regular positions on the same basis as applicants from outside the agency. Temporary full-time employees who have been employed at Metro three (3) consecutive months and who have gone through a competitive selection process for the current temporary full-time position will be given in-house promotional hiring preference for vacant positions for which they possess the qualifications. If appointed into a regular position, employment time spent in previous full-time temporary positions may be counted toward the accumulation of vacation and personal holiday time if there has been no break in service.

(g) All sections of this chapter not inconsistent with the terms of the section including the pay and classification procedures will apply to temporary employees.

(Ordinance No. 81-116, Sec. 54)

2.02.270 Employment Contracts:

(a) Persons employed in certain positions may be employed subject to employment contracts. In that event, the terms of such contracts shall control the conditions of employment, and this ordinance shall apply to such employment to the extent not inconsistent with such contracts.

(b) Employment contracts shall be authorized only for positions designated by resolution of the Council, and compensation to be paid pursuant to such contracts shall not exceed those approved by the Council.

(c) Hiring and termination by Metro of employees employed pursuant to this section shall only be with the approval or consent of the Council.

(Ordinance No. 82-139, Sec. 3)

2.02.275 Zoo Visitor Services Employees:

(a) Purpose: The purpose of this section is to establish personnel rules pertaining to the conditions of employment of Zoo Visitor Services Worker employees.

(b) Definitions:

(1) The Visitor Services Worker classification is divided into two definitions:

(A) Seasonal Visitor Services Worker Employee: Employees who are employed on a year-round basis. They will be scheduled regularly

during the peak seasons and scheduled as needed and as available during the remainder of the year. The period of employment is indefinite unless the employee is terminated according to section (i) of this section or the employee resigns. Section 2.02.045 Probationary Period of the Metro Code does not apply.

(B) Regular Visitor Services Worker Employee: Employees who are employed on a year-round basis in the Visitor Services Division of the Metro Washington Park Zoo and regularly scheduled to work 80 or more hours each month, as provided by the current adopted budget.

(2) Director means Director of the Metro Washington Park Zoo.

(c) Application of Personnel Rules: All Visitor Services Worker Employees shall be subject to this section and to all other personnel regulations not inconsistent with this section.

(d) Recruitment and Appointment for Seasonal Visitor Services Worker Employees:

- (1) In-house recruitment to fill Seasonal Visitor Services vacancies is not required.
- (2) Recruitment to fill vacancies shall include appropriate forms of announcements to attract qualified applicants and to comply with Affirmative Action goals.
- (3) At the beginning of each year there will be a general recruitment. A list of qualified applicants will be developed from which Visitor Services Workers will be appointed. The Executive Officer will pre-authorize this qualified list on an annual basis pursuant to these Visitor Services Worker Rules. Applicants will be appointed from this list on an as-needed basis only. The duration of this list will be one year, unless it is exhausted before that time, in which case other recruitments will be held. If the list is not exhausted, those not hired but remaining on the list must go through the next year's selection process to be considered for hiring. When an emergency exists and no one on the pre-authorized, qualified list is available to work that period, the Zoo may recommend an appointment from another

source. Appointments made in an emergency situation will be treated the same as other appointments. These Visitor Services Worker Rules will apply to employees appointed during an emergency situation. Emergencies will be determined and documented by the Visitor Services Manager or his/her designee. The Visitor Services Manager will maintain the list and will determine who will be appointed.

- (4) Employees who leave in good standing may, within one year of termination, be reinstated without going through a recruitment process.

(e) Recruitment and Appointment for Regular Visitor Services Worker Employees:

- (1) In-house recruitment to fill Regular Visitor Services Worker vacancies will be the first means used, unless no one applies, then the position may be filled by a current seasonal employee.
- (2) Recruitment to fill vacancies shall include posting of such vacancies for at least five (5) calendar days in the agency.
- (3) Recommendations from the list of employees who applied to be appointed to vacant positions will be made by the Director of the Zoo or his/her designee. The Executive Officer is the appointing authority for all positions.
- (4) Regular Visitor Services Worker employees will be eligible to apply in-house for all vacant Regular (non-Visitor Services Worker) positions within the agency.

(f) Status of Seasonal Visitor Services Worker Employee: Seasonal Visitor Services Worker employees will be eligible to compete: a) for in-house recruitments of Regular Visitor Services Worker positions if they were hired under the competitive process for the position they currently hold or had been reinstated to that position; and b) for in-house recruitment of a Regular, non-Visitor Services Worker position, if they have worked 40 hours per week for three consecutive months and were hired through a competitive process for or had been reinstated to the position they currently hold. If hired into a Regular position, time employed in a previous full-time Seasonal Visitor Services Worker position will be counted toward the accumulation of Vacation time if there has been no break in service.

(g) Benefits:

- (1) Benefits required by law such as Workers' Compensation and Social Security will be paid for all Visitor Services employees. Seasonal Visitor Services Worker employees and Regular Visitor Services Worker employees who do not work at least 80 hours per month will not receive any other benefits.
- (2) Seasonal Visitor Services Worker employees will not be paid for holidays not worked. Designated holidays shall be considered as normal workdays.
- (3) Regular Visitor Services Worker employees appointed to one of the regular Visitor Services Worker positions will receive a full benefit package when working a minimum of 80 hours per month.

(h) Performance Evaluation: Performance evaluations will be performed on the schedule specified in Table S of the Pay Plan. Employees are eligible for advancement to the next step upon completion of 12 months and 480 hours.

(i) Disciplinary Action:

- (1) Disciplinary actions or measures shall include only the following: oral or written reprimand, suspension, demotion and dismissal from employment. Disciplinary action shall be for just cause. Oral reprimands will not be used as the basis for subsequent disciplinary action unless the employee is so notified at the time of reprimand. If Metro has reason to reprimand an employee, it shall be done in a manner that is least likely to embarrass the employee before other employees or the public.
- (2) It shall be the duty of all employees to comply with and to assist in carrying into effect the provisions of this chapter. No employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by this chapter.
- (3) Any of the following may constitute grounds for disciplinary actions:
 - (A) Abandonment of position;
 - (B) Absence from duty without leave;
 - (C) Abuse of leave privileges;

- (D) Below standard work performance;
- (E) Discourteous treatment of the public or other employees;
- (F) Intoxication during working hours;
- (G) Fraud in securing appointment or promotion;
- (H) Insubordination;
- (I) Misuse of Metro property, funds or records;
- (J) Neglect of duty;
- (K) Willful deceit;
- (L) Any conviction by a court of law which would be incompatible with the work performed for Metro by the affected employee;
- (M) Violation of Metro ordinances and regulations and directives in particular, those directives defined in the Visitor Services Worker Handbook.

- (4) Any of the following types of disciplinary action may be utilized. It is appropriate, though not necessary in every circumstance, that the following steps be taken progressively. Reasons for each disciplinary action should be documented before action is taken unless extenuating circumstances exist.

- (A) Oral Reprimand: Oral Reprimand is notice by a supervisor to an employee that his/her behavior or performance must be improved. It defines areas where improvement is needed, sets goals, and informs the employee that failure to improve may result in more serious action.

The supervisor shall record the date and content of the oral reprimand, and such record shall be placed in the employee's personnel file. This record shall be removed when successful corrective action is completed.

- (B) Written Reprimand: Written Reprimand is formal notice by a supervisor to an employee that his/her performance or behavior must be improved. A written reprimand must be approved by the Director or his/her designee. It contains the same elements as the oral reprimand. When appropriate, it should be used in conjunction with a plan for individual improvement. A copy of the written reprimand and plan for individual improvement is placed in the employee's personnel record. This copy shall be removed

when successful corrective action is completed.

- (C) Suspension: Suspension without pay should be used when other disciplinary measures have failed or when it is necessary that the employee not remain on duty. Suspensions shall not require advance notice and may be effected immediately. Approval of the Director or his/her designee is required. Within two (2) working days a notice shall be sent to the suspended employee at his or her last known address or personally delivered to that employee describing the circumstances of the suspension, the reason for the suspension, the length of the suspension, the date or the circumstances under which the employee may return to work. A duplicate copy of the written notice shall be placed in the employee's personnel file by the Personnel Officer. Dismissal may be the next step of disciplinary action.

- (5) Dismissal. Should the actions of an employee require a supervisor to discharge the employee, the supervisor shall suspend the employee without pay for five days. This must be authorized by the Director or his/her designee. The notice shall be in writing and shall include the reasons the termination is being recommended, the effective date, and notice that the employee may respond in writing within two days to the Visitor Services Manager.

The Visitor Services Manager will review the proposed termination with the Personnel Officer, including a review of any written response by the employee. If the Visitor Services Manager still believes the disciplinary action is appropriate he/she shall prepare a written notice of termination to be reviewed by the Director or his/her designee and the Personnel Officer. The Executive Officer must approve the termination except in an emergency. The written notice shall be sent to the employee by certified mail by the fifth day from the date the suspension notice was mailed or the employee was personally served with the suspension. The notice will become a permanent part of the employee's personnel file. Payroll shall be notified to prepare the final check.

(j) Promotion: Eligibility for assignment to Visitor Services Worker 2 and 3 classifications shall be established by the supervisor upon determination that an employee has acquired or possesses the knowledge, skill and ability required for the position.

(k) Wage Rates:

- (1) Visitor Services Worker employees will be paid at a rate in the Pay Plan approved by the Council.
- (2) The step range for each employee shall be established on the basis of individual qualifications and work assignment. It will be the general practice to appoint new Visitor Services Worker employees at the beginning step of the Visitor Services Worker 1 salary range. Exceptions approved by the Executive Officer may be made to allow hiring above the beginning step. Total hours of previous work experience with the Zoo and the quality of that work will be considered in determining the step for previous employees reemployed at the Zoo in subsequent seasons.
- (3) Eligibility for a wage increase shall be based on completion of 480 hours of satisfactory service after a 12-month period and upon recommendation of the Director or his/her designee, with a performance evaluation submitted to the Personnel Division.
- (4) Section 2.02.160 of the Metro Code (Salary Administration Guidelines) shall not apply to any Visitor Services Worker employees.

(l) Reporting and Hours of Work:

- (1) Because the number of Seasonal Visitor Services Worker employees needed at a given time depends upon weather conditions, such employees may be relieved from duty prior to the end of a scheduled workday or may be directed to not report for duty on a scheduled workday. The Director or his/her designee shall establish appropriate procedures for regulating reporting during inclement weather.
- (2) Work schedules will be posted, and will be subject to subsection (1) above. No employee will be called to work for less than three (3) hours in one day.

(m) Rest and Meal Period:

- (1) A rest period of 10 minutes with pay will be provided during each work period of four hours.
- (2) A non-paid lunch period of one-half hour (30 minutes) shall be provided. Whenever possible, such meal period shall be scheduled in the middle of the shift.

(Ordinance No. 81-123, Sec. 1 and 2; amended by Ordinance No. 87-221, Sec. 1 and 2; and Ordinance No. 89-269, Sec. 1; amended by Ordinance No. 89-269)

2.02.280 Ethical Requirements for Employees, Officers, Elected and Appointed Officials:

(a) The purpose of this section is to establish a Code of Ethics for District public officials which is consistent with current public policy established by the Oregon Legislative Assembly. Failure to comply with the provisions of this code shall be grounds for disciplinary action for employees of the District.

(b) "Public Official" means all employees, officers, elected officials and appointed members of boards, commissions and committees of the Metropolitan Service District.

(c) All public officials of the Metropolitan Service District shall strictly comply with the following requirements:

- (1) No public official shall use official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses, or for any member of the household of the public official, or for any business with which the public official is associated.
- (2) No public official or candidate for office or a member of the household of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate, if elected, would exercise any authority.

- (3) No public official shall solicit or receive, either directly or indirectly, and no person shall offer or give to any public official any pledge or promise of future employment, based on any understanding that such public official's vote, official action or judgment would be influenced thereby.
- (4) No public official shall further the personal gain of the public official through the use of confidential information gained in the course of our by reason of the official position or activities of the public official in any way.
- (5) No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefor or a member of the household of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.

(d) The Executive Officer, and every member of the Council of the Metropolitan Service District and the Portland Metropolitan Area Local Government Boundary Commission shall be required to comply with the reporting requirements established by ORS 244.060, including the filing of a Statement of Economic Interest on an annual basis as required by state law. A copy of the Statement of Economic Interest shall be filed with the Council Clerk at the time of filing with the appropriate State agency.

(e) All members of the Metropolitan Exposition and Recreation Commission and employees filling positions requiring Council confirmation as set forth in Section 2.02.040(e) shall file annually with the Council Clerk a Statement of Economic Interest which is substantially consistent with that required by ORS 244.060.

(f) Public Officials shall comply with the following requirements regarding the declaration of potential conflicts of interest and recording the notice of a potential conflict:

- (1) If the public official is an elected public official or an appointed public official serving on a board or commission, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.

- (2) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the potential conflict, and request that the appointing authority dispose of the matter giving rise to the potential conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (3) Nothing in subsection (1) of this section requires any public official to announce a potential conflict of interest more than once on the occasion which the matter out of which the potential conflict arises is discussed or debated.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.
- (5) When a public official gives notice of a potential conflict of interest, the potential conflict shall be recorded in the official records of the public body.

(Ordinance No. 89-305A, Sec. 3)

2.02:285 Smoking Policy: Smoking (cigarettes, pipes and cigars) is prohibited in all Metro facilities, with the following exceptions:

- (a) employee lounges and lunchrooms as posted;
- (b) individuals' enclosed offices;
- (c) Solid Waste facility gatehouses as posted; and
- (d) the Council lounge except when food is served.

Notwithstanding the provisions of this section, smoking is prohibited in any public meeting as defined in ORS 192.710.

(Ordinance No. 89-285, Sec. 1)

CHAPTER 2.03

CIVIL PENALTIES

SECTIONS:

2.03.010	Purposes
2.03.020	Definitions
2.03.030	Consolidation of Proceedings
2.03.040	Notice of Violation and Intent to Assess Civil Penalty
2.03.050	Mitigating and Aggravating Factors
2.03.060	Zoo Schedule of Civil Penalties
2.03.070	Solid Waste Schedule of Civil Penalties
2.03.080	Written Notice of Assessment of Civil Penalty; When Penalty Payable
2.03.090	Compromise or Settlement of Civil Penalty by Director

2.03.010 Purposes: The purpose of these rules and regulations is to prescribe the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties.

(Ordinance No. 50, Sec. 1)

2.03.020 Definitions: Unless otherwise required by context, as used in this subdivision:

(a) "Director" means the Director of a department of Metro.

(b) "Order" means (a) any action satisfying the definition given in ORS Chapter 183 or (b) any other action so designated in ORS Chapter 268.

(c) "Respondent" means the person against whom a civil penalty is assessed.

(d) "Violation" means a transgression of any provision or condition of any license and includes both acts and omissions.

(e) "License" as used in this Code, has the meaning given that word by ORS 183.310(3) (1975 Replacement Part).

(Ordinance No. 50, Sec. 2)

2.03.030 Consolidation of Proceedings: Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

(Ordinance No. 50, Sec. 3)

2.03.040 Notice of Violation and Intent to Assess Civil Penalty:

(a) Except as provided in subsection (d) of this section, prior to the assessment of any civil penalty the Director shall serve a written notice of violation and intent to assess civil penalties upon the respondent.

(b) The notice shall be personally delivered or sent by registered or certified mail by an employee of Metro or any other competent person over the age of 18 years to:

- (1) The respondent; or
- (2) Any person designated by law as competent to receive service of a summons or notice for the respondent; or
- (3) Following appearance of counsel for the party, the party's counsel.

(c) A notice of violation shall specify the violation and state that Metro will assess a civil penalty if the violation continues or occurs after five (5) days following service of the notice.

(d) Written notice of violation and intent to assess a civil penalty shall not be required where:

- (1) The respondent has otherwise received actual notice of violation not less than five (5) days prior to the violation for which a penalty is assessed.
- (2) The violation is of a type that would normally not be in existence for five (5) days or the jurisdiction of Metro to prosecute the violation is liable to be interrupted within that time.

(Ordinance No. 50, Sec. 4)

2.03.050 Mitigating and Aggravating Factors:

(a) In establishing the amount of a civil penalty to be assessed, the Director or the Council shall consider the following factors:

- (1) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

- (2) The history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;
- (3) The economic and financial conditions of the respondent.

(b) In establishing whether a civil penalty should be remitted or mitigated, the Director or the Council may consider the following factors:

- (1) The gravity and magnitude of the violation;
- (2) Whether the violation was repeated or continuous;
- (3) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;
- (4) The opportunity and degree of difficulty to correct the violation;
- (5) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;
- (6) The cost to Metro of investigation and correction of the cited violation prior to the time Metro receives respondent's answer to the written notice of assessment of civil penalty; or
- (7) Any other relevant factor.

(c) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Council may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition or regarding any factor urged in mitigation shall be upon the respondent.

(Ordinance No. 50, Sec. 5)

2.03.060 Zoo Schedule of Civil Penalties: In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Zoo by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than One Hundred (\$100) Dollars nor more than Five Hundred (\$500) Dollars for violation of an Order of Metro or its Council.

(b) Not less than Twenty-Five (\$25) Dollars nor more than Five Hundred (\$500) Dollars for any violation which causes, contributes to, or threatens the injury of any Zoo animals.

(c) Not less than Twenty-Five (\$25) Dollars nor more than Five Hundred (\$500) Dollars for any other violation.

(Ordinance No. 50, Sec. 6)

2.03.070 Solid Waste Schedule of Civil Penalties: In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the transferring, processing or disposal of solid waste by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(a) Not less than One Hundred (\$100) Dollars nor more than Five Hundred (\$500) Dollars for violation of an Order of Metro or its Council.

(b) Not less than Twenty-Five (\$25) Dollars nor more than Five Hundred (\$500) for any other violation.

(Ordinance No. 50, Sec. 7)

2.03.080 Written Notice of Assessment of Civil Penalty: When Penalty Payable:

(a) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service of the written notice of assessment of civil penalty shall be in accordance with the service provisions of Section 2.03.040.

(b) The written notice of assessment of civil penalty shall include:

- (1) A reference to the particular sections of the statute, rule, regulation, standard, order, certificate or permit involved;
- (2) A short and plain statement of the matters asserted or charged;
- (3) A statement of the amount of the penalty or penalties imposed; and

(4) A statement of the respondent's right to request a hearing.

(c) The respondent shall have twenty (20) days from the date of mailing of the notice in which to make written application for a hearing before the Metro.

(d) All hearings shall be conducted pursuant to the Contested Case Hearing procedures in the Metro Code.

(e) Unless the amount of the penalty is paid within ten (10) days after the Order becomes final, the Order shall constitute a Judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the Order in the same manner as execution upon a Judgment of a Court of Record.

(Ordinance No. 50, Sec. 8)

2.03.090 Compromise or Settlement of Civil Penalty by Director:

At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which he deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Council.

(Ordinance No. 50, Sec. 9)

CHAPTER 2.04

METRO CONTRACT PROCEDURES

SECTIONS:

GENERAL CONTRACT PROCEDURES

- 2.04.010 Definitions
- 2.04.020 Public Contract Review Board
- 2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts
 - a) Applicability
 - b) Initiating a Contract
 - c) Documentation Required for Contract Files
 - d) Contract Review
 - e) Disadvantaged Business Program
 - f) Code of Conduct
 - g) Federal/State Agency Approval
 - h) Budget
- 2.04.031 Notice of Award and Appeals
- 2.04.032 Contract Information Reports
- 2.04.033 Council Approval of Contracts
- 2.04.035 Metropolitan Exposition-Recreation Commission
- 2.04.040 Public Contracts, General Provisions
 - a) Competitive Bidding
 - b) Oregon Preference
 - c) Rejection of Bids
 - d) Bonds
- 2.04.041 Requirement of Competitive Bidding, Exemptions
 - a) State Law
 - b) Board Rule
 - c) Board Resolution
 - d) Limitation
- 2.04.042 Public Contracts Under \$2,500
 - a) Selection Process
 - b) Approval Process
 - c) and d) Other Provisions
- 2.04.043 Public Contracts Between \$2,501 and \$15,000
 - a) Selection Process
 - b) Review Process
 - c) Approval Process
 - d) Other Provisions
- 2.04.044 Public Contracts of \$15,000 or More
 - a) Selection Process
 - b) Approval Process
 - c), d) and e) Other Provisions
- 2.04.045 Public Contract Extensions and Amendments (Including Change Orders, Extra Work and Contract Renewals)
 - a) Selection Process
 - b) Review Process
 - c) Approval Process

- d) Other Provisions
- 2.04.050 Personal Services Contracts, General Provisions
 - a) Distinguishing Employees from Independent Contractors
 - b) Emergency Contracts
- 2.04.051 Personal Services Contracts Under \$2,500
 - a) Selection Process
 - b) Approval Process
 - c) Other Provisions
- 2.04.052 Personal Services Contracts Between \$2,501 and \$10,000
 - a) Selection Process
 - b) Review Process
 - c) Approval Process
 - d) Other Provisions
- 2.04.053 Personal Services Contracts of \$10,000 or More
 - a) Selection Process
 - b) Approval Process
 - c) Other Provisions
- 2.04.054 Personal Services Contract Extensions & Amendments
 - a) Selection Process
 - b) Approval Process
 - c) Other Provisions
- 2.04.060 Sole Source Contracts
 - a) Selection Process
 - b) Approval Process
 - c) Other Provisions
- 2.04.070 Sale of Metro Goods and Services
- 2.04.075 Purchase of Recycled Paper Products and Equipment that Uses Paper
- 2.04.080 Sale of Surplus Property
- 2.04.090 Food Items and Food Service Contracts
 - a) Selection Process
 - b) Review Process
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- 2.04.100 Purpose and Authority
- 2.04.105 Policy Statement
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- 2.04.115 Notice to Contractors, Subcontractors and Subrecipients
- 2.04.120 Liaison Officer
- 2.04.125 Directory
- 2.04.130 Minority-Owned Banks
- 2.04.135 Affirmative Action and Equal Opportunity Procedures
- 2.04.140 Certification of Disadvantaged Business Eligibility
- 2.04.145 Annual Disadvantaged Business Goals
- 2.04.150 Contract Goals
- 2.04.155 Contract Award Criteria
- 2.04.160 Determination of Good Faith Efforts
- 2.04.165 Replacement of Disadvantaged Business Subcontracts

2.04.170	Records and Reports		
2.04.175	Counting Disadvantaged	Business	Participation
	Toward Meeting Goals		
2.04.180	Compliance and Enforcement		
2.04.090	Food Items and Food Service Contracts		

2.04.010 Definitions:

(a) "Competitive Bids or Bids" means a competitive offer in which price and conformance, to specification will be the award criteria.

(b) "Contract Review Board or Board" means The Council is the Contract Review Board for the Metropolitan Service District with the powers described in ORS Chapter 279 and Section 2.04.020 of this Chapter.

(c) "Emergency" means an emergency for the purpose of this Chapter means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented and which require the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs.

(d) "Emergency Contracts" means a contract may be exempt from the competitive bidding process if an emergency requires prompt execution of a contract, but only if the contract is limited to remedying the emergency situation.

(e) "Exemptions from Competitive Bidding" means exemptions include any exemption or exception from the regular competitive bidding process for Public Contracts as defined in ORS 279.011 to 279.061, this chapter, and any exemption made by the Board pursuant to Section 2.04.041 of the Code.

(f) "Intergovernmental Agreement" means a written agreement with any other unit or units of federal, state or local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. "Unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter. (ORS 190.003 Definitions for ORS 190.003 to 190.110) As outlined in ORS 190.010, the agreement may provide for the performance of a function or activity:

- (1) By a consolidated department;
- (2) By jointly providing for administrative officers;
- (3) By means of facilities or equipment jointly constructed, owned, leased or operated;
- (4) By one of the parties for any other party; or

- (5) By a combination of the methods described in numbers (1) through (4) above.

(g) "Notice of Award" means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that the District intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

(h) "Personal Services Contract":

- (1) The following are Personal Services Contracts:

- (A) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, timber cruiser, data processing consultant or broadcaster.
- (B) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.
- (C) Contracts for services of a specialized, creative and research-oriented, noncommercial nature, including, but not limited to, contracts funded by specially designated Metro revenue sources such as the "One Percent Well Spent" program to fund innovative recycling projects.
- (D) Contracts for services as consultant.
- (E) Contracts for educational and human custodial care services.

- (2) The following are not Personal Services Contracts:

- (A) Contracts, even though in a professional capacity, if predominantly for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominantly for a tangible product.

- (B) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
- (C) Contracts for trade-related activities considered to be Labor and Materials Contracts.
- (D) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

(i) "Public Agency" means any agency of the federal government, state of Oregon, or any political subdivision thereof, authorized by law to enter into Public Contracts and any public body created by intergovernmental agreement.

(j) "Public Contract means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by Purchase Order, other than agreements which are for personal services. Public Contracts may be obtained by Purchase Order as determined by the Executive Officer.

(k) "Public Improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

(l) "Purchase Order" means a Public Contract for purchase of goods in any amount, or for goods and services \$500 or less, or for services \$500 or less.

(m) "Requests for Proposals or RFPs" means a Request for Proposal is the process described in Section 2.04.050, "Personal Services Contracts." This process may be used for Public Contracts only when the Board has granted an exemption for that type of contract or for a particular contract as set out in Section 2.04.041, "Requirement of Competitive Bidding, Exemptions." The Board may adopt a particular RFP process for a particular contract by setting forth the amendments in the exemption approval.

(n) "Sole Source Contracts" means contracts for which it can be documented there is only one qualified provider of the required service or material.

(Ordinance No. 79-76, Sec. 1 & 2; amended by Ordinance No. 81-125, Sec. 2 & 4, Ordinance No. 82-130, Sec. 2, Ordinance No. 84-175, Sec. 1, 2, 3, 4 & 8; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 89-271, Sec. 1; amended by Ordinance No. 89-305A, Section 5)

2.04.020 Public Contract Review Board:

(a) Creation of the Public Contract Review Board: Pursuant to ORS 279.055 the Council is designated and created as the Metropolitan Service District Contract Review Board.

(b) Powers of Board: The Contract Review Board shall have all the powers in the award of District contracts allowed under ORS 279.011 to 279.061.

(c) Contract Review Board Meetings:

(1) The meetings of the Contract Review Board shall normally, but need not, be conducted at the same time as, and as a part of, the regular meetings of the Metropolitan Service District Council.

(2) The rules of procedure adopted by the Council for its proceedings shall also govern proceedings of the Contract Review Board unless they conflict with rules adopted by the Board.

(d) Rules: The Contract Review Board may adopt rules relating to the award of District contracts. Such rules of the Contract Review Board shall be adopted by ordinance.

(e) Regulations: The Executive Officer may establish such other contract regulations, not inconsistent with this chapter as may be necessary and expedient.

(Ordinance No. 79-76, Sec. 1 & 2; amended by Ordinance No. 81-125, Sec. 2 & 4, Ordinance No. 82-130, Sec. 2, Ordinance No. 84-175, Sec. 1, 2, 3, 4, & 8; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2)

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a Purchase Order, it must first notify the Department of Finance & Administration of its intention and request the issuance of a contract number which shall appear on all

copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the Department of Finance & Administration either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The Department of Finance & Administration will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

- (1) Any contract which deviates from a standard contract form, exceeds \$10,000 for a Personal Services Contract or \$15,000 for a Public Contract, or is with another public agency must be reviewed by the General Counsel.
- (2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. The Director of Finance and Administration will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should

be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer will provide a monthly report to the Council, pursuant to Section 2.04.032, of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(h) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 89-305A, Section 6)

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract over \$15,000 or a Personal Services Contract over \$10,000 the District shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract above \$15,000 and a Personal Services Contract above \$10,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.
- (3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

(Ordinance No. 89-271, Sec. 1)

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) Contracts Awarded: This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) Contracts Amended: This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment

number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

- (3) Contracts Open: This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.
- (4) Contracts Closed: This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) Contract Type: Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any public contract or personal services agreement in an amount exceeding \$15,000 for which only one bid or response to a Request for Proposal has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a sole source contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts

designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request for Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request for Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal

document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(g) Any public contract \$15,000 or more or Personal Service Contract \$10,000 or more or any Intergovernmental Agreement not on the list of proposed contracts submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of section 2.04.033.

(Ordinance No. 89-271, Sec. 1; amended by Ordinance No. 89-305A, Sec. 7)

2.04.033 Council Approval of Contracts:

(a) Notwithstanding any other provisions of Chapter 2.04 the following contracts shall be approved by the Council prior to execution:

- (1) Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed except those contracts or classes of contracts that the Council shall have by ordinance exempted from this requirement by designating them as "B" contracts in the annual contract list provided by the Executive Officer under subsection 2.04.032(d);
- (2) Any intergovernmental agreement as defined herein under Section 2.04.010(f) by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the sale, lease or transfer of real property owned by the District.

(b) All contracts which require Council approval pursuant to subsection (a)(1) above and which are subject to competitive bidding or Request for Proposals procedures shall require Council approval of the Request for Bids or Request for Proposals prior to release of bidding or proposal documents to vendors. At the time of Council approval of the competitive bid or Request for Proposal documents, the Council may waive the requirement of Council approval of the contract and authorize the Executive Officer to execute the contract subject to any conditions, consistent with Council contracting authorities as described herein, specified by the Council at the time of the waiver.

(Ordinance No. 89-271, Sec. 1; amended by Ordinance No. 89-305A)

2.04.035 Metropolitan Exposition-Recreation Commission:

The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. Notwithstanding any provision of this chapter to the contrary, the Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount in accordance with its own contracting rules adopted pursuant to the authority contained in Section 6.01.040(j). No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies of all contracts and amendments thereto with the Department of Finance & Administration.

(Ordinance No. 87-232, Sec. 2; amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 88-279, Sec. 1; amended by Ordinance No. 89-325A, Sec. 2)

2.04.040 Public Contracts, General Provisions:

(a) Competitive Bidding: Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(b) Oregon Preference: In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) Rejection of Bids: The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

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

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$15,000 or less.
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a Performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.
- (4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Executive Officer determines it is in the public interest.
- (5) Bid security and labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.
- (6) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 87-223, Sec. 1, amended by

Ordinance No. 87-232, Sec. 2; amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 89-271, Sec. 1; amended by Ordinance No. 89-309)

2.04.041 Requirement of Competitive Bidding, Exemptions:

(a) State Law: The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies estimated to be less than \$500.

(b) Board Rule: The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less than \$15,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.
- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration

of the emergency unless the Board grants an extension.

- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.
- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.

(c) Board Resolution: Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(d) Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

(Ordinance No. 84-175, Sec. 6; amended by Ordinance No. 84-179, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 87-223, Sec. 1; Ordinance No. 87-230, Sec. 1; and Ordinance No. 87-233, Sec. 2; amended by Ordinance No. 88-279, Sec. 2)

2.04.042 Public Contracts Under \$2,500:

(a) Selection Process:

- (1) Under \$500: Unless completely exempt from competitive bidding under Section 2.04.041, competitive bids are not required for public contracts less than \$500. The District should, where feasible, obtain competitive quotes.
- (2) Between \$500 and \$2,500: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$500 or more, but less than \$2,500, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) Approval Process: For public contracts of an amount of less than \$2,500, the Director of the initiating department, or a designee of the Director approved by the Executive Officer, may sign contracts if the following conditions are met:

- (1) A standard contract form is used;
- (2) Any deviations to the contract form are approved by the General Counsel;
- (3) The expenditure is authorized in the budget;

- (4) The contract does not further obligate the District for \$2,500 or more;
- (5) The appropriate Scope of Work is attached to the contract;
- (6) The contract is for an entire project or purchase; not a portion of a project or purchase which, when complete, will amount to a cost of \$2,500 or more; and
- (7) No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(d) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 88-278, Sec. 2)

2.04.043 Public Contracts Between \$2,501 and \$15,000:

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$2,500 or more, but less than \$15,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.

(c) Approval Process: (1) For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2 and Ordinance No. 91-378A, Sec.5)

2.04.044 Public Contracts of \$15,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.
- (2) The bid document will be reviewed by the Department of Finance and Administration and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.
- (3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.
- (4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.
- (5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the Department of Finance and Administration.
- (6) After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.
- (7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.
- (8) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of \$15,000 or more shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director Regional of Facilities may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the Department of Finance and Administration shall provide the notice required by ORS 279.363.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249 and Ordinance No. 91-378A, Sec. 6)

2.04.045 Public Contract Extensions and Amendments (Including Change Orders, Extra Work and Contract Renewals):

(a) Selection Process: Any contract amendment for additional work including contract renewals, change orders, extra work, field orders and other changes in the original specifications which increase the original contract price may be made with the contractor without competitive bidding subject to the extent any of the following conditions are met:

- (1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or
- (2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments

made under subsection (1) are not included in computing the aggregate amount under this section; or

- (3) The increase in price is due to unexpected conditions which arise during performance of a construction, maintenance or repair contract and the Executive Officer determines that extension of the scope of work on the current contract is the most economical method of dealing with the unexpected conditions; or
- (4) The total cost of the contract, including amendments, does not exceed \$5,000 but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).
- (5) In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.
- (6) In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they do not materially add to or delete from the original scope of work included in the original contract.

Change orders exceeding the amounts provided in subsection 2 which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.

(c) Approval Process:

- (1) In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more

(rule 3) shall be approved under the rule for contract prices of \$2,500 or more.

- (2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:

- (A) A standard contract form is used;
- (B) Any deviations to the contract form are approved by the General Counsel;
- (C) The expenditure is authorized in the budget;
- (D) The contract does not further obligate the District beyond \$2,500;
- (E) The appropriate Scope of Work is attached to the contract; and
- (F) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

- (3) \$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 may be approved by either the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contract amendments and extensions. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 87-223, Sec. 1; amended by Ordinance No. 88-249, Sec. 2 and Ordinance No. 91-378A, Sec. 6)

2.04.050 Personal Services Contracts, General Provisions:

(a) Distinguishing Between Employees and Independent Contractors: Employees shall not be hired under the guise of a Personal Services Contract. To determine whether a particular worker is to be an employee or an independent contractor, the most important factor to consider is the employer's right to control. If the employer is to retain the right to control the manner and means of accomplishing a desired result, the worker is generally considered an employee; if, however, the employer has the right to control only the results of the work, the worker is considered an independent contractor. This test of control does not require actual exercise of control, but rather the employer's right to control. The following factors shall be considered in determining a worker's status:

- (1) Whether the worker is to be engaged in a distinct occupation or business. Independent contractor status is often accorded those who are engaged for their special skills. Thus, the hiring of an architect, broker, doctor, painter or attorney may indicate that an independent contractor relationship is being contemplated.
- (2) Whether the employer or the worker is to supply the instrumentalities, tools and the place of work.
- (3) Whether the worker or the employer is to have the power to dictate the particular manner in which the instrumentalities or tools shall be used and the way the workers shall do their work.
- (4) Whether the worker employs, pays and has full power of control over assistants.
- (5) Whether the work is part of the regular business of the employer.

(b) An emergency contract for personal services may be let without obtaining quotes in writing when the Executive Officer makes written findings that an emergency exists because of circumstances which could not have been reasonably foreseen and requires the prompt execution of a contract to remedy that condition. The Executive Officer shall inform the Council of all such contracts declared to be an emergency at the Council meeting immediately following the adoption of findings declaring an emergency.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216,

Sec. 2; amended by Ordinance No. 87-223, Sec. 1; amended by Ordinance No. 88-249, Sec. 2)

2.04.051 Personal Services Contracts Under \$2,500:

(a) Selection Process: For Personal Services contracts of less than \$2,500, the Department Director shall state in writing the need for the contract. This statement shall include a description of the contractor's capabilities in performing the work. Multiple proposals need not be obtained. This statement will be kept in the Department of Finance and Administration contract file.

(b) Approval Process: For Personal Services contracts of less than \$2,500, the Director of the initiating department, or a designee of the Director approved by the Executive Officer, may sign contracts if the following conditions are met:

- (1) A standard contract form is used;
- (2) Any deviations to the contract form are approved by the General Counsel;
- (3) The expenditure is authorized in the budget;
- (4) The contract does not further obligate District beyond \$2,500;
- (5) The appropriate Scope of Work is attached to the contract;
- (6) The Contract is for an entire project or purchase; not a portion of a project or purchase which, when complete, will amount to a cost of \$2,500 or more; and
- (7) No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2)

2.04.052 Personal Services Contracts Between \$2,500 and \$10,000:

(a) Selection Process: For Personal Services contracts \$2,500 or more but less than \$10,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three (3) potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work.
- (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited. Preferably, the proposals should be written, but this is not required. The District reserves the right to reject any or all proposals for any reason.
- (3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Department of Finance and Administration.

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2 and Ordinance No. 91-378A, Sec. 6)

2.04.053 Personal Services Contracts of \$10,000 or More:

(a) Selection Process: For Personal Services contracts of \$10,000 or more an evaluation of proposals from potential contractors shall be performed as follows:

- (1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the Department of Finance and Administration. Where appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.
- (2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.
- (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) After evaluation is complete, the Department Director will recommend final selection through the Department of Finance and Administration.

- (6) Notifications of selection and rejection shall be made in writing by the initiating department.
- (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the Department of Finance and Administration for internal review and execution. General Counsel review is required.

(b) Approval Process: All initial contracts with a contract price of greater than \$10,000 shall be approved and executed by the Executive officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may approve and execute contracts of \$15,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 89-271, Sec. 1 and Ordinance 91-378A, Sec. 6)

2.04.054 Personal Services Contract Extensions and Amendments:

(a) Selection Process:

- (1) A Personal Services contract may be renewed without receiving competitive proposals if the contractor is performing a continuing activity for the agency. This applies, but is not limited to contracts for construction observation, public relations consulting, outside legal counsel and annual auditing. Except as provided in subsection (2) below, competitive proposals must be solicited for these services at least once every three (3) years and annually if the contractor proposes a price or rate increase of more than ten percent (10%) over the previous year.
- (2) Personal Services contracts may be renewed, extended or renegotiated without soliciting competitive proposals if, at the time of renewal, extension or renegotiation, there are fewer than three (3) potential contractors qualified to provide the quality and type of services required and the initiating department makes detailed findings that the quality and type of services

required make it unnecessary or impractical to solicit proposals.

- (3) In addition to the requirements of this subsection, any contract amendment or extension exceeding \$10,000 shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the competitive procurement procedures of Section 2.04.053.

(b) Approval Process:

- (1) Less than \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:
 - (A) A standard contract form is used;
 - (B) Any deviations to the contract form are approved by the General Counsel;
 - (C) The expenditure is authorized in the budget;
 - (D) The contract does not further obligate Metro beyond \$2,500;
 - (E) The appropriate Scope of Work is attached to the contract; and
 - (F) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.
- (2) \$2,500 and Over: All contract amendments and extension which are for \$2,500 or more or which result in a total contract price of more than \$2,500 shall be approved by either the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contract amendments and extensions. No contract amendment or extension may be approved for an amount in excess of the amount provided for in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 89-271, Sec. 1 and Ordinance No. 91-378, Sec. 6)

2.04.060 Sole Source Contracts:

(a) Selection Process: If there is only one qualified provider of the service required, the initiating department need not solicit and document proposals. The initiating department must document that there is only one qualified provider of the service required. Sole Source Contracts may not exceed \$2,500 unless the Contract Review Board shall have specifically exempted the contract from the public bidding or applicable alternative procurement procedure.

(b) Approval Process: The approval process for Sole Source Contracts is the same as described for regular Personal Services or Public Contracts, depending on the nature of the work.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.050, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 11; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 89-271, Sec. 1)

2.04.070 Sale of Metro Goods and Services: Approval of agreements for the sale of Metro Goods and Services shall follow the procedures for purchase of goods and services.

(Ordinance No. 87-216, Sec. 2)

2.04.075 Purchase of Recycled Paper Products and Equipment that Uses Paper: The following criteria and standards shall apply to the purchase of paper products and equipment that uses paper:

(a) In all contracts and subcontracts the District shall prefer the purchase of recycled paper products with a 50 percent (50%) recycled content or the highest percentage of recovered material practicable, when practicable includes 1) performance in accordance with applicable specifications; 2) availability at a reasonable price; 3) availability within a reasonable period of time; and 4) maintenance of a satisfactory level of competition.

(b) The District shall allow a five percent (5%) price preference for the purchase of recycled paper products and attempt

to purchase jointly with other agencies to reduce the cost of recycled paper products purchases.

(c) Subject to subsection 8 below, paper product procurements for Solid Waste will specify recycled paper only.

(d) The guidelines in (1), (2) and (3) above will apply in all cases except where specific printing quality requirements can not be met by recycled paper products. Joint purchases may be made with other agencies to reduce the cost of recycled paper product purchases. All recycled paper purchases shall require the manufacturer's certification and verification of recovered material content. The initiating Department shall assure compliance with the provision of ORS 279.739.

(e) All recycled paper products purchases shall require the manufacturer's certification and verification of recovered material content.

(f) All bids for new equipment and services shall include language that will ensure the use of recycled paper and paper products.

(g) Metro shall phase in equipment and paper to facilitate the use of recycled paper products wherever practicable.

(h) In instances where recycled paper and paper products may void existing warranties, service agreements, or contracts, recycled paper and paper products shall not be specified.

(i) All contract printing shall allow a five percent (5%) price preference when using recycled paper.

(j) The use of non-recyclable goldenrod and other very bright, hard-to-bleach colored papers shall be prohibited.

(Ordinance No. 88-280, Sec. 1)

2.04.080 Sale of Surplus Property: Contracts for sale of surplus property may be executed without competitive bidding only when the Executive Officer, or Director or Assistant Director of the Zoo determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bid will be such that a liquidation sale will result in substantially greater net revenue to the District.

(Ordinance No. 87-216, Sec. 2)

2.04.090 Food Items and Food Service Contracts

(a) Selection Process:

- (1) All food items and food service contracts will be procured through competitive bidding, except as provided in sections (2) through (5) below.
- (2) Competitive bids or quotes are not required when food items other than those routinely stocked by a Metro department are needed for requested catering services.
- (3) Competitive bids or quotes are not required for fully or partially prepared food items which require:
 - (A) the use of a specific recipe provided and/or developed in conjunction with a Metro department; or
 - (B) the use of a proprietary recipe or formula which is the property of a vendor.

In the event a procurement is made pursuant to the exception listed in this section (3), the initiating department must document that the food product is within the criteria set out in (3)(A) or (3)(B).

- (4) (A) Purchases of the following food products may be limited to vendors who have been prequalified according to the procedures set out at section (4)(B) below:
 - (i) groceries, i.e., food items that are purchased in a preserved state (e.g., canned or frozen);
 - (ii) meat and poultry;
 - (iii) produce.
- (B) Upon a determination by the Executive Officer that it is in the best interest of Metro to purchase the food products listed in (4)(A) from pre-qualified vendors, the agency may develop a Pre-Qualified Suppliers List. The initiating department shall make reasonable efforts to inform known companies which provide the required food products that a pre-qualification process will be conducted. At a minimum, the initiating department's efforts shall include the publication of an Invitation to Pre-Qualify in at least one newspaper of general circulation, a local minority

newspaper and any appropriate trade publications in the area. The Invitation to Pre-Qualify shall specify the deadline for submission of pre-qualification applications; minimum standards which must be met to pre-qualify as a potential supplier; and shall provide an estimate of the quantity of the product which may be required during a designated time period. All vendors who submit the documentation required in the Invitation to Pre-Qualify shall be listed as pre-qualified suppliers of the food products covered by the solicitation unless the agency disqualifies the prospective vendor upon a finding that:

- (i) the vendor does not have sufficient financial ability to perform the contract;
- (ii) the vendor does not have the equipment available to perform the contract;
- (iii) the vendor does not have key personnel available of sufficient experience to perform the contract; or
- (iv) the vendor has repeatedly breached contractual obligations to public and private contract agencies.

In the event a prospective is disqualified, the agency shall notify the vendor in writing. The notice shall specify the reasons for the disqualifications and shall inform the vendor of its rights to a hearing under ORS 279.043 and 279.045.

Vendors who fail to meet the above criteria during the period covered by the prequalified vendor list may be disqualified from the pre-qualified vendor list.

- (C) Monthly firm price quotes shall be required of all pre-qualified suppliers. Once a pre-qualified vendor list has been created, all food products listed in section (4)(A)(i) through (iii) shall be ordered from the pre-qualified supplier whose products meet the minimum product specification and who submits

the lowest price quote for the period covered by the required monthly price quote. In the event the supplier that submits the lowest price quote is unable to provide the ordered products, the food products may be ordered from the supplier whose quote is the next lowest and whose products meet the minimum product specifications.

- (D) A pre-qualified supplier may be removed from the Pre-Qualified Suppliers List for any of the reasons listed in section (4)(B) above.
 - (E) Pre-qualification lists shall be opened annually for prospective suppliers to submit the documentation required for placement on the Pre-Qualified Suppliers List. Placement on the Pre-Qualified Suppliers List will be for a period of three years, unless a supplier is removed for one of the reasons listed in section (4)(B) above.
- (5) Competitive bids or quotes are not required for food items which the Executive Officer authorize for a market test. A market test is used to determine whether a food item should be added to the District's menu or to develop the specifications for a particular food item. The test should clearly define the period of time for the market study, not to exceed one (1) year, and the statistical method used to determine the value of the food item as part of the regular menu. A written report shall be made and a copy placed in the District's central contract files. If a market test food item is accepted for regular sales, it will be subject to the appropriate competitive purchase procedures described under Section 2.04.090. If a food product identified during a market test fits within one of the product categories identified in subsection (3) above, the food product may be procured without competitive bids or quotes.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the Director of Finance and Administration.

(c) Approval Process:

- (1) \$2,500 and Under: All contracts and amendments and extensions which are \$2,500 or less or which result in a total contract price of \$2,500 or less may be

approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:

- (A) A standard contract form is used;
 - (B) Any deviations to the contract form are approved by the General Counsel;
 - (C) The expenditure is authorized in the budget;
 - (D) The contract does not further obligate the District beyond \$2,500;
 - (E) The appropriate Scope of Work is attached to the contract; and
 - (F) The contract is for an entire project or purchase; not a portion of a project which, when complete, will amount to a cost not greater than \$2,500.
- (2) Over \$2,500: All contracts and amendments and extension which exceed \$2,500 may be approved by either the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contracts and amendments and extensions.
- (3) Exceptions: Emergency contract extensions and amendments may be approved by the Executive Officer or his/her designee.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 10 & 16; Ordinance No. 84-176, Sec. 4; Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2; amended by Ordinance No. 89-271, Sec. 1; amended by Ordinance No. 89-309 and Ordinance No. 91-378A, Sec. 6)

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such

businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.105 Policy Statement:

(a) Through this Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

- (1) To assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.
- (2) To initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantage Business Enterprise or DBE" means a small business concern which is certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(g) "Executive Department" means the State of Oregon's Executive Department.

(h) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE and non-DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.

(i) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal Services Contract" means a contract for services of a personal or professional nature.

(m) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially and Economically Disadvantaged Individuals or Disadvantaged Individuals" means those individuals who are

citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(q) "USDOT Assisted Contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT Financial Assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

(s) "Women-Owned Business Enterprise or WBE" means a small business concern, as defined pursuant to section 3 of the Small

Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients: Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.125 Directory: A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, Sec. 6; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.

(b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department

contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.

(h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, Sec. 8; amended by Ordinance No. 84-181, Sec. 4; Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to

a determination of whether the challenged party is in fact socially and economically disadvantaged.

- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.
 - (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) if the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

(7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.

(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

(Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the Program;
- (4) For USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals; and
- (5) For locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available

for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, Sec. 10; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.160 and/or 2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs

certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided

above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, Sec. 12; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the sub-contracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from

DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the

goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.165 Replacement of DBE or WBE Subcontractors: Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers

responsible for administration of pass-through agreements shall include the following language in those agreements:

- (a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.
- (b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by

a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, Sec. 17; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

CHAPTER 2.05

PROCEDURE FOR CONTESTED CASES

SECTIONS:

2.05.005	Contested Case Defined, Notice of Opportunity for Hearing, Service
2.05.007	Rights of Parties in Contested Cases
2.05.010	Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service
2.05.015	Orders When No Hearing Requested or Failure to Appear
2.05.025	Hearing
2.05.030	Evidentiary Rules
2.05.035	Proposed Orders in Contested Cases Other Than Personnel Discharges
2.05.040	Proposed Orders in Contested Cases on Personnel Discharges
2.05.042	Ex Parte Communications to the Hearings Officer
2.05.043	Ex Parte Communications to Councilors
2.05.045	Final Orders in Contested Cases, Notification, Review
2.05.046	Motions
2.05.047	Service of Documents on All Parties
2.05.050	Reconsideration, Rehearing

2.05.005 Contested Case Defined, Notice of Opportunity for Hearings, Service:

(a) A contested case exists whenever:

- (1) Individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard.
- (2) The District has discretion to suspend or revoke a right or privilege of a person; or
- (3) There is a proceeding regarding a license, franchise or permit required to pursue any activity governed or regulated by the District; or
- (4) There is a discharge of a District employee; or

- (5) The District proposes to require a county, city or special district to change a plan pursuant to ORS 268.380 or 268.390; or
- (6) There is a proceeding in which the District has directed by ordinance, rule or otherwise that the proceeding be conducted in accordance with contested case procedures.

(b) A contested case does not exist when a District action rests solely on the results of a test or inspection.

(c) The District shall give notice to all parties in a contested case. The notice shall include:

- (1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;
 - (2) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (3) A reference to the particular sections of the statutes, ordinances or rules involved;
 - (4) A short and plain statement of the matters asserted, charged or proposed;
 - (5) A statement that the party may be represented by counsel at the hearing;
 - (6) When applicable, a statement that if the party desires a hearing, the District must be notified within a specified number of days; and
- (d) Unless the Council provides otherwise, the number of days within which the District must be notified that the party desires a hearing shall be as follows:
- (1) Within thirty (30) days of the date of mailing of notice; or
 - (2) Within sixty (60) days of the notification of refusal to issue a license, franchise or permit required to pursue any activity governed or regulated by the District, if the refusal is based on grounds other than the results of a test or inspection; or

- (3) Within ninety (90) days of an immediate suspension or refusal to renew a license or franchise pursuant to Section 2.05.010 of these rules.
- (4) In the case of a personnel discharge, within fourteen (14) days of the employee's receipt of the Notice of Discharge.

(e) The notice shall be served personally or by registered or certified mail.

(f) The District may provide that notice in addition to that required by this section be given for specific types of contested case.

(Rule No. 79-3; amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2)

2.05.007 Rights of Parties in Contested Cases:

(a) The following information shall be given to the parties before commencement of a contested case hearing:

- (1) If a party is not represented by an attorney, a general description of the hearing procedure.
- (2) Whether a record will be made of the proceeding and the manner of making the record and its availability to the parties.
- (3) Whether an attorney will represent the District in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
- (4) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the District, whether the person presiding at the hearing is or is not an employee, officer, or other representative of the District and whether that person has the authority to make a final independent determination.
- (5) Whether there exists an opportunity after the hearing and prior to the final determination or

order of the agency to review and object to any proposed Findings of Fact, Conclusions of Law, summary of evidence or recommendations of the officer presiding at the hearing.

- (6) A description of the appeal process from the determination or order of the District.

(b) The information required in subsection (a) may be given in writing or orally before the commencement of the hearing.

(Rule No. 79-3; amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2)

2.05.010 Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service:

(a) If the District finds there is a serious danger to the public health or safety, it may suspend or refuse to renew a license or permit immediately.

(b) The District shall give notice to the party upon immediate suspension or refusal to renew a license or permit. The notice shall include:

- (1) A statement of the party's right to hearing.
- (2) A statement of the authority and jurisdiction under which the hearing is to be held.
- (3) A reference to the particular sections of the statutes, ordinances and rules involved.
- (4) A short and plain statement of the matters asserted, charged or proposed.
- (5) A statement that the party may be represented by counsel at the hearing.
- (6) A statement that if the party demands a hearing the District must be notified within thirty (30) days of date of the notice.
- (7) A statement giving the reason or reasons for the immediate action.
- (8) The effective date of the suspension or refusal to renew the license or permit.

(c) The notice shall be served personally or by registered or certified mail.

(Rule No. 79-3)

2.05.015 Orders When No Hearing Requested or Failure To Appear:

(a) When a party has been given an opportunity and fails to request a hearing within the specified time or fails to appear at the specified time and place of the hearing, the District may enter an order which supports the District action or an order denying the petition upon which the hearing was to be held.

(b) The order supporting the District action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

(Rule No. 79-3)

2.05.025 Hearing:

(a) The hearing shall be conducted by, and shall be under the control of, the Council Presiding Officer or a Hearings Officer. Contested case hearings on amendments to the regional Urban Growth Boundary shall be before a Hearings Officer. The Council may from time to time approve and provide to the Executive Officer a list of prospective Hearings Officers from which Hearings Officers may be appointed by the Executive Officer. Unless the hearing is to be held before the Council, the Hearings Officer in a contested case shall be a member of the Oregon State Bar.

(b) In the case of a hearing on a personnel discharge, the employee shall be given the opportunity to select the Hearings Officer from a list of at least three (3) prospective Hearings Officers approved by the Council.

(c) At the discretion of the Presiding Officer or the Hearings Officer, the hearing shall be conducted in the following order:

- (1) Staff report, if any.
- (2) Statement and evidence by the District in support of its action, or by the petitioner in support of a petition.
- (3) Statement and evidence of affected persons disputing the District action or petition.

(4) Rebuttal testimony.

(d) The Hearings Officer, a Council member, the Executive Officer or his/her designee, the General Counsel, and the affected parties shall have the right to question any witnesses. Cross-examination by parties shall be by submission of written questions to the Presiding Officer or Hearings Officer; provided however that cross-examination by parties may be oral, at the discretion of the Presiding Officer or Hearings Officer, if such questioning will not disrupt the proceedings.

(e) The hearing may be continued for a reasonable period as determined by the Presiding Officer or Hearings Officer.

(f) The Presiding Officer or Hearings Officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony.

(g) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the District as part of the record of the proceedings.

(h) A verbatim oral, written, or mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for Council or judicial review.

(i) Upon conclusion of the hearing, the record shall be closed and new evidence shall not be admissible thereafter; provided, however, that upon proper showing, the Presiding Officer or Hearings Officer may reopen the hearing for receipt of new evidence which could not have been introduced earlier and which is otherwise admissible under Section 2.05.030.

(Rule No. 79.3; amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 4)

2.05.030 Evidentiary Rules:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All offered evidence, not objected to, will be received by the Hearings Officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Hearings Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

(e) The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(Rule No. 79-3)

2.05.035 Proposed Orders in Contested Case Other than Personnel Discharges:

(a) Within thirty (30) days of a hearing before a Hearings Officer in a contested case other than a personnel discharge, the Hearings Officer shall prepare and submit a proposed order together with the record compiled in the hearing, to the Council. The proposed order, including Findings of Fact and Conclusions of Law, shall be served upon the parties.

(b) Within seven (7) days of the release of the proposed order, the Executive Officer shall mail notice to all parties of the date by which written exceptions to the proposed order must be filed. This shall be not less than fourteen (14) nor more than twenty-one (21) days from the date notice of this deadline is mailed, unless otherwise agreed to by all parties. The proposed order and any exceptions received to it shall be forwarded to the Council of the Metropolitan Service District for consideration at its next scheduled meeting at least two (2) weeks after the deadline for filing exceptions.

The Council may, by majority vote, decide to consider objections received following the deadline established, but must allow at least two weeks between the date the exception is filed and the date the Council reviews it. Only parties may file exceptions, and exceptions may address only issues raised in the hearing. Upon approval of the Council, parties who have filed written exceptions may present oral argument in support of the exceptions, and other parties shall be given the opportunity to orally rebut exceptions made. Oral argument shall be limited to the specific objections raised in the written exceptions.

(c) A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code Section 2.05.025. A written request to submit additional evidence must explain why the information was not provided at the hearing, and must demonstrate that such evidence meets the standards of Section 2.05.030 and would likely result in a different decision. Upon

receipt of a written request to submit additional evidence, the Council shall:

- (1) Refuse the request; or
- (2) Remand the proceeding to the Hearings Officer for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence; or
- (3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence.

Requests to submit new evidence must be filed by the deadline for filing written exceptions established pursuant to Section 2.05.035(b), unless circumstances regarding the evidence preclude doing so.

(d) If a new hearing is granted in accordance with subsection (c)(2) of this section, the Hearings officer shall within seven (7) days of the hearing serve upon all of the parties and forward to the Council a new proposed order in accordance with the provisions of Code Section 2.05.035(a).

(Rule No. 79-3; amended by Rule No. 82.5; Ordinance No. 82-137, Sec. 5; and Ordinance No. 86-203, Sec. 2 and 3)

2.05.040 Proposed Orders in Contested Cases on Personnel Discharges:

(a) Within seven (7) days of a hearing on a personnel discharge, the Hearings Officer shall prepare and submit a proposed order together with the record compiled in the hearing to the Executive Officer. Said proposed order shall include rulings on evidence, findings of fact, conclusions of law and a proposed action.

(b) Within seven (7) days of receipt of the proposed order, the Executive Officer shall issue a final order pursuant to Section 5.02.045 of these Rules.

(Rule No. 79-3; amended by Rule No. 81-5, Ordinance No. 82-137, Sec. 6; and Ordinance No. 86-203, Sec. 2 and 3)

2.05.042 Ex Parte Communications to the Hearings Officer: The Hearings Officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact

in issue made to the Officer during the pendency of the proceeding. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5; amended by Ordinance No. 82-137, Sec. 7)

2.05.043 Ex Parte Communications to the Councilors: Councilors shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to a Councilor during review of a contested case. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5; amended by Ordinance No. 82-137, Sec. 8)

2.05.045 Final Orders in Contested Cases, Notification, Review:

(a) Except as provided in subsection (c) of this section, the Council or Executive Officer's decision in a contested case shall be adopted by a final order. Final orders in contested cases shall be in writing and shall include the following:

- (1) Rulings on admissibility of offered evidence.
- (2) Findings of Fact -- those matters which are either agreed upon as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be fact over contentions to the contrary.
- (3) Conclusion(s) of Law -- applications of the controlling law to the facts found and legal results arising therefrom.
- (4) The action taken by the District as a result of the Findings of Fact and Conclusions of Law.

(b) Upon receipt of a proposed order and consideration of exceptions, the Council shall adopt the proposed order or revise or replace the findings or conclusions in a proposed order or remand the matter to the Hearings Officer. No written exceptions need be received on a revised or replaced order except on new evidence presented to the Hearings Officer on remand. Parties shall be given an opportunity to comment orally to the Council on a revised order.

(c) When the proposed order in a contested case necessitates the adoption of an ordinance, staff shall prepare an ordinance for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by subsection (a)

or (b) of this section. An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

(d) Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

(e) Final orders in cases other than on Urban Growth Boundary amendments shall be approved by a majority of a quorum of the Council.

(f) An ordinance to approve a petition for amendment of the Urban Growth Boundary shall be pursuant to Code Section 2.01.070. A motion to deny such a petition shall require the approval of at least six members of the Council, and six votes shall be sufficient to approve a motion to deny notwithstanding a tie vote.

(Rule No. 79-3; amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 9; Ordinance No. 85-190, Sec. 1; and Ordinance No. 86-203, Sec. 3)

2.05.046 Motions:

(a) Unless these rules or applicable statutes or ordinances provide another form of application, a request for an order or relief from the Hearings Officer or the Council shall be made by serving and filing a motion in writing for such order or relief.

(b) Parties shall submit all motions without oral argument unless otherwise directed by the Hearings Officer or the Council. The motion shall show proof of service on all opposing parties in accordance with Code Section 2.05.047.

(Rule No. 81-5)

2.05.047 Service of Documents on All Parties: All documents, written correspondence or other material filed with or submitted to the Hearings Officer or the Council shall be served on all parties. Any document filed with or submitted to the Hearings Officer or the Council shall contain proof of service on all parties.

(Rule No. 81-5)

2.05.050 Reconsideration, Rehearing:

(a) A party may file a petition for reconsideration or rehearing on a final order with the District within ten (10) days

after the order is issued. In the case of a personnel discharge, such petition shall be submitted to the Executive Officer. Other petitions shall be referred to the Council.

(b) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.

(c) The District may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted, an amended order shall be entered. The Council may allow oral or written argument by the parties on the reconsideration petition.

(d) The District may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by the District to specific matters. If a rehearing is held an amended order shall be entered. Rehearings shall be held before the Hearings Officer who conducted the original hearing.

(e) If the District does not act on the petition within the sixtieth (60) day following the date the petition was filed, the petition shall be deemed denied.

(Rule No. 79-3; amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 10)

CHAPTER 2.06

INVESTMENT POLICY

SECTIONS:

2.06.010	Scope
2.06.020	Objectives
2.06.030	Responsibility
2.06.040	Prudence
2.06.050	Diversification
2.06.060	Competitive Selection of Investment Instruments
2.06.070	Qualified Institutions
2.06.080	Banking Services
2.06.090	Safekeeping and Collateralization
2.06.100	Indemnity Clause
2.06.110	Controls
2.06.120	Accounting Method
2.06.130	Reporting Requirements
2.06.140	Performance Evaluation
2.06.150	Policy Adoption
2.06.160	Policy Readoption

2.06.010 Scope: These investment policies apply to all cash-related assets included within the scope of the Metropolitan Service District's (Metro) audited financial statements and held directly by Metro. Funds held and invested by trustees or fiscal agents are excluded from these policies; however, such funds are subject to the regulations established by the State of Oregon.

Funds of Metro will be invested in compliance with the provisions of ORS 294.035 through 294.048; ORS 294.125 through 294.155; ORS 294.810; and other applicable statutes. Investments will be in accordance with these policies and written administrative procedures. Investment of any tax exempt borrowing proceeds and of any debt service funds will comply with the 1986 Tax Reform Bill provisions and any subsequent amendments thereto.

(Ordinance No. 90-365)

2.06.020 Objectives:

(a) Safety: Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio and security of funds and investments. For securities not backed by the full faith and credit of the federal government, diversification is required in order that potential losses on individual securities would not exceed the income generated from the remainder of the portfolio.

(b) Liquidity: The Investment Officer shall assure that funds are constantly available to meet immediate payment requirements including payroll, accounts payable and debt service.

(c) Yield: The investment portfolio shall be designed with the objective of regularly exceeding the average return on 90-day U.S. Treasury Bills. The investment program shall seek to augment returns above this level, consistent with risk limitations described in this policy and prudent investment principles.

Due to Metro's fiduciary responsibility, safety of capital and availability of funds to meet payment requirements are the overriding objectives of the investment program. Investment yield targets are secondary.

(d) Legality: Funds will be deposited and invested in accordance with statutes, ordinances and policies governing Metro.

(Ordinance No. 87-228, Sec. 3; amended by Ordinance No. 90-365)

2.06.030 Responsibility:

(a) Investment Officer: The Executive Officer is the Investment Officer of the District. The authority for investing Metro funds is vested with the Investment Officer, who, in turn, may designate staff to manage the day-to-day operations of Metro's investment portfolio, place purchase orders and sell orders with dealers and financial institutions, and prepare reports as required.

(b) Investment Advisory Board (IAB): There shall be an Investment Advisory Board composed of three members.

- (1) Terms of Service: The term of service for citizens appointed to the IAB shall be three calendar years. The term of appointment shall be staggered so that only one members' term expires in any calendar year.
- (2) Appointment: The Investment Officer shall recommend to the Council for confirmation, the names of persons for appointment to the Investment Advisory Board.
- (3) Duties: The IAB shall meet at least quarterly. The IAB will serve as a forum for discussion and act in an advisory capacity for investment

strategies, banking relationships, the legality and probity of investment activities and the establishment of written procedures for the investment operations.

(c) Quarterly Reports: At each quarterly meeting, the IAB shall review investment reports submitted by the Investment Officer reflecting investment activity for each of the immediately preceding three months. Acceptance of the report must be by at least two members of the IAB. Should the reports not be accepted, the reports shall be revised accordingly by the Investment officer and resubmitted to the IAB at its next regularly scheduled meeting or sooner if requested.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.040 Prudence: The standard of prudence to be applied by the Investment Officer shall be the "prudent investor" rule: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." The prudent investor rule shall be applied in the context of managing the overall portfolio.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.050 Investment Diversification: (Definitions of terms and applicable authorizing Statutes are listed in the "summary of Investments Available to Municipalities" provided by the State Treasurer.) The Investment Officer will diversify the portfolio to avoid incurring unreasonable risks inherent in over investing in specific instruments, individual financial institutions, or maturities.

(a) Diversification by Investment:

Percent of	Portfolio (Maximum)
(1) U.S. Treasury Bills, Notes, Bonds, Strips and/or State and Local Government Series (SLGS)	100%
(2) U.S. Government Agencies Securities and Instrumentalities of Government Sponsored Corporations	100%
(3) Certificates of Deposit (CD)	100%

Commercial Banks in Oregon insured
by FDIC

- | | | |
|------|--|------|
| (4) | Certificates of Deposit
Savings and Loan Associations in
Oregon which meet Federal capital
requirements and are insured by
the FDIC | 25% |
| (5) | Repurchase Agreements (Repo's) | 50% |
| (6) | Banker's Acceptances (BA) | 100% |
| (7) | Commercial Paper (CP)
Financial institution, holding company
or business enterprise headquartered
in Oregon; A-1 and P-1 only; maximum
60-day maturity | 25% |
| | Corporate, publicly held U.S.
corporations outside Oregon; A-1 and
P-1 only; maximum 60-day maturity | 10% |
| (8) | State of Oregon and Local Government
Securities with A ratings or better | 100% |
| (9) | State of Oregon Investment Pool | 100% |
| (10) | State of Oregon Arbitrage Pool
Bond Proceeds Subject to Arbitrage | |
| (11) | Market Interest Accounts and Checking
Accounts Minimum necessary for daily
cash management efficiency | |

(b) Diversification by Financial Institution:

- (1) Qualified Institutions: The Investment Officer shall maintain a listing of financial institutions and securities dealers recommended by the IAB. Any financial institution and/or securities dealers is eligible to make an application to the Investment Officer and upon due consideration and approval hold available funds.

A listing of the eligible institutions shall be held by the Investment Officer and provided any fiduciary agent or trustee.

- (2) Diversification Requirements: The combination of investments in Certificates of Deposit and Banker's Acceptances as outlined individually at 2.06.050(b)(2)(A), (B) and (D) invested with any one institution shall not exceed 30 percent of the total available funds or 15 percent of the equity of the institution.

(A) Certificates of Deposit - Commercial Banks

No more than the lesser of 30 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.

(B) Certificates of Deposit - Savings and Loan Association

No more than the lesser of 25 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution.

(C) Repurchase Agreements

May be purchased from any qualified institution provided the master repurchase agreement is effective and the safekeeping requirements are met. All repurchase agreements will be fully collateralized by U.S. Government and U.S. Agency obligations marked to market.

The Investment Officer shall not enter into any reverse repurchase agreements.

(D) Banker's Acceptances

No more than the lesser of 30 percent of the total available funds or 15 percent of the equity of the financial institution may be invested with any one institution. All banker's acceptances will be purchased from an ORS Chapter 294.035(11) qualified Oregon financial institution.

(E) Commercial Paper

Business in Oregon - No more than 10 percent of the total portfolio with any one corporate entity.

Publicly Held Corporation not in Oregon - No more than 5 percent of the total portfolio with any one corporate entity.

(F) State and Local Government Securities

No more than 15 percent of the total portfolio in any one local entity.

(G) State of Oregon Investment Pool

Not to exceed \$20 million in accordance with ORS 294.810 (\$10 million maximum per account) with the exception of pass-through funds (in and out within 10 days).

(H) State of Oregon Arbitrage Pool

Any bond proceeds subject to arbitrage.

(I) U.S. Government Agencies

Limited to obligations of government-sponsored corporations which are eligible as collateral for Treasury Tax and Loan as determined by the Board of Governors of the Federal Reserve System and also appear on the Oregon State Treasury list of U.S. Government and Agency Securities for Local Government Investment under ORS 294.035 and/or 294.040. No more than 40 percent of the total portfolio in any one agency.

(J) U.S. Government Treasuries

No limitations

(c) Diversification by Maturity: Only investments which can be held to maturity shall be purchased. Investments shall not be planned or made predicated upon selling the security prior to maturity. This restriction does not prohibit the use of Repurchase Agreements under ORS 294.135(2). This policy shall not preclude the sale of securities prior to their maturity in

order to improve the quality, net yield, or maturity characteristic of the portfolio.

Maturity limitations shall depend upon whether the funds being invested are considered short-term or long-term funds. All funds shall be considered short-term except those reserved for capital projects (e.g., bond sale proceeds).

(1) Short-Term Funds:

- (A) Investment maturities for operating funds shall be scheduled to coincide with projected cash flow needs.
- (B) Except for special situations, as identified by the Investment Advisory Board and directed by the Investment Officer, investments shall be limited to maturities not exceeding 18 months.
- (C) Generally, bond reserve funds shall be limited to investment in securities up to 18 months. The maturity of the investment may extend to 18 months, or more, only if the debt service account is properly funded and provision has been made in amount and maturity for the first possible draw upon the reserve account. In any event, the investment maturity must not exceed the expected draws upon the reserve funds.

(2) Long-Term Funds:

- (A) Maturity scheduling shall be timed according to anticipated need. ORS 294.135 permits investment beyond 18 months for any bond proceeds or funds accumulated for any purpose which the District is permitted by State law to accumulate and hold funds for a period exceeding one year. The maturities should be made to coincide as nearly as practicable with the expected use of the funds.
- (B) Investment of capital project funds shall be timed to meet projected contractor payments. The drawdown schedule used to guide the investment of the funds shall evidence the approval of the Investment Officer and review of the Director of Finance & Administration.

(d) Politico/Socio Limitations: The Investment Officer may not purchase any Banker's Acceptances which involve goods which derive from South Africa. A certificate warranting this shall be obtained from the financial institution from which the Banker's Acceptance was purchased.

(e) Total Prohibitions: Purchase of standby or forward commitments of any sort are specifically prohibited.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.060 Competitive Selection of Investment Instruments: Before the Investment Officer invests any surplus funds, a competitive offering solicitation shall be conducted orally. Offerings will be requested from financial institutions for various options with regards to term and instrument. The Investment Officer will accept the offering which provides the highest rate of return within the maturity required and within the prudent investor rule. Records will be kept of the offerings which are accepted.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.070 Qualifying Institutions: The Investment Officer shall maintain a listing of all authorized dealers and financial institutions which are approved for investment purposes. Written procedures and criteria for selection of financial institutions will be established by the Investment Officer. Financial institutions must have a branch in Oregon. Any firm is eligible to apply to provide investment services to Metro and will be added to the list if the selection criteria are met. Additions or deletions to the list will be made by the Investment Officer and reviewed by the IAB. At the request of the Investment Officer, the firms performing investment services for Metro shall provide their most recent financial statements or Consolidated Report of Condition (call report) for review. At minimum, the Investment Officer and the IAB shall conduct an annual evaluation of each firm's qualifications to determine whether it should be on the authorized list.

Securities dealers not affiliated with a bank shall be required to have an office located in Oregon and be classified as reporting dealers affiliated with the New York Federal Reserve Bank as primary dealers, or meet the criteria for financial institutions.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.080 Banking Services: Every three years the Investment Officer will solicit competitive bids from commercial banks

operating in the District to provide Metro's banking services. The Investment Officer may select a trustee bank to perform activities related to investments. In this case, the activities of the trustee shall be set forth in a trustee agreement consistent with this Code. Trustee services for a bond issue need not be rebid during the life of the issue.

(Ordinance No. 87-228, Sec. 1; amended by Ordinance No. 90-365)

2.06.090 Safekeeping and Collateralization: All securities purchased pursuant to this Investment Policy will be delivered by either book entry or physical delivery to a third party for safekeeping by a bank designated as primary agent. Purchase and sale of all securities will be on a payment versus delivery basis. The trust department of the bank designated as primary agent will be considered to be a third party for the purposes of safekeeping of securities purchased from that bank. The primary agent shall issue a safekeeping receipt to the District listing the specific instrument, rate, maturity and other pertinent information.

Repurchase agreements will not be subject to the safekeeping requirements if purchased from First Interstate Bank of Oregon, The Bank of California or from U.S. National Bank of Oregon; repurchase agreements from all other financial institutions shall require safekeeping. In all cases, a master repurchase agreement is required.

Deposit-type securities (i.e., Certificates of Deposit) shall be collateralized through the State collateral pool as required by ORS 295.015 and ORS 295.018 for any amount exceeding FDIC coverage, recognizing that ORS 295.015 requires only 25 percent collateralization and ORS 295.018 requires 110 percent collateralization when the institution is notified by the State Treasurer.

2.06.100 Indemnity Clause:

(a) Metro shall indemnify the Investment Officer, staff and the Investment Advisory Board members from personal liability for losses that might occur pursuant to administering this investment policy.

(b) The Investment Officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported to the Council as soon as practicable.

(Ordinance No. 87-228, Sec. 1)

2.06.110 Controls: The Investment Officer shall maintain a system of written internal controls, which shall be reviewed annually by the IAB and the independent auditor. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation or imprudent actions.

Metro's independent auditor at least annually shall audit investments according to generally accepted auditing standards and this Ordinance.

(Ordinance No. 90-365)

2.06.120 Accounting Method: Investments will be carried at cost. Gains or losses from investments will be credited or charged to investment income at the time of sale or maturity. Metro shall comply with Government Accounting Standards Board (GASB) requirements.

(Ordinance No. 90-365)

2.06.130 Reporting Requirements:

(a) A transaction report shall be prepared by the District's Department of Finance & Administration not later than one business day after the transaction, unless a trustee, operating under a trust agreement, has executed the transaction. The trustee agreement shall provide for a report of transactions to be submitted by the trustee on a monthly basis.

(b) Quarterly reports shall be prepared for each regular meeting of the Investment Advisory Board to present historical investment information for the past 12-month period. Copies shall be provided to the Executive Officer and the Metro Council.

(Ordinance No. 90-365)

2.06.140 Performance Evaluation: The overall performance of Metro's investment program shall be evaluated annually by the IAB using the objectives outlined in this policy. A written copy of the evaluation shall be provided to the Metro Council as soon as practicable.

The performance of Metro's portfolio shall be measured by comparing the average yield of the portfolio at month-end against the performance of the 90-day U.S. Treasury Bill issue maturing closest to 90 days from month-end and the Local Government Investment Pool's monthly average yield. The IAB will periodically determine the target rate of return for the investment portfolio.

(Ordinance No. 90-365)

2.06.150 Policy Adoption: This investment policy may be reviewed by the IAB and the Oregon Short-Term Fund Board prior to adoption by the Metro Council. Adoption of this policy supersedes any other previous Council action or policy regarding Metro's investment management practices.

(Ordinance No. 90-365)

2.06.160 Policy Readoption: This policy shall be subject to review and readoption annually by the Metro Council in accordance with ORS 294.135(b).

(Ordinance No. 90-365)

CHAPTER 2.07

ONE PERCENT FOR ART PROGRAM

SECTIONS:

2.07.010	Short Title
2.07.020	Definitions
2.07.030	Policy
2.07.040	Dedication
2.07.050	Ownership
2.07.060	Approvals
2.07.070	Implementation

2.07.010 Short Title: This Ordinance shall be known as the "Metropolitan Service District One Percent for Art Program" and may be so cited and pleaded and shall be referred to herein as "this program."

(Ordinance No. 87-215, Sec. 1)

2.07.020 Definitions:

(a) "Construction Cost" means budgeted construction cost, excluding design, engineering and administrative costs, cost for fees and permits, and indirect costs, such as interest during construction, land acquisition, relocation, demolition, street and utility, construction appurtenant to the main project, advertising and legal fees.

(b) "Council" means the Council of the Metropolitan Service District.

(c) "District" means the Metropolitan Service District.

(d) "District Facility" means those facilities constructed at the direction of the District.

(e) "Major District Construction Project" ("Project") means projects for construction, reconstruction or major renovation of a District facility with an estimated construction cost of \$100,000 or more. "Major District Construction Project" does not include emergency work, minor alteration, ordinance repair or maintenance necessary to preserve a facility.

(Ordinance No. 87-215, Sec. 2)

2.07.030 Policy: The Council finds that it is appropriate in Major District Construction Projects that 1 percent of the

construction cost of such projects be devoted to the acquisition and display of art to be integral to, displayed in, upon, or in proximity to the project, or capable of display in other District facilities which the Council deems appropriate.

These funds shall be expended on art which is of redeeming quality, advances public understanding of art, and enhances the aesthetic quality of the location which will be the site of works of art funded by these funds. The goal is to select and display art which represents the best in artistic skills and to encourage public dialogue and understanding of works of art.

(Ordinance No. 87-215, Sec. 3)

2.07.040 Dedication: One percent of the construction cost of Major District Construction Projects shall be set aside for the acquisition of art, unless the Council, following a public hearing, by resolution exempts the project from the One Percent Program. Such an exemption must be approved prior to or at the time a contract for an architect has been entered into, or prior to or at the time a contract to participate financially in a project is entered into by the Council, whichever is earlier.

Works of art may be integral to, or displayed in, upon or adjacent to the project, or capable of display in other District facilities.

The Council may order works of art removed or relocated if it finds that doing so is in keeping with the purposes of this ordinance.

The Council may determine to use contributed funds in addition to or in lieu of the monies raised for the construction costs.

(Ordinance No. 87-215, Sec. 1)

2.07.050 Ownership: All art acquired pursuant to this ordinance shall be acquired in the name of the Metropolitan Service District and title shall vest in the Metropolitan Service District.

(Ordinance No. 87-215, Sec. 5)

2.07.060 Approvals: Contracts brought forward under this program shall be approved in accordance with the Metro Code.

(Ordinance No. 87-215, Sec. 6)

2.07.070 Implementation: The Council shall adopt by resolution guidelines for implementing this program. The guidelines shall

be interpreted in such a manner to fully carry out the purposes of this ordinance.

(Ordinance No. 87-215, Sec. 7)

CHAPTER 2.08

OFFICE OF GENERAL COUNSEL

SECTIONS:

2.08.010	Purpose
2.08.020	General Counsel Office Created
2.08.030	Powers
2.08.040	Duties
2.08.050	Records
2.08.060	Attorney-Client Relationship
2.08.070	Employment of Outside Counsel
2.08.080	Opinions Regarding Division of Powers

2.08.010 Purpose: The purpose of this chapter is to establish an Office of General Counsel to provide legal services to the District and its Council, Executive Officer, and any Metro commissions.

(Ordinance No. 88-237, Sec. 1)

2.08.020 General Counsel Office Created: There is hereby created an Office of General Counsel consisting of the General Counsel and such subordinate employees as the Council may provide. The General Counsel and any subordinate employees shall be employed by the District subject to Personnel Rules adopted by the Council. Subordinate attorneys shall serve at the pleasure of the General Counsel. The General Counsel shall be appointed by Executive Officer subject to the confirmation of a majority of the members of the Council. The General Counsel may be removed by the Executive Officer or by a vote of a majority of the members of the Council. The Office of General Counsel is not a department of the District.

(Ordinance No. 88-237, Sec. 1)

2.08.030 Powers: The General Counsel shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the District may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments and commissions of the District, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the District. No District officer, board, Council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

(Ordinance No. 88-237, Sec. 1)

2.08.040 Duties: The General Counsel shall have the following duties:

(a) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when required by the Council, the Executive Officer, or any Metro commission;

(b) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the District;

(c) Except as provided by any insurance policy obtained by the District appear for, represent, and defend the District, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of the General Counsel, are found by the General Counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(d) Submit to the Council and Executive Officer, quarterly, a formal report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District. At any time the General Counsel shall at the request of the Council or the Executive report on the status of any or all matters being handled by the General Counsel.

(e) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when mutually requested by the Executive Officer and the Council when, in the discretion of the General Counsel, the same may be necessary or advisable to protect the interests of the District. The General Counsel shall not appear on behalf of the District, without the mutual consent of the Executive Officer and Council as appropriate in any action, suit, matter, cause or proceeding in any court or tribunal.

The Executive Officer may authorize Metro's General Counsel to commence litigation or settlement for the collection of a continuously delinquent credit account more than forty-five (45) days past due when litigation or settlement is advisable to

protect the interests of the District. General Counsel shall report all collection litigation or settlement activities to the Executive Officer and Council at the earliest opportunity.

(Ordinance No. 88-237, Sec. 1; amended by Ordinance No. 89-316; Sec. 1)

2.08.050 Records:

(a) The General Counsel shall have charge and custody of the Office of General Counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible;

(b) The General Counsel shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District, the Executive Officer, Council, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable;

(c) The General Counsel shall keep and record all significant written opinions furnished to the District or to any department, the Executive Officer, Council or any Metro commission and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the office.

(Ordinance No. 88-237, Sec. 1)

2.08.060 Attorney - Client Relationship: The relationship between the Office of General Counsel and the District shall be an attorney - client relationship, with the District being entitled to all benefits thereof. The General Counsel shall maintain a proper attorney - client relationship with the elected officials of the District so long as such officials are acting within the scope of their official powers, duties and responsibilities.

(Ordinance No. 88-237, Sec.1)

2.08.070 Employment of Outside Legal Counsel:

(a) Whenever the General Counsel concludes that it is inappropriate and contrary to the public interest for the Office of General Counsel to concurrently represent more than one Metro public officer in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the General Counsel, the General Counsel may authorize one or both of such officers to employ its own

counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the General Counsel whenever the General Counsel determines that separate representation is no longer appropriate;

(b) When in the judgment of the General Counsel the General Counsel deems it necessary or appropriate to do so the General Counsel may subject to budget and procedural requirements established by the Council employ outside legal counsel on behalf of any commission, the Council, the Executive Officer, or any Metro commission to handle such matters as the General Counsel deems advisable.

(Ordinance No. 88-237, Sec. 1)

2.08.080 Opinions Regarding Division of Powers:

(a) The General Counsel shall prepare written opinions regarding interpretations of Oregon Law including but not limited to ORS Chapter 268 as provided for herein. Opinions prepared in conformance with this section shall be official guidance to the District except as superseded by courts of law, legislative action administrative rules, or actions of other superior tribunals or bodies.

(b) Requests for opinions regarding interpretations of Oregon Law concerning the powers, duties, and authority of the Metro Council or the Metro Executive Officer as they relate to the division of powers, duties, and authorities, or jointly held powers, duties, and authorities, shall be made only by the Executive Officer, the Presiding Officer, chairs of standing Council Committees, Committees acting by resolution, or the Council acting by resolution.

(c) Prior to commencing to prepare any requested opinion subject to the provisions of paragraph (b) this section, the General Counsel shall refer the request to both the Executive Officer and the Council. The issuance of an opinion shall require the concurrence of both the Council and the Executive Officer in the question to be answered. Council concurrence shall be by resolution, except where an opinion request is originally approved by the Council and the Executive Officer concurs in the request. Executive Officer concurrence shall be in writing.

(d) In the event the Council and the Executive Officer fail to concur in a request for an opinion, either the Council or the Executive Officer may direct that the Office of General Counsel refer the question to outside legal counsel approved by the General Counsel and the requestor of the opinion subject to the provisions of Metro Code Chapter 2.04 and available budget appropriations. In the event any requested opinion is rendered

by outside counsel, it shall not be official guidance to the District but shall constitute legal advice to the requestor of the opinion only.

(e) Nothing contained herein shall restrict the Office of General Counsel from effectively advocating the legal interests of the District in appearing before courts or tribunals. Such advocacy shall be consistent with opinions rendered pursuant to this section but the advocacy efforts of attorneys for the District shall not constitute official guidance to the District.

(Ordinance No. 90-347A, Sec. 2)

CHAPTER 2.09

CONTRACTOR'S BUSINESS LICENSE PROGRAM

SECTIONS:

2.09.010	Purpose and Authority
2.09.020	Definitions
2.09.030	Eligibility and License Issuance
2.09.040	Denial of Issuance
2.09.050	Exemptions
2.09.060	License Applicability
2.09.070	Application for License
2.09.080	Application Contents
2.09.090	Validity of the License
2.09.100	Fee
2.09.110	License
2.09.120	Renewal
2.09.130	Revocation
2.09.140	Appeal of a Revoked License or Denied Application
2.09.150	Penalty
2.09.160	Distribution of Fees
2.09.170	Regulations

2.09.010 Purpose and Authority:

(a) The purpose of this ordinance is to provide a procedure for the District to issue a Contractor's Business License, establish a fee for the license, and distribute to participating jurisdictions the fees collected by the District.

(b) The authority for the Metropolitan Service District to issue a Contractor's Business License, establish requirements for the issuance of the license, charge a fee for the license, receive reimbursement for administrative expenses incurred in carrying out this program, determine the dollar amount of residential building permits issued within the District and distribute the fees to participating jurisdictions is granted by Oregon Revised Statutes 701.015.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 2)

2.09.020 Definitions:

(a) "Contractor" or "Landscape Contractor" has the meaning given under ORS 701.005, and ORS 701.015(6)(d), respectively.

(b) "Contractor Business License" means a document issued by the District to a contractor or landscape contractor that permits the contractor or landscape contractor to conduct business in participating jurisdictions.

(c) "Contractor's Business License Fee" means any fee paid to the District for the issuance of a Contractor's Business License.

(d) "Business License Tax" means any fee paid by a contractor or landscape contractor to a city or county for any form of license that is required by the city or county to conduct business in that jurisdiction. The term does not include any franchise fee or privilege tax imposed by a participating jurisdiction upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(e) "Conducting Business" means to engage in any activity in pursuit of gain including activities carried on by a contractor or landscape contractor through officers, agents and employees as well as activities carried on by a contractor or landscape contractor on that contractor's or landscape contractor's own behalf.

(f) "Participating Jurisdiction" means any city or county located wholly or partly within the boundaries of the District that has a requirement for a contractor or landscape contractor to obtain a business license to conduct business in that jurisdiction, and the fee for this license is not based on or measured by adjusted net income.

(g) "Principal Place of Business" means the location of the central administrative office in this state of a contractor or landscape contractor conducting business in this District.

(h) "Residential Building Permit" means any permit issued for the construction or alteration of a residential structure issued by a governing body authorized under ORS 455.150.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 3)

2.09.030 Eligibility and License Issuance: Any contractor or landscape contractor wishing to conduct business in any participating jurisdiction shall be issued a Contractor's Business License if subsections (a) and (b) are met by the contractor or landscape contractor:

(a) Presents proof to the District that the contractor or landscape contractor has paid the business license tax imposed by the city when:

- (1) The principal place of business of the contractor or landscape contractor is within the city; or
- (2) Presents proof that contractor or landscape contractor has paid the business tax imposed by the city because the contractor or landscape

contractor derives gross receipts of One Hundred and Twenty Five Thousand Dollars (\$125,000) or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

- (b) (1) Presents proof that the contractor or landscape contractor is currently registered with the State of Oregon Construction Contractor's Board or the State of Oregon Landscape Contractor's Board.
- (2) Completes an application as required by Section 2.09.070 of this chapter;
- (3) Pays the Contractor's Business License fee established in Section 2.09.100 of this chapter; and
- (4) Meets all other license requirements provided under this chapter.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 4)

2.09.040 Denial of Issuance:

(a) The District shall refuse to issue a license for any one of the following reasons:

- (1) Fraud, misrepresentation or false statement made in the applications at the time of application.
- (2) Failure to present proof at the time of application that the applicant has met all other license requirements provided under this chapter.
- (3) Failure to pay the Contractor's Business License fee established under Section 2.09.100 of this chapter.

(b) Notice of denial of a application shall be given in writing to the applicant setting forth the grounds of the denial. Such notice shall be mailed to the applicant at the address that appears on the application for the license. This action of denial may be appealed as provided in Section 2.09.140 of this chapter.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 5)

2.09.050 Exemptions:

(a) A contractor or landscape contractor that is required to be licensed by a city within the boundaries of the District

that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city may not obtain and possess a Contractor's Business License in lieu of that jurisdiction's business license tax or business.

(b) Certain persons furnishing materials, improving personal property, owner builders, or persons otherwise licensed may be exempt from registration under this chapter under ORS 701.010.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 6)

2.09.060 License Applicability:

(a) If a contractor or landscape contractor has paid any business license tax imposed by participating jurisdictions in which the contractor or landscape contractor has an office the contractor or landscape contractor may apply for a Contractor's Business License from the District.

(b) If a contractor or landscape contractor has been issued a Contractor's Business License by the District, the contractor or landscape contractor may conduct business without any other business license in participating jurisdictions in which the contractor or landscape contractor:

- (1) Has no office;
- (2) Has not derived gross receipts of \$125,000 or more from business conducted within the boundary of the participating jurisdiction during the calendar year for which the business license is owed.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 7)

2.09.070 Application for License: To obtain a Contractor's Business License, a contractor or landscape contractor must make application in person or by mail to the District upon forms provided and prescribed by the District. The completed application shall be filed with the fee described in Section 2.09.100 of this chapter with the District before a contractor or landscape contractor is issued a Contractor's Business License.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 8)

2.09.080 Application Contents: Each application for a Contractor's Business License received by the District shall contain:

- (a) The name of the business making application.
- (b) The name of a contact person in the business.

- (c) The address of the principal place of business.
- (d) The telephone number of the business.
- (e) State of Oregon Construction Contractor's Board registration number or State Landscape Contractor's Board.
- (f) Date of application.
- (g) The signature of the contractor or landscape contractor making the application.
- (h) Such other information as the District shall determine.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 9)

2.09.090 Validity of the License:

(a) The license shall be valid from the date of issuance to the first day of the month in the following year; if issued after the middle of any month, the license shall be valid to the first day of the following month of that year. The license shall not be issued for a portion of a year.

(b) Before the expiration of the Contractor's Business License, the District shall notify the contractor or landscape contractor to whom the license was issued of the approaching expiration. Within 90 days prior to the expiration date, the notice shall be mailed to the contractor or landscape contractor to whom the license was issued at the address shown on the original application for the license maintained by the District.

(c) The District is not required to notify the contractor or landscape contractor of an approaching expiration if the contractor's or landscape contractor's license has been revoked under Section 2.09.130 of this chapter, or if the contractor or landscape contractor has failed to notify the District of a change of address.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 10)

2.09.100 Fee: The fee to be paid by any contractor or landscape contractor for a Contractor's Business License is \$110.00 and is non-refundable.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 11)

2.09.110 License: Each Contractor's Business License issued under this chapter shall state upon its face the following:

- (a) The name of the licensee.

- (b) The address of the licensee.
- (c) A unique license number established by the District.
- (d) The date of issuance.
- (e) The date of expiration.
- (f) Such other information as the District shall determine.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 12)

2.09.120 Renewal: Each contractor or landscape contractor requesting renewal of a license must make application, as described in Section 2.09.070 of this chapter, to the District upon forms provided and prescribed by the District. The completed application for renewal of the Contractor's Business License shall be filed with the fee described in Section 2.09.100 of this chapter with the District before a renewal license is issued.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 14)

2.09.130 Revocation:

(a) A license issued under this chapter may be revoked by the District, after notice, for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for the license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying out the licensed activity.
- (3) Conducting the licensed activity in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the public.
- (4) Failure to comply with the ordinances and resolutions of a jurisdiction within the boundaries of the District in which the license holder is conducting business authorized by this license.

(b) Notice of revocation of a license shall be given in writing to the licensee setting forth the grounds of the complaint. Such notice shall be mailed by certified mail at least ten (10) working days before the date of revocation to the licensee at the address that appears on the application for the

license being revoked. Revocation shall be effective ten (10) working days after notice of revocation.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 15)

2.09.140 Appeal of a Revoked License or Denied Application: Any contractor or landscape contractor aggrieved by the action of the District in denying an application for or revocation of a Contractor's Business License is entitled to appeal action under the provisions of Metro Code Chapter 2.05.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 16)

2.09.150 Penalty: Any contractor or landscape contractor who fails to comply with or violates any provision of this chapter is subject to penalties under Section 1.01.110 of this Code. In the event that a provision of this chapter is violated by a firm or corporation, the officer or contractor or landscape contractor responsible for the violation shall be subject to the penalty provided in Section 1.01.110 of this Code.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 17)

2.09.160 Distribution of Fees: The District shall distribute the Contractor's Business License fees collected by the District under this chapter to participating jurisdictions after the District has received reimbursement for administrative expenses incurred in carrying out the provisions of this chapter. At least once a year, each participating jurisdiction shall receive a share of the Contractor's Business License fees collected by the District based on a ratio of the number of residential building permits issued by each participating jurisdiction to the total number of residential building permits issued during that year by all participating jurisdictions.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 18)

2.09.170 Regulations: The Executive Officer may establish such other Contractor's Business License regulations, not inconsistent with this chapter, as may be necessary and expedient.

(Ordinance No. 88-248, Sec. 1; amended by Ord. 91-411, Sec. 19)

CHAPTER 2.10

VOTERS' PAMPHLET

SECTIONS:

2.10.010	State Voter's Pamphlet
2.10.020	Definitions
2.10.030	District Measures Included in the Pamphlet
2.10.040	Preparation and Judicial Review of Ballot Titles
2.10.050	Preparation and Judicial Review of Explanatory Statements
2.10.060	Arguments Support and Opposing Measures
2.10.070	Filing of Material with the Secretary of State

2.10.010 State Voters' Pamphlet: The Metropolitan Service District believes it to be in the interest of the electors of the District that ballot titles, explanatory statements and arguments relating to District measures be included in the state Voters' Pamphlet, as authorized by ORS 254.285 and provided for in Sections 2.10.010 through 2.10.070 of this Chapter.

(Ordinance No. 90-330A)

2.10.020 Definitions: As used in this Chapter:

(a) "Committee Director" has the meaning given that term in ORS 260.005.

(b) "Court" means the Circuit Court of the State of Oregon for the County of Multnomah.

(c) "Filing Officer" means the director of the Multnomah County Division of Elections.

(d) "Measure" has the meaning given that term in ORS 251.005.

(e) "Political Committee" has the meaning given that term in ORS 260.005.

(f) "Voters' Pamphlet" means the state Voters' Pamphlet published pursuant to ORS Chapter 251.

(Ordinance No. 90-330A)

2.10.030 District Measures Included in the Pamphlet: A District measure shall qualify for inclusion in the Voters' Pamphlet under the provisions of ORS 251.285 and Sections 2.10.010 through 2.10.070 of this Chapter if:

(a) The measure is submitted to the electors at an election for which a Voters' Pamphlet is printed;

(b) All procedures set forth in Sections 2.10.010 through 2.10.070 of this Chapter relating to the preparation of the ballot title and explanatory statement for the measure, including review by the Court, have been completed on or before the 75th day prior to the date of the election at which the measure is to be submitted to the electors; and

(c) In the case of a measure proposed by initiative or referendum petition:

- (1) The Filing Officer certifies that the petition has sufficient qualified signatures to require submission of the measure to the electors; and
- (2) Such certification is filed with the Executive Officer on or before the 90th day preceding the election at which the measure is to be submitted to the electors.

(Ordinance No. 90-330A)

2.10.040 Preparation and Judicial Review of Ballot Titles:

(a) A ballot title for a measure proposed by initiative or referendum petition shall be prepared as provided in ORS 255.145. A ballot title for a measure referred to the electors by the District shall be prepared by the District.

(b) Judicial review of any ballot title for a District measure shall be as provided in ORS 255.155.

(Ordinance No. 90-330A)

2.10.050 Preparation and Judicial Review of Explanatory Statements:

(a) Explanatory statements for all District measures shall be prepared by General Counsel and shall be filed with the Executive Officer. An explanatory statement shall be an impartial, simple and understandable statement of 500 words or less, explaining the measure and its effect. The explanatory statement for a measure referred by the District shall be filed with the Executive Officer and the Council at the same time as the ordinances or resolutions referring the measure is acted upon by the Council. The explanatory statement for a measure proposed by initiative or referendum petition shall be filed with the Executive Officer not later than the seventh business day after the petition is submitted to the Filing Officer for signature verification.

(b) Upon receipt of an explanatory statement, the Executive Officer shall publish in the next available edition of a newspaper of general circulation in the District a notice of receipt of the statement including notice that an elector may file a petition for review of the statement not later than the date referred to in subsection (c) of this section. The Executive Officer and the Filing Officer may jointly publish notice of the explanatory statement and ballot title for a measure in the same publication.

(c) Any elector dissatisfied with an explanatory statement for a District measure may petition the Court stating the reasons why the statement does not meet the requirements of subsection (a) of this section. The petition shall be filed not later than the seventh business day after the statement is filed with the Executive Officer. An elector filing a petition with the Court shall also file a copy of the petition with the Executive Officer not later than the end of the next business day following the date the petition is filed with the Court. The Court shall review the statement and measure, hear arguments, if any, and certify to the Executive Officer a statement for the measure which meets the requirement of subsection (a) of this section. Review by the Court shall be first and final.

(Ordinance No. 90-330A)

2.10.060 Arguments Supporting and Opposing Measures:

(a) Arguments in support of or opposition to a measure which is subject to this Chapter may be filed with the Executive Officer not later than the 75th day prior to the date of the election at which the measure is to be submitted to the electors by:

- (1) Any person who tenders a filing fee in the amount of \$300 and submits a statement on such form as the Executive Officer may prescribe or provide, which:
 - (A) Identifies the name of the person who submitted the argument;
 - (B) Identifies the name of the organization the person represents, if any;
 - (C) Indicates whether the argument supports or opposes the measure; and
 - (D) Indicates who authorized publication of the argument.

(2) A person who files a petition for the inclusion of the argument in the Voters' Pamphlet which contains the signatures of not less than 1,000 electors of the District. Before the argument is filed with the Executive Officer, the signatures on the petition shall be verified by the Filing Officer. Prior to the circulation of a petition under this paragraph, a prospective petition shall be filed with the Executive Officer, on such form as the Executive Officer may prescribe or provide, which:

- (A) Sets forth the text of the proposed argument;
- (B) Identifies the name of the person who submitted the argument;
- (C) Indicates the name of the organization the person represents, if any;
- (D) Indicates whether the argument supports or opposes the measure; and
- (E) Indicates who authorized publication of the argument.

(b) Arguments shall be typewritten and shall be prepared for printing on 29.7 square inches of the Voters' Pamphlet.

(Ordinance No. 90-330A)

2.10.070 Filing of Material with the Secretary of State: The Executive Officer shall file all measures, ballot titles, explanatory statements and arguments that meet the requirements of this Chapter with the Secretary of State and the Clerk of the Council not later than the 70th day prior to the date of the election for which a Voters' Pamphlet will be printed.

(Ordinance No. 90-330A)

CHAPTER 2.11

OFFICE OF GOVERNMENT RELATIONS

SECTIONS:

- 2.11.010 Purpose
- 2.11.020 Government Relations Office Created
- 2.11.030 Duties
- 2.11.040 Advocate for District Policies

2.11.010 Purpose: The purpose of this Chapter is to establish an Office of Government Relations to provide government relations services to the District and its Council, Executive Officer and any Metro commissions.

(Ordinance No. 90-369, Sec. 1)

2.11.020 Government Relations Office Created: There is hereby created an Office of Government Relations consisting of the Government Relations Officer and such subordinate employees as the Council may provide. The Government Relations Officer and any subordinate employees shall be employed by the District subject to Personnel Rules adopted by the Council. The Government Relations Officer shall be appointed by the Executive Officer subject to the confirmation of a majority of the members of the Council. The Government Relations Officer may be removed by the Executive Officer or by a vote of a majority of the members of the Council. The Office of Government Relations is not a department of the District. All contracts authorized for Government Relations Services shall be managed through the Office of Governmental Relations.

(Ordinance No. 90-369, Sec. 1)

2.11.030 Duties: The Government Relations Officer shall have the following duties:

(a) Responsibility for managing the District's State Legislative Program including:

- (1) Assembling the District's legislative program for review and approval by the Council following a process established by the Council;
- (2) Insure District representation before legislative committees with individual legislators both during a legislative session and in interim periods and with other interested persons;

- (3) Development and implementation of a system to monitor and inform the Council and Executive Officer of District- related legislation; and
- (4) Preparation of a final legislative report analyzing District-related legislation.

(b) Responsibility for communicating District programs and policies to local, state and federal governmental officials, and task forces, commissions, and rule making bodies.

(c) Responsibility to monitor and communicate to the Council and Executive Officer programs and policies of other governments and special interest groups which affect or impact functions or activities of the District.

(Ordinance No. 90-369, Sec. 1)

2.11.040 Advocate for District Policies: In carrying out the duties of the Office, the Government Relations Officer or subordinate employees shall not represent or advocate the position of any single Metro elected official or group of elected officials. The Government Relations Officer or subordinate employees shall advocate only on matters which have been approved or adopted by the Metro Council or any task force or committee authorized by the Council to represent the Council on legislative matters and which have been approved by the Executive Officer. For any matter in which the Council or any task force or committee authorized to represent the Council on legislative matters and the Executive Officer disagree, the Government Relations Officer and subordinate employees shall not represent or advocate for either the Metro Council or the Executive Officer.

(Ordinance No. 90-369, Sec. 1)

TITLE III

PLANNING

CHAPTERS:

- 3.01 Urban Growth Boundary Locational Adjustments
- 3.02 Waste Treatment Management Plan*
- 3.03 Housing Goals and Objectives
- 3.04 Regional Stormwater Management Plan
- 3.05 Phosphorous Ban
- 3.06 Planning Procedure for Designating Functional Planning Areas and Activities

*Chapter 3.02 was originally adopted by the Columbia Region Association of Governments (CRAG) prior to the 1979 merger of CRAG and the Metropolitan Service District. All rules adopted by CRAG continue in effect until superseded or repealed by Metro pursuant to 1977 Or. Laws, ch. 665, sec. 25. References in the CRAG rule to "CRAG" and the CRAG "Board" have been changed to "Metro" and the Metro "Council."

CHAPTER 3.01

URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENTS

SECTIONS:

3.01.005	Purpose
3.01.010	Definitions
3.01.015	Administrative Interpretation of the UGB
3.01.020	Petitions Generally
3.01.025	Local Position on Petitions
3.01.030	Local Action to Conform to District Boundary
3.01.035	Standing to Petition for Amendment
3.01.040	Standards for Petition Approval
3.01.045	Notice of Filing Deadline
3.01.050	Filing Fee
3.01.053	Notice of Proposed Action
3.01.055	Notice of UGB Adjustment Hearing
3.01.060	Hearing
3.01.065	Staff Review and Report
3.01.070	Council Action on Petitions
3.01.075	Notice District Action
3.01.080	Review of Procedures
3.01.085	LCDC Acknowledgement

3.01.005 Purpose:

(a) It is the purpose of this chapter to establish procedures to be used by the District in making minor amendments to the District Urban Growth Boundary (UGB) adopted pursuant to ORS 268.390(3) and 197.005 to 197.430. Procedures for District UGB amendments that do not meet the standards provided in this chapter will be adopted in a separate ordinance.

(b) This chapter is intended to incorporate relevant portions of Statewide Goal No. 14, and, by restricting the size and character of UGB adjustments that may be approved under this chapter, this chapter obviates the need to specifically apply the provisions of Goal No. 14 to UGB amendments approved hereunder.

(c) Procedural provisions of this chapter are to be construed as directory rather than mandatory and minor procedural deviations from this chapter shall not constitute grounds for invalidating District actions taken under this chapter.

(Ordinance No. 81-105, Sec. 1)

3.01.010 Definitions:

(a) "UGB" means the District Urban Growth Boundary adopted pursuant to ORS 268.390 and 197.005 to 197.430.

(b) "District" has the same meaning as in Chapter 1.01.

(c) "Council" has the same meaning as in Chapter 1.01.

(d) "Goals" means the statewide planning Goals adopted by the Oregon Land Conservation and Development Commission at OAR 660-15-000.

(e) "Petition" means a petition to amend the UGB.

(f) "Property owner" means a person who owns a legal interest in the property.

(g) "Legal Description" means a written description which appears on the UGB map as adopted by the Council or a written description from which the adopted map was drafted or which was adopted by Metro or its predecessor CRAG to describe the mapped UGB.

(h) "Locational Adjustment" means an amendment to the District UGB which includes an addition or deletion of 50 acres or less or a combination of an addition and deletion resulting in a net change of 10 acres of vacant land or less, and which is otherwise consistent with the standards indicated in Section 3.01.040.

(i) "Vacant land" means:

(1) For lots of one acre or less with a dwelling unit, not vacant land;

(2) For lots of one acre or less with no dwelling unit, vacant land is the entire lot;

(3) For lots in excess of one acre, vacant land is the gross area of a lot, less one acre multiplied by the number of dwelling units on the lot, but not less than zero.

(Ordinance No. 81-105, Sec. 2; amended by Ordinance No. 82-133, Sec. 1; Ordinance No. 88-261, Sec. 1)

3.01.015 Administrative Interpretation of the UGB:

(a) When the UGB map and the legal description of the UGB are found to be inconsistent, the Executive Officer is hereby authorized to determine and interpret whether the map or the legal description correctly establishes the UGB location as adopted and to correct the map or description if necessary. In determining where the adopted UGB is located, the Executive Officer shall review the record to determine legislative intent and shall seek a legal opinion from the District General Counsel. The map location should be preferred over the legal description in absence of clear evidence to the contrary.

(b) A city, county or special district whose municipal or planning area boundary includes the property, or a property owner who would be included or excluded from the urban area depending on whether the map or legal description controls, may request that the Executive Officer render an interpretation under this section. If the request is submitted in writing, the Executive Officer shall make the requested interpretation within 60 days after the request is submitted.

(c) Within ten days of rendering the interpretation, the Executive Officer shall provide a written notice and explanation of his decision to each city or county whose municipal or planning area boundaries include the area affected, owners of property in the area affected, and the Council.

(d) Any party eligible to request an interpretation under subsection (b) may appeal to the Council for a determination of where the UGB is located if that party disagrees with the Executive Officer's interpretation or if the Executive Officer fails to render an interpretation requested under subsection (b). Such appeal must be filed with the District within twenty (20) days of receipt of the Executive Officer's interpretation or within eighty (80) days after submission of the request for interpretation to the Executive Officer, whichever is later.

(Ordinance No. 81-105, Sec. 3; amended by Ordinance No. 81-124, Sec. 3)

3.01.020 Petitions Generally:

(a) All petitions filed pursuant to this chapter for locational adjustment of the UGB must include a completed petition on a form provided by the District. Petitions which do not include the appropriate completed form provided by the District will not be considered for approval. Except as provided in subsection (b) of this section, petitions for locational adjustment shall be considered by the District at one time each year beginning July 1 and petitions filed after July 1 of each year shall not be considered until July of the next calendar year. The District will determine not later than one week after the July 1 deadline for receipt of petitions whether each petition is complete and notify the petitioner. If the petitioner is notified that the petition is not complete, the petition must be completed and refiled within two weeks of notification or by July 1, whichever is later, to be considered in that calendar year.

(b) Upon request by a Councilor or the Executive Officer, the Council may, by majority vote, waive the July 1 filing deadline for a particular petition or petitions and hear such petition or petitions at any time. Such waiver shall not waive any other requirement of this chapter.

(c) In addition, upon request by a Councilor or the Executive Officer, the Council may at any time by majority vote, initiate consideration of a locational adjustment without petition or filing fee. Such consideration shall be in accordance with all other requirements of this chapter.

(d) No petition will be accepted under this chapter if the proposed amendment to the UGB would result in an island of urban land outside the contiguous UGB or would create an island of non-urban land within the UGB.

(e) No petition to add or remove more than fifty acres of land in one location will be accepted under this chapter; provided, however, that petitions which request a combination of an addition and a deletion which would result in a net change of no more than 10 acres of vacant land may be accepted notwithstanding the total acreage involved.

(Ordinance No. 81-105, Sec. 4; amended by Ordinance No. 82-133, Sec. 1)

3.01.025 Local Position on Petition:

(a) Except as provided in subsection (b) of this section, a petition shall not be accepted and shall not be considered a completed petition under Section 3.01.020 unless the petition includes a written action by the governing body of each city or county with jurisdiction over the area included in the petition which:

- (1) Recommends that Metro approve the petition; or
- (2) Recommends that Metro deny the petition; or
- (3) Expresses no opinion on the petition.

(b) The requirement of paragraph (a) of this section shall be waived if the applicant shows that a recommendation from the governing body was requested six months or more before the petition was filed with the District and that the governing body has not reached a decision on that request.

(c) If a city or county holds a public hearing to establish its position on a petition, the city or county should:

- (1) Provide notice of such hearing to the District and to any city or county whose municipal boundaries or urban planning area boundary abuts the area affected; and
- (2) Provide the District with a list of the names and addresses of parties testifying at the hearing and

copies of any exhibits or written testimony submitted for the hearing.

(Ordinance No. 81-105, Sec. 5)

3.01.030 Local Action to Conform to District Boundary:

(a) A city or county may, in addition to the action required in Section 3.01.025, approve a plan or zone change to implement the proposed adjustment in the area included in a petition prior to an amendment of the District UGB if:

- (1) The District is given notice of the local action,
- (2) The notice of the local action states that the local action is contingent upon subsequent action by the District to amend its UGB, and
- (3) The local action to amend the local plan or zoning map becomes effective only if the District amends the UGB consistent with the local action.

(b) If the city or county has not contingently amended its plan or zoning map to allow the use proposed in a petition, and if the District does approve the UGB amendment, the local plan or map change shall be changed to be consistent with the UGB amendment. That change shall be made at the next regularly scheduled plan or zoning map review or within 1 year, whichever comes first.

(Ordinance No. 81-105, Sec. 6)

3.01.035 Standing to Petition for Amendment:

(a) A petition may be filed by:

- (1) A county with jurisdiction over the property or a city with a planning area that includes or is contiguous to the property; or
- (2) The owners of the property included in the petition or a group of more than 50 percent of the property owners who own more than 50 percent of the land area in each area included in the petition.

(b) Petitions to extend the UGB to include land outside the District shall not be accepted unless accompanied by:

- (1) A copy of a petition for annexation to the District to be submitted to the Portland

Metropolitan Area Local Government Boundary
Commission pursuant to ORS ch. 199; and

- (2) A statement of intent to file the petition for annexation within ninety (90) days of Metro action to approve the petition for UGB amendment under Section 3.01.070 of this chapter.

(Ordinance No. 81-105, Sec. 7; amended by Ordinance No. 82-133, Sec. 1)

3.01.040 Standards for Petition Approval:

(a) As required by subsections (b) through (d) of this section, locational adjustments shall be consistent with the following factors:

- (1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, fire protection and schools in the adjoining areas within the UGB; and any area to be added must be capable of being served in an orderly and economical fashion.
- (2) Maximum efficiency of land uses. Considerations shall include existing development densities on the area included within the amendment, and whether the amendment would facilitate needed development on adjacent existing urban land.
- (3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.
- (4) Retention of agricultural land:
 - (A) When a petition includes land with Class I-IV soils designated in the applicable comprehensive plan for farm or forest use consistent with the requirements of LCDC Goals No. 3 or 4, the petition shall not be approved unless it is factually demonstrated that:
 - (i) retention of the agricultural land would preclude urbanization of an

adjacent area already inside the UGB, or

(ii) retention of the agricultural land would prevent the efficient and economical provision of urban services to an adjacent area inside the UGB, or

(iii) the property is a legal parcel or parcels 10 acres or smaller in aggregate zoned for Exclusive Farm Use under provisions of ORS chapter 215 and occupied by one or more permanent structures, including but not limited to roads and paved parking lots; and

(aa) the parcel(s) are not used for rural residential purposes or for agricultural production, cultivation, processing or marketing; and

(bb) the parcel(s) were in existence at the time Exclusive Farm Use zoning was applied to the property;

(cc) all structures predate or have been built in compliance with applicable comprehensive plans and zoning regulations and now cover at least 50 percent of the aggregate parcel(s) on which they are located.

(B) Metro will issue notice to property owners within 250 feet of the boundaries of any property for which a UGB amendment is proposed consistent with the requirements of OAR 660-04-030(1).

(5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of factors (1) through (4) of this subsection must clearly outweigh the adverse impact of any incompatibility.

(b) Petitions to remove land from the UGB may be approved under the following conditions:

- (1) Consideration of the factors in subsection (a) of this section demonstrate that it is appropriate that the land be excluded from the UGB.
- (2) The land is not needed to avoid short-term land shortages for the District or for the county in which the affected area is located and any long-term land shortage that may result can reasonably be expected to be alleviated through addition of land in an appropriate location elsewhere in the region.
- (3) Removals should not be granted if existing or planned capacity of major facilities such as sewerage, water and arterial streets will thereby be significantly under-utilized.
- (4) No petition shall remove more than 50 acres of land.

(c) A petition to remove land from the UGB in one location and add land to the UGB in another location (trades) may be approved if it meets the following criteria:

- (1) The requirements of paragraph 3.01.040(a)(4) of this chapter are met.
- (2) The net amount of vacant land proposed to be added may not exceed 10 acres; nor may the net amount of vacant land removed exceed 50 acres.
- (3) The land proposed to be added is more suitable for urbanization than the land to be removed, based on a consideration of each of factors (1), (2), (3) and (5) of Section 3.01.040(a).

(d) Petitions to add land to the UGB may be approved under the following conditions:

- (1) An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (a) and the adjustment includes all contiguous lots divided by the existing UGB.

- (2) For all other additions, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (a). The minor addition must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors in subsection (a).
- (3) Additions shall not add more than 50 acres of land to the UGB and generally should not add more than 10 acres of vacant land to the UGB. Except as provided in subsection (4) of this subsection, the larger the proposed addition, the greater the differences shall be between the suitability of the proposed UGB and suitability of the existing UGB, based upon consideration of the factors in subsection (a) of this section.
- (4) If an addition is requested in order to remedy an alleged mistake made at the time the UGB for the area affected was adopted, the addition may be approved if all of the following conditions are met.
 - (A) There is clear evidence in the record of specific legislative intent to place the UGB in the particular location requested.
 - (B) The petition for an addition to remedy an alleged mistake is filed by July 1, 1982 or within two years from the time the UGB for the area affected was adopted, whichever is later.
 - (C) The addition is superior to the existing UGB, based on consideration of the factors in subsection (a) of this section and does not add more than 50 acres of land.

(Ordinance No. 81-105, Sec. 8; amended by Ordinance No. 82-133, Sec. 1; amended by Ordinance No. 84-174, Sec. 1; and Ordinance No. 88-261, Sec. 2 and 3)

3.01.045 Notice of Filing Deadline: The District shall give notice of the July 1 deadline for acceptance of petitions for UGB amendments under this chapter not less than 90 days before the deadline and again 20 days before the deadline in a newspaper of general circulation in the District. The notice shall briefly explain the consequences of failing to file before the deadline and shall specify the District officer or employee from whom additional information may be obtained.

(Ordinance No. 81-105, Sec. 9)

3.01.050 Filing Fee:

(a) Each petition submitted by a property owner or group of property owners pursuant to this chapter shall be accompanied by a filing fee in an amount generally sufficient to defray the actual cost to the District of processing such petitions.

(b) The fees for administrative costs shall be charged at a rate of \$35 per hour for the time worked on a case by the District's Land Use Coordinator from the time a petition is filed through mailing of the Notice of Adoption to the Department of Land Conservation and Development and other interested parties. In addition, petitioners shall be charged for the costs of the District Hearings Officer as billed for that case and for the costs of public notice.

(c) Before a hearing is scheduled, petitioners shall submit a fee deposit as follows:

- (1) A deposit for administrative costs of \$700 for petitions up to 20 acres in size; \$1,400 for petitions larger than 20 acres but less than 50, and \$2,500 for petitions 50 acres in size or larger;
- (2) A deposit of \$1,600 for Hearings Officer's costs and public notices.

(d) The unexpended portion of petitioner's deposit, if any, shall be returned to the petitioner at the time of a final disposition of the petition.

(e) If Hearings Officer or administrative costs exceed the amount of the deposit, the petitioner shall be required to pay to the Metropolitan Service District an amount equal to the costs in excess of the deposit, prior to final action by the Council of the Metropolitan Service District; however, for locational adjustments the total cost shall not exceed \$2,500 for the Hearings Officer or \$2,000 for administrative costs.

(f) The Council of the Metropolitan Service District may, by resolution, reduce, refund or waive the administrative fee, or portion thereof, if it finds that such fees would create an undue hardship for the applicant.

(Ordinance No. 81-105, Section 10; amended by Ordinance No. 88-236, Section 1.)

3.01.053 Notice of Proposed Action: For all locational adjustments to the UGB, Metro will issue notice to the Oregon

Department of Land Conservation and Development, consistent with the requirements of ORS 197.610-197.625 and OAR 660-Division 18.

(Ordinance No. 88-261, Sec. 4)

3.01.055 Notice of UGB Adjustment Hearing:

(a) The notice provisions established by this section shall be followed in UGB hearings on petitions for UGB adjustments. These notice provisions shall be in addition to the District notice provisions for contested case hearings contained in the District Code Section 2.05.005 and to the notice requirements of OAR 660-18-000.

(b) Notice of public hearing shall include:

- (1) The time, date and place of the hearing.
- (2) A description of the property reasonably calculated to give notice as to its actual location.
- (3) A summary of the proposed action.
- (4) Notice that interested persons may submit written comments at the hearing and appear and be heard.
- (5) Notice that the hearing will be conducted pursuant to District rules for contested cases.

(c) Not less than 10 days before the hearing, notice shall be mailed to the following persons:

- (1) The petitioner(s).
- (2) All property owners of record within 250 feet of the property subject to petition. For purposes of this subsection, only those property owners of record within 250 feet of the subject property as determined from the maps and records in the county departments of taxation and assessment are entitled to notice by mail. Failure of a property owner to receive actual notice will not invalidate the action if there was a reasonable effort to notify record owners.
- (3) All cities and counties in the District and affected agencies as determined by the Executive Officer.
- (4) The Oregon Department of Land Conservation and Development.

(d) Notice shall be published in a newspaper of general circulation in the District not more than twenty (20) nor less than ten (10) days prior to the hearing.

(e) The hearing may be continued without additional notice.

(Ordinance No. 81-105, Sec. 11; amended by Ordinance No. 82-133, Sec. 1; and Ordinance No. 88-261, Sec. 5)

3.01.060 Hearing:

(a) All petitions accepted under this chapter shall receive a contested case hearing. The hearing shall be conducted by a hearings officer pursuant to District procedures for contested cases contained in District Code Chapter 2.05.

(b) Proposed UGB amendments may be consolidated by the hearings officer or presiding officer for hearings where appropriate.

(c) The proponent of a proposed UGB amendment shall have the burden of proving that the proposed amendment complies with the applicable standards in this chapter.

(Ordinance No. 81-105, Sec. 12; amended by Ordinance No. 82-133, Sec. 1)

3.01.065 Staff Review and Report: All petitions shall be reviewed by District staff and a report and recommendation submitted to the Hearings Officer or the Council not less than five (5) days before the required hearing. A copy of the staff report and recommendation shall simultaneously be sent to the petitioner(s) and others who have requested copies.

(Ordinance No. 81-105, Sec. 13)

3.01.070 Council Action on Petitions:

(a) Following public hearings on all petitions for UGB changes, the Council shall act to approve or deny the petitions in whole or in part or approve the petitions in whole or in part subject to conditions consistent with the applicable standards in Sections 3.01.040 through 3.01.050 of this chapter.

(b) Final Council action following a hearing shall be as provided in Code Section 2.05.045. Parties shall be notified of their right to review before the Land Use Board of Appeals pursuant to 1979 Or. Laws, ch. 772.

(c) When the Council acts to approve in whole or in part a petition affecting land outside the District:

- (1) Such action shall be by resolution expressing intent to amend the UGB if and when the affected property is annexed to the District within six months of the date of adoption of the resolution.
- (2) The Council shall take final action, as provided for in paragraphs (b) and (c) of this section, within thirty (30) days of notice from the Boundary Commission that annexation to the District has been approved.

(Ordinance No. 81-105, Sec. 14; amended by Ordinance No. 82-133, Sec. 1)

3.01.075 Notice of District Action: The District shall give each county and city in the District notice of each amendment of the UGB. Such notice shall include a statement of the local action that will be required to make local plans consistent with the amended UGB and the date by which that action must be taken.

(Ordinance No. 81-105, Sec. 15)

3.01.080 Review of Procedures:

(a) These procedures are designed for small adjustments to the UGB which generally should not, in total, result in a net addition to or removal of more than 2,000 acres of urban land over the next twenty years.

(b) If, at any time after December 31, 1983, the total net change in the size of the urban area resulting from locational adjustments made pursuant to this chapter since its adoption is greater than an average net addition or removal of 100 acres per year, the District shall either amend this chapter to change the standards under which petitions may be approved or adopt findings demonstrating why such ordinance amendment is not necessary to ensure continued compliance with the Statewide Goals.

(c) The District action provided for in paragraph (b) of this section shall occur before any additional UGB amendments are approved.

(Ordinance No. 81-105, Sec. 16)

3.01.085 LCDC Acknowledgment: This chapter shall be submitted upon adoption to the Land Conservation and Development Commission for acknowledgement pursuant to ORS 197.251, as an implementing measure to the District UGB.

(Ordinance No. 81-105, Sec. 17)

CHAPTER 3.02

WASTE WATER MANAGEMENT PLAN

SECTIONS:

3.02.001	Authority and Purpose
3.02.002	Adoption
3.02.003	Conformity to the Regional Plan
3.02.004	Review of Violations of the Waste Treatment Management Component
3.02.005	Change of Waste Treatment Management Component Study Areas
3.02.006	Study Areas
3.02.008	Project Prioritization
3.02.009	Continuing Planning Process
3.02.010	Application of Rules
3.02.011	Severability

3.02.001 Authority and Purpose:

(a) This chapter is adopted pursuant to 268.390(1)(b) and 268.390(2) for the purpose of adopting and implementing the Regional Waste Water Management Plan, hereinafter referred to as the "Regional Plan." The Regional Plan shall include the Regional Waste Water Management Plan Text, Sewerage Transmission and Treatment Service Areas Map and Collection System Service Areas Map.

(b) These rules shall become effective forty-five (45) days after the date of adoption. As a result of Metro's continuing "208" Water Quality Program, the Council hereby designates water quality and waste treatment management as an activity having significant impact upon the orderly and responsible development of the region.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 1; Ordinance No. 84-184, Sec. 1; Ordinance No. 86-206, Sec. 1; and Ordinance No. 88-275, Sec. 1)

3.02.002 Adoption: The Regional Waste Water Management Plan, as amended, copies of which are on file at Metro offices, is adopted and shall be implemented as required by this chapter.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 2; 84-184, Sec. 1, Ordinance No. 86-206, Sec. 1; Ordinance No. 87-229, Sec. 1; and Ordinance No. 88-275, Sec. 1)

3.02.003 Conformity to the Regional Plan:

(a) Management agencies shall not take any land use related action or any action related to development or provision of public facilities or services which are not in conformance with the Regional Plan.

(b) For purposes of this chapter "management agencies" shall mean all cities, counties and special districts involved with the treatment of liquid wastes within the Metro jurisdiction.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 3, and Ordinance No. 86-203, Sec. 1)

3.02.004 Review of Violations of the Regional Plan:

(a) Any member management agency, interested person or group may petition the Council for review of any action, referred to in 3.02.03 of this chapter, by any management agency within thirty (30) days after the date of such action.

(b) Petitions filed pursuant to this section must allege and show that the subject action is of substantial regional significance and that the action violates the Regional Plan.

(c) Upon receipt of a petition for review, the Council shall decide, without hearing, whether the petition alleges a violation of the Regional Plan and whether such violation is of substantial regional significance and, if so, shall accept the petition for review. The Council shall reach a decision about whether to accept the petition within thirty (30) days of the filing of such petition. If the Council decides not to accept the petition, it shall notify the petitioner in writing of the reasons for rejecting said petition. If the Council decides to accept the petition, it shall schedule a hearing to be held within thirty (30) days of its decision. A hearing on the petition shall be conducted in accordance with applicable procedural rules.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 4)

3.02.005 Regional Plan Amendments:

(a) Revisions in the Regional Plan shall be in accordance with procedural rules adopted by the Council.

(b) Mistakes discovered in the Regional Plan may be corrected administratively without petition, notice or hearing. Such corrections may be made by order of the Council upon determination of the existence of a mistake and of the nature of the correction to be made.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 5, and Ordinance No. 86-203, Sec. 1)

3.02.006 Study Areas:

(a) Treatment System Study Areas:

- (1) Certain areas may be designated on the Treatment System Service Area Map as "Treatment System Study Areas." Such designations are temporary and indicate areas requiring designation of that land to which each management agency intends to provide wastewater treatment services, as identified in an acceptable Facilities Plan.
- (2) Wastewater treatment facilities within Treatment System Study Areas shall be allowed only if:
 - (A) Required to alleviate a public health hazard or water pollution problem in an area officially designated by the appropriate state agency;
 - (B) Needed for parks or recreation lands which are consistent with the protection of natural resources or for housing necessary for the conduct of resource related activities; or
 - (C) Facilities have received state approval of a Step 1 Facilities Plan, as defined by the U. S. Environmental Protection Agency regulations (Section 201, PL 92-500), prior to the effective date of this chapter.
- (3) Facilities planning for a designated Treatment System Study Area shall include investigation of the regional alternative recommended in the support documents accepted by the Regional Plan. Such investigations shall be conducted in accordance with Article V, Section 1, (A)(2)(a)(iv) of the Regional Plan Text.
- (4) No federal or state grants or loans for design or construction of any major expansion or modification of treatment facilities shall be made available to or used by agencies serving designated Treatment System Study Areas until such time as a state approved Facilities Plan has been completed.
- (5) Upon completion of a Facilities Plan and acknowledgment by Metro of compliance with the

Regional Plan, a Treatment System Study Area shall become a designated Treatment System Service Area and shall be eligible to apply for Step 2 and Step 3 construction grants. The Treatment System Service Area shall be incorporated by amendment into the Regional Plan and all appropriate support documents pursuant to Section 3.02.009 of this chapter.

(b) Collection System Study Areas:

- (1) Certain areas are designated on the Collection System Service Area Map as "Collection System Study Areas." Such designations are temporary and exist only until such time as each member and special district designates that land to which it intends to provide sewage collection services. At the time of designation, Collection System Study Areas shall become designated Collection System Service Areas. The Regional Plan and the appropriate support documents shall be amended to incorporate the Collection System Service Area pursuant to Section 3.02.009 of this chapter.
- (2) Designation as a Collection System Study Area shall not be construed to interfere with any grants or loans for facility planning, design or construction.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 6, and Ordinance No. 86-206, Sec. 1)

3.02.008 Project Prioritization: Metro shall review each publication of the DEQ grant priorities list and shall have the opportunity to comment thereon.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 8, and Ordinance No. 86-206, Sec. 1)

3.02.009 Continuing Planning Process:

(a) For the purpose of implementing Article V, Section 1 (A)(2)(b)(i) of the Regional Plan, the continuing planning process shall follow, but not be limited to, the procedure shown below.

- (1) Evaluation of new information with respect to its impact on the Regional Plan. Regional Plan changes shall be based upon:

- (A) Changes in custody, maintenance and/or distribution of any portion of the Waste Treatment Component;
 - (B) Changes in population forecasts and/or wasteload projections;
 - (C) Changes in state goals or regional goals or objectives;
 - (D) Changes in existing treatment requirements;
 - (E) Implementation of new technology or completion of additional study efforts; development of more energy-efficient wastewater treatment facilities; or
 - (F) Other circumstances which because of the impact on water quality are deemed to effect the Waste Treatment Component.
- (2) Adequate public review and comment on the change.
 - (3) Adoption of Regional Plan change by Metro Council.
 - (4) Submittal of change to DEQ for approval and state certification.
 - (5) EPA approval of change.

(b) For the purpose of amending support documents referenced in Article I, Section 3(F) of the Regional Plan, the process shall be as shown below:

- (1) Any proposed change to the support documents shall be presented to the Metro Council with the following information:
 - (A) Reasons for proposed action;
 - (B) Basis of data;
 - (C) Method of obtaining data;
 - (D) Period in which the data was obtained;
 - (E) Source of the data;
 - (F) Alternatives considered; and

- (G) Advantages and disadvantages of the proposed action.
- (2) Following approval by the Metro Council, amendments to the support documents shall be attached to appropriate documents with the following information:
 - (A) Approved change and replacement text for the document;
 - (B) Specific location of change within the document;
 - (C) Reasons for the change; and
 - (D) Date of Council action approving the change.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 9, and Ordinance No. 86-206, Sec. 1)

3.02.010 Application of Ordinance: This chapter shall apply to all portions of Clackamas, Washington and Multnomah Counties within the jurisdiction of Metro.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 10)

3.02.011 Severability:

(a) The sections of this chapter shall be severable, and any action or judgment by any state agency or court of competent jurisdiction invalidating any section of this chapter shall not affect the validity of any other section.

(b) The sections of the Regional Plan shall also be severable and shall be subject to the provisions of subsection (a) of this section.

(c) For purposes of this section, the maps included in the Regional Plan shall be considered as severable sections, and any section or portion of the maps which may be invalidated as in subsection (a) above shall not affect the validity of any other section or portion of the maps.

(Adopted by CRAG Rule; amended by Ordinance No. 80-102, Sec. 11)

CHAPTER 3.03

HOUSING GOALS AND OBJECTIVES

SECTIONS:

3.03.010	Authority and Purpose
3.03.020	Adoption
3.03.030	Implementation
3.03.040	Periodic Review

3.03.010 Authority and Purpose: This chapter is adopted pursuant to ORS 268.380 (1) and (2) for the purpose of adopting and implementing region-wide land use planning goals and objectives related to housing.

(Ordinance No. 80-98, Sec. 1)

3.03.020 Adoption: The document entitled "Metro Housing Goals and Objectives," September 4, 1980, attached hereto and incorporated herein, or on file at Metro offices, is hereby adopted.

(Ordinance No. 80-98, Sec. 2) Note: The "Metro Housing Goals and Objectives" were amended by Ordinance No. 80-104.

3.03.030 Implementation: The Metro Housing Goals and Objectives adopted herein are considered interim and shall be implemented as provided in the Introduction and Background section of the Goals and Objectives document referred to in Section 3.03.020 of this chapter.

(Ordinance No. 80-98, Sec. 3)

3.03.040 Periodic Review: The Metro Housing Goals and Objectives shall be subject to regular review, and amendment where appropriate, every four years from the date of adoption.

(Ordinance No. 80-98, Sec. 4)

CHAPTER 3.04

REGIONAL STORMWATER MANAGEMENT PLAN

SECTIONS:

3.04.010	Authority and Purpose
3.04.020	Adoption
3.04.030	Regional Drainage Basin Designations
3.04.040	Policies and Guidelines
3.04.050	Drainage Management Agencies
3.04.060	Plan Amendments
3.04.070	Continuing Planning Process
3.04.080	Scope and Application

3.04.010 Authority and Purpose:

(a) This chapter is adopted pursuant to ORS 268.310(3) and 268.390(1)(b) for the purpose of adopting and implementing a Regional Stormwater Management Plan, herein after referred to as the "Plan." The Plan shall include the Plan Text, dated February 1982, the eight Regional Drainage Basin Maps, dated February 1982, and the following supporting documents:

- (1) Regional Stormwater Management Inventory, Metropolitan Service District, April 1980
- (2) Technical Supplement 13, Stormwater Management Design Manual, Metropolitan Service District, Spring 1980
- (3) Technical Report #1, Basic Data Report, Portland State University, 1981
- (4) Technical Report #2, Instream Water Quality, Portland State University, 1981
- (5) Technical Report #3, Effectiveness of Selected Management Practices, Portland State University, 1981
- (6) Technical Report #4, Regional Drainage Basins Report, Portland State University, 1981
- (7) Technical Report #5, Monitoring Report, Portland State University, 1981

(b) The Plan shall become effective ninety (90) days after the date of adoption. As a result of Metro's continuing "208" Water Quality Program, the Council hereby designates water quality and stormwater management as an activity having

significant impact upon the orderly and responsible development of the region.

(Ordinance No. 82-128, Sec. 1)

3.04.020 Adoption: The Regional Stormwater Management Plan, dated February 1982, copies of which are on file at Metro offices, is adopted and shall be implemented as required in this chapter.

(Ordinance No. 82-128, Sec. 2)

3.04.030 Regional Drainage Basin Designations:

(a) Eight minor drainage basins in the Metro region are hereby determined to be Regional Drainage Basins for the purposes of the Plan. These basins have been selected because they:

- (1) Encompass three (3) or more local jurisdictions (city or county); and
- (2) They currently have stormwater management problems or a high potential for such problems due to increased development.

(b) The Regional Drainage Basins are shown on the Regional Drainage Basin maps and are listed below:

- (1) Beaver/Kelly Creek
- (2) Fairview Creek
- (3) Kellogg/Mt. Scott Creek
- (4) Tryon Creek
- (5) Fanno Creek
- (6) Beaverton/Cedar Mill Creek
- (7) Rock Creek
- (8) Johnson Creek

(c) In addition to drainage issues within the Regional Drainage Basins, the Metro Council can choose to address other drainage and water quality issues outside of the Regional Drainage Basins if those issues involve three or more jurisdictions (city, county or state) and arise, or have the potential to arise, as the result of increased development.

(Ordinance No. 82-128, Sec 3)

3.04.040 Policies and Guidelines: In order to help meet the regional objectives prescribed in ORS 268.310(3) and ORS 268.390(1)(b) the following Drainage Management Policies and Guidelines are established.

(a) Policy: To minimize on-site erosion during site preparation as part of an overall site drainage plan for all new development on slopes in excess of 12 percent.

- (1) Temporary Erosion Control Plans (TECP) should be considered as part of an overall site drainage plan for all new development on slopes in excess of 12 percent.
- (2) Chapter 70 (Excavation and Grading) of the State of Oregon Structural Specialty Code and Fire and Life Safety Code should be adopted by all local jurisdictions within the Metro region.
- (3) For developments which do not require a TECP, removal of vegetation during the construction period should be minimized, with replacement and/or enhancement of vegetation upon completion of construction.

(b) Policy: To minimize streambank and channel erosion by controlling the amount and rate of stormwater runoff. To implement this policy, the following guidelines are suggested.

- (1) Stormwater drainage systems should place emphasis on maximizing natural water percolation. Runoff which cannot be accommodated by soil percolation should be directed to natural drainageways so as not to degrade instream water quality or contribute to the peak flood flow.
- (2) Natural drainageways should be riprapped or otherwise stabilized as necessary below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion.
- (3) Erosion protection should be provided the full length of any channel section in which water velocity exceeds the scour velocity of the natural channel materials.
- (4) Riparian vegetation that protects streambanks from eroding should be maintained and enhanced.
- (5) Removal of fill material or construction within stream channels and floodways should be accomplished so that:
 - (A) There is not increase in suspended sediment or turbidity above background level; and

(B) There is no decrease in channel capacity.

(c) Policy: To manage the 100-year floodplain and floodway in order to protect their natural function, and minimize water quality degradation and property damage. To implement this policy, the following guidelines are suggested:

- (1) Local drainage management agencies as identified in Table III-1, are encouraged to establish Regional Drainage Councils to coordinate basin-wide drainage management.
- (2) Drainage plans and policies within Regional Drainage Basins should be coordinated by all local drainage management agencies within the basin.
- (3) All local drainage management agencies should adopt and maintain regulations necessary to qualify for the National Flood Insurance Program.
- (4) Local drainage management agencies are encouraged wherever possible to retain floodway and floodplain lands as open space used for flood storage recreation and wildlife habitat.

(d) Policy: To protect and enhance the capacity of urban streams to provide habitat for fish and other aquatic organisms. To implement this policy, the following guidelines are suggested:

- (1) The removal of fill material or construction in fish spawning areas shall be in accordance with the policies of the State Department of Fish and Wildlife and the Division of State Lands.
- (2) Canopy-forming riparian vegetation should be preserved or replaced along all year-round streams.
- (3) Community education programs should be developed to help minimize the disposal of harmful or toxic materials in storm drains.
- (4) Cooperative fish enhancement programs between civic groups, local jurisdictions and the Oregon Department of Fish and Wildlife are encouraged.

(Ordinance No. 82-128, Sec. 4)

3.04.050 Drainage Management Agencies: For the purposes of this chapter the following Management Agencies have been designated:

(a) Region-wide Planning and Coordination shall be done by the Metropolitan Service District.

(b) Regional Drainage Basin Management should be coordinated within each of the following basins by the respective jurisdictions:

(1) Rock Creek Basin:

- (A) Hillsboro
- (B) Portland
- (C) Multnomah County
- (D) Washington County

(2) Beaverton/Cedar Mill Creek Basin:

- (A) Beaverton
- (B) Portland
- (C) Multnomah County
- (D) Washington County

(3) Fanno Creek Basin:

- (A) Beaverton
- (B) Durham
- (C) Lake Oswego
- (D) Portland
- (E) Tigard
- (F) Tualatin
- (G) Clackamas County
- (H) Multnomah County
- (I) Washington County

(4) Tryon Creek Basin:

- (A) Lake Oswego
- (B) Portland
- (C) Clackamas County
- (D) Multnomah County

(5) Kellogg/Mt. Scott Creek Basin:

- (A) Gladstone
- (B) Happy Valley
- (C) Milwaukie
- (D) Clackamas County
- (E) Washington County

(6) Johnson Creek Basin:

- (A) Gresham
- (B) Happy Valley

- (C) Milwaukie
- (D) Portland
- (E) Clackamas County
- (F) Multnomah County

(7) Fairview Creek Basin:

- (A) Fairview
- (B) Gresham
- (C) Troutdale
- (D) Wood Village
- (E) Multnomah County

(8) Beaver/Kelly Creeks:

- (A) Gresham
- (B) Troutdale
- (C) Multnomah County

(Ordinance No. 82-128, Sec. 5)

3.04.060 Plan Amendments:

(a) Revisions in the Regional Plan shall be in accordance with procedural rules adopted by the Council pertaining to review and amendment of functional plans.

(b) Mistakes discovered in the Regional Plan Text or Maps may be corrected administratively without petition, notice or hearing. Such corrections may be made by order of the Council upon determination of the existence of a mistake and of the nature of the correction to be made.

(Ordinance No. 82-128, Sec. 6)

3.04.070 Continuing Planning Process:

(a) Goals of the Continuing Planning Process are;

- (1) To provide a forum for evaluating and refining the Regional Plan.
- (2) To assist Metro with the evaluation and prioritization of its Stormwater Management activities.

(b) An annual workshop is to be held on or about the date of the annual meeting of the Water Resources Policy Alternatives Committee. This workshop shall be designed to accomplish the following:

- (1) Serve as a forum for evaluating Regional Plan performance and needs.
- (2) Provide an annual community assessment of Metro's drainage program.

(c) The following ongoing program activities are proposed, subject to availability of financial resources, in support of the Continuing Planning Process:

- (1) Regional Planning Framework - To facilitate a consistent regulatory framework for drainage management Metro will explore the formation of Regional Drainage Councils comprised of the local management agencies designated in Section 3.04.050.
- (2) Regional Drainage Information Clearinghouse - Metro should establish a regional technical information service to encourage and complement regional plan implementation efforts at the local level.
- (3) Community Involvement - Metro should maintain an ongoing public involvement program designed to establish a regional constituency for stormwater quality management.

(Ordinance No. 82-128, Sec. 7)

3.04.080 Scope and Application: This chapter shall apply to all land development within the eight Regional Drainage Basins identified in Section 3.04.030 and illustrated on maps contained in Part IV of the Regional Plan.

(Ordinance No. 82-128, Sec. 8)

CHAPTER 3.05

PHOSPHORUS BAN

SECTIONS:

3.05.010	Policy and Purpose
3.05.020	Definitions:
3.05.030	Prohibition
3.05.040	Exemptions
3.05.050	Severability
3.05.060	Penalty

NOTE: Chapter 3.05 shall be effective February 1, 1991. This ordinance shall expire on December 31, 1994, unless otherwise extended by Metro Council ordinance.

3.05.010 Policy and Purpose: The Council recognizes its authority and responsibility in ORS 268.030 and 268.390 to plan and provide for metropolitan aspects of sewerage, control of surface water, and water supply. This ordinance is an exercise of police power under ORS 268.360 for purposes of these authorized functions.

The Council hereby finds that phosphorous loading of surface waters is currently a serious pollution problem affecting water quality in the Tualatin River Subbasin and threatens future water quality in other surface waters of the region. Phosphate detergents contribute significant phosphorous loading to the treated wastewater released to surface waters in the metropolitan area. When phosphorous loading becomes a serious pollution problem, federal and state standards may require advanced wastewater treatment facilities at public expense beyond primary and secondary treatment facilities. This ordinance is enacted to reduce phosphorus pollution in the metropolitan area at its source to maintain existing water quality and to enhance cost-effective wastewater treatment where phosphorous pollution becomes a serious pollution problem.

(Ordinance No. 90-336, Sec. 1)

3.05.020 Definitions:

(a) "Cleaning agent" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including, but not limited to the cleansing of fabrics, dishes, food utensils, and household and commercial premises. Cleaning agent shall not mean foods, drugs, cosmetics, insecticides, fungicides and rodenticides, or cleaning agents exempt from this ordinance as provided in section 3.05.040.

(b) "Phosphorus" means elemental phosphorus.

(c) "Person" means any person, firm, partnership or corporation.

(d) "Commercial premises" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hotels, motels, and food or restaurant establishments.

(Ordinance No. 90-336, Sec. 1)

3.05.030 Prohibition: No person may sell or distribute for sale within the Metropolitan Service District, any cleaning agents containing more than 0.5 percent phosphorus by weight except cleaning agents used in automatic dishwashing machines shall not exceed 8.7 percent phosphorus by weight.

(Ordinance No. 90-336, Sec. 1)

3.05.040 Exemptions: This ordinance shall not apply to any cleaning agent:

(a) Used in dairy, beverage, or food processing equipment.

(b) Used as an industrial sanitizer, brightener, acid cleaner, or metal conditioner, including phosphoric acid products or trisodium phosphate.

(c) Used in hospitals, veterinary hospitals or clinics, or health care facilities.

(d) Used in agricultural production and the production of electronic components.

(e) Used in a commercial laundry for laundry services provided to a hospital or health care facility for a veterinary hospital or clinic.

(f) Used by industry for metal cleaning or conditioning.

(g) Manufactured, stored, or distributed for use or sale outside the District.

(h) Used in any laboratory, including a biological laboratory, research facility, chemical, electronics or engineering laboratory.

(i) Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, stoves, tubs or other food preparation surfaces, and plumbing fixtures.

(j) Used as a water softening chemical, antiscaling chemical or corrosion inhibitor intended for use in closed systems, such as boilers, air conditioners, cooling towers or hot water systems.

(k) For which the Council determines that imposition of this ordinance will either:

- (1) Create a significant hardship on the user; or
- (2) Be unreasonable because of the lack of an adequate substitute cleaning agent.

(Ordinance No. 90-336, Sec. 1)

3.05.050 Severability: The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

(Ordinance No. 90-336, Sec. 1)

3.05.060 Penalty: By authority of ORS 286.360(4), the Council may levy a fine up to five hundred dollars (\$500) a day for violation of this ordinance, following notification and assessment procedures outlined in the Code of the Metropolitan Service District 2.03.040 and 2.03.050.

(Ordinance No. 90-336, Sec. 1)

CHAPTER 3.06

PLANNING PROCEDURE FOR DESIGNATING FUNCTIONAL PLANNING AREAS AND ACTIVITIES

SECTIONS:

- 3.06.010 Policy and Purpose
- 3.06.020 Procedures and Implementation

3.06.010 Policy and Purpose: The Council recognizes its authority and responsibility pursuant to ORS 268.390 to prepare and adopt functional plans for areas and activities which have impact on air quality, water quality, transportation and other aspects of metropolitan area development identified by the Council.

This chapter is intended to define a planning procedure for identifying and designating those activities and areas in need of functional planning.

(Ordinance No. 91-408A, Sec. 1)

3.06.020 Procedures and Implementation:

(a) The Executive Officer from time to time shall report to the Council those aspects of development in addition to water quality, air quality, and transportation, which are related to the orderly and responsible development of the metropolitan area.

(b) As part of the Council standing committee recommendations from review of the Executive Officer's annual Proposed Budget, the standing committees shall report to the Council whether there are aspects of development in addition to water quality, air quality and transportation, which are related to the orderly and responsible development of the metropolitan area.

(c) The Council may by resolution designate areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, air quality, water quality, and transportation. The resolution shall state that the area or activity designated has a significant impact on metropolitan area development.

(d) The resolution shall direct the Executive Officer to present to the Council a functional plan for the area and activity designated in the resolution.

(Ordinance No. 86-207, replaced by Ordinance No. 91-408A, Sec. 1)

TITLE IV

METRO WASHINGTON PARK ZOO

CHAPTERS:

4.01 Metro Washington Park Zoo Regulations

CHAPTER 4.01

METRO WASHINGTON PARK ZOO REGULATIONS

SECTIONS:

- 4.01.010 General; Definitions
- 4.01.020 Buildings and Grounds of the Zoo
- 4.01.030 Parking Lot and Sidewalk Adjacent to the Zoo
- 4.01.040 Zoo Railroad
- 4.01.050 Penalties
- 4.01.060 Admission Fees and Policies

4.01.010 General and Definitions:

(a) These rules and regulations apply to all buildings and grounds of the Metro Washington Park Zoo, to sidewalks and parking lots adjacent thereto and to the Metro Washington Park Zoo Train and tracks, and to all persons entering in or on such buildings, grounds, parking lots, sidewalks, train or tracks.

(b) As used in these Rules and Regulations, unless the context requires otherwise:

- (1) "Director" or "Zoo Director" means the Director of the Metro Washington Park Zoo.
- (2) "Premises" means the property, buildings and grounds within the perimeter fence surrounding the Zoo, the admission and exit gates, the administrative, commissary, haybarn and shop buildings, the employee parking lot, the Zoo vehicular storage area and the Zoo Train right-of-way from the Zoo to the Metro Washington Park Station.
- (3) "Zoo" means the Metro Washington Park Zoo.

(Ordinance No. No. 45, Sec. 1; amended by Ordinance No. 89-269, Sec. 2)

4.01.020 Buildings and Grounds of the Zoo:

(a) Recording Presence: Except as otherwise ordered, the Zoo buildings and grounds shall be closed to the public to after posted visiting hours. Such buildings and grounds, or portions thereof, shall be also closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Whenever the buildings and grounds or portions thereof are closed to the public for any reasons, visitors will immediately leave the premises upon being requested by an authorized individual. Admission to such premises during

periods when closed to the public will be limited to those on official Zoo business who will be required to register and identify themselves when requested by security officers or other authorized individuals. Climbing or cutting the fence or other means of unauthorized entry is prohibited.

(b) Preservation of Property: It is unlawful to destroy, damage, or remove any property belonging to or a part of the Zoo. In order to remove any property from the premises, a properly completed property pass signed by the Zoo Director, or his/her designate, may be required for removal.

(c) Protection of Zoo Animals: Except for official purposes, no person shall:

- (1) Kill, injure or disturb any animal by any means except to secure personal safety;
- (2) Pet, attempt to pet, handle, move, or remove the animals except where expressly permitted;
- (3) Feed the animals where prohibited by authorized signs;
- (4) Catch, attempt to catch, trap, remove or kill any free roaming animals inhabiting the premises;
- (5) Go over, under, between, or otherwise cross any guardrail, fence, moat, wall or any other safety barrier;
- (6) Except as provided in paragraph (3), throw any object or material at any animal or into any animal enclosure or exhibit area.

(d) Conformity with Signs and Emergency Directions: Persons in or on the premises shall comply with official signs of a prohibitory or directory nature and with the directions of members of the Zoo staff or volunteers.

(e) Nuisances: The use of unreasonably loud, abusive or obscene language; the improper disposal of rubbish; climbing on buildings, trees and fences; and any other disorderly conduct as defined by ORS 166.025 is prohibited.

(f) Gambling: Participating in games for money or other personal property or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets in or on the premises is prohibited.

(g) Alcoholic Beverages and Narcotics:

- (1) Consumption of alcoholic beverages on the premises is prohibited, unless officially authorized by the Director or his/her designate. Alcoholic beverages is defined to include wine and beer of less than four (4) percent alcohol by weight.
- (2) Entering the premises under the influence of a narcotic or dangerous drug or the use of a narcotic or dangerous drug on the premises except when administered or dispensed by or under the direction of a person authorized by law to prescribe or administer narcotic drugs and dangerous drugs to human beings is prohibited.

(h) Soliciting, Vending and the Distribution of Handbills: The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, and the disseminating of written materials and canvassing for political, charitable or religious purposes are prohibited. This rules does not apply to concessions operated by the Zoo or by a contractor for the Zoo.

(i) Animals: No animals shall be brought on the premises for other than official purposes.

(j) Photographs for News, Advertising or Commercial Purposes: No photographs for advertising or any other commercial purpose may be taken on the premises unless officially authorized by the Zoo Director or his/her designate.

(k) Weapons and Explosives: Except for official purposes, no person while on the premises shall:

- (1) Carry a firearm, loaded or unloaded. "Firearm" is defined to include a pistol, revolver, gun, rifle or other ordinance, including a miniature weapon, which projects a missile or shot by force of gunpowder or any other explosive, by spring or by compressed air.
- (2) Carry a dangerous or deadly weapon. "Dangerous or deadly weapon" includes a firearm, metal knuckles, straight razor, weapon of the type commonly known as a nunchaku, blackjack, sap or sap glove, slingshot, bomb or bombshell, and any type of knife other than an ordinary pocketknife with a blade not longer than three and one-half (3-1/2) inches. When carried with intent to use the same unlawfully against another, "dangerous or deadly weapon" also includes any instrument or device

capable or inflicting injury to the person or property of another.

- (3) Carry, discharge or set off any fireworks or explosives of any nature.

(Ordinance No. 45, Sec. 1; amended by Ordinance No. 89-269, Sec. 1)

4.01.030 Parking Lot and Sidewalk Adjacent to the Zoo:

(a) Vehicular and Pedestrian Traffic:

- (1) It shall be a violation of this Code for the driver of any motor vehicle or bus to violate any legend or direction contained on any sign, signal or marking now installed or hereafter installed upon any street, avenue, parking lot or other public way within the boundaries of the Metro Washington Park Zoo or the surrounding area leased by the City of Portland to Metro for public access or for public parking at the Zoo. Drivers of all vehicles shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the police or security officers and all posted traffic signs.
- (2) Blocking of entrances, driveways, walks, loading platforms, or fire hydrants is prohibited. Parking without authority, or parking in unauthorized locations or in locations reserved for other persons or contrary to the directions of posted signs, is prohibited.

(b) Security personnel designated by the Executive Officer of Metro as serving as a Zoo Parking Patrol shall have the authority and duty to issue parking citations in accordance with subsection (c) of this section for a violation specified by subsection (a) of this section. The Zoo parking patrol shall have no other police authority or duty. Persons appointed as Zoo parking patrol shall be special police officers of the Metropolitan Service District. As special police officers the Zoo parking patrol personnel and the Zoo parking patrol supervisor shall have authority to issue citations for violations of parking or non-moving traffic violations occurring on Zoo property or property adjacent to the Zoo leased from the City of Portland by the Metropolitan Service District for Zoo parking purposes, and particularly they shall have authority to issue citations as provided for in Section 4.01.030 of the Metro Code. To the extent of the power and authority granted in this section, such personnel and their supervisor shall exercise full police power and authority.

(c) Parking Citations:

(1) Form of citations. All parking citations forms used by the Zoo parking patrol shall be in a form approved by the General Counsel of Metro and as issued by the District Court for the State of Oregon for Multnomah County. Such parking citations shall, at a minimum, clearly state:

- (A) the date, place and nature of the charge;
- (B) time and place for the defendant's appearance in court;
- (C) name of the issuing officer;
- (D) license number of the vehicle.

(2) Procedure for issuing citations. Any citation form issued pursuant to this Code section shall either be delivered to the defendant or placed in a conspicuous place upon the vehicle involved in the violation. A duplicate original of the notice shall serve as the complaint in the case when it is filed with the court. In all other aspects, the procedure now provided by law in such cases shall be followed, but ORS 810.365 does not apply. The officer need not have observed the act of parking, but need only observe that the car was parked in violation of the Metro Code.

(3) Use of parking citation as a complaint. The original of the traffic citation form when completed to meet the minimum requirements of ORS 221.340 may serve a complaint, other forms of parking complaints are prohibited.

(4) Citation form books issued by District Court. Citation form books for parking violations shall be provided by the District Court and upon request distributed to the Zoo parking patrol officers who issue them.

(5) List of parking citations. A list of the parking citations issued by Zoo parking patrol officers shall be forwarded to the District Court within twenty-four (24) hours.

(d) Person Responsible for Violation Charged by the Citation. The registered owner of the vehicle is prima facie responsible for the violation charged by the citation.

(e) Advertising, Canvassing, Soliciting and Disseminating of Written Materials for Political, Charitable or Religious Purposes. Advertising, canvassing, soliciting and disseminating of written materials for political, charitable, or religious purposes is permitted on the parking lot and sidewalks between the parking lot and the perimeter fence surrounding the Zoo. Such activities must be conducted in accordance with the following conditions:

- (1) Parking lot entrances, exits and travel lanes must not be obstructed. Interference with traffic flow is prohibited.
- (2) Loudspeakers and other sound devices are prohibited.
- (3) Activity causing a crowd to gather is prohibited if pedestrian or vehicular traffic is obstructed or impeded.
- (4) Activity conducted within twenty (20) feet of an admission gate, ticket booth, entrance or exit is prohibited.
- (5) Activity shall be conducted by no more than two (2) persons in the vicinity of the entrances or exists for each cause or candidate.
- (6) Obstructing Zoo visitors' line of travel or detaining a Zoo visitor or employee against his or her will is prohibited.
- (7) Abusive language and actual or threatened physical harm directed against a Zoo visitor or employee is prohibited.
- (8) A person conducting such activity shall identify his or her cause or candidate and shall not misrepresent his or her purpose.
- (9) The dissemination or sale of food or goods other than written materials is prohibited.

(Ordinance No. 45, Sec. 1; Amended by Ordinance No. 88-251, Sec. 1)

4.01.040 Zoo Railroad: Except for official purposes, no person shall:

(a) Enter or exit the train except when the train is stopped.

- (b) Enter the train without authorization.
- (c) Throw any object or material from or at the train.
- (d) Smoke on the train while it is in motion.
- (e) Destroy, damage or deface the train, equipment, rolling stock, tracks or switches or attempt to do the same.

(Ordinance No. 45, Sec. 1)

4.01.050 Penalties:

(a) Each violation of these Rules and Regulations shall be punishable by a fine of not more than \$500.

(b) In addition to prosecution under paragraph (a) above, any person violating these Rules and Regulations may be ejected from the Zoo. The decision to eject shall be made by the Zoo Director or his/her designate, a security officer, or a peace officer.

(c) In addition to the measures prescribed in subsection (a) and (b) above, violation of these Rules and Regulations may be grounds for exclusion from Zoo premises. In the event of a violation of these Rules and Regulations or a violation of any of the laws of the State of Oregon, any police officer, Zoo security officer, Zoo Director or his/her designate, or any individual providing security services under contract with Metro may exclude for a period of not more than forty-five (45) days, any person who violates any provision of these Rules and Regulations, or any of the laws of the State of Oregon.

- (1) Written notice shall be given to any person excluded from the Zoo premises. The notice shall specify the violation of Zoo Rules and Regulations or State law which is the basis for the exclusion and shall specify the dates covered by the exclusion. The notice shall be signed by the issuing party. Warning of the consequences for failure to comply with the exclusion shall be prominently displayed on the notice.
- (2) A person receiving an exclusion notice may appeal to the Metro Council in accordance with the Contested Case procedure in Chapter 2.05 of the Metro Code.
- (3) At any time within the period of exclusion, a person receiving an exclusion notice may apply in writing to the Zoo Director for a temporary waiver from the exclusion. The Zoo Director may grant a

temporary waiver of an exclusion upon a showing of good cause for said waiver.

(Ordinance No. 45, Sec. 1; amended by Ordinance No. 90-358)

4.01.060 Admission Fees and Policies:

(a) Regular Fees:

(1) Definitions:

- (A) An Education discount is offered to groups of five (5) or more students in a state accredited elementary, middle, junior or high school or pre-school/daycare center. Qualifications for Education Discount include a minimum of one chaperon for every five (5) students of high school age or under; registration for a specific date at least two weeks in advance; and the purchase of curriculum materials offered by the Zoo, or submission of a copy of the lesson plan that will be used on the day of the visit.
- (B) The Group Discount is defined as any group of twenty-five (25) or more (including school groups that have not met the advance registration and curriculum requirements for the Education Discount; groups of students not accompanied by a minimum of one chaperon for every five students shall not qualify for the Group Discount).

(2) Fee Schedule:

Adult (12 years and over)	\$5.00
Youth (3 years through 11 years)	\$3.00
Child (2 years and under)	free
Senior Citizen (65 years and over)	\$3.50
Education Groups (per student)	\$2.00
Chaperons accompanying	
Education groups	free
Groups other than Education groups	
25 or more per group	20% discount from appropriate fee listed above

(b) Free and Reduced Admission Passes:

- (1) Free and reduced admission passes may be issued by the Director in accordance with this ordinance.

- (2) A free admission pass will entitle the holder only to enter the Zoo without paying an admission fee.
- (3) A reduced admission pass will entitle the holder only to enter the Zoo by paying a reduced admission fee.
- (4) The reduction granted in admission, by use of a reduced admission pass (other than free admission passes), shall not exceed twenty percent.
- (5) Free or reduced admission passes may be issued to the following groups or individuals and shall be administered as follows:
 - (A) Metro employees shall be entitled to free admission upon presentation of a current Metro employee identification card.
 - (B) Metro Councilors and the Metro Executive Officer shall be entitled to free admission.
 - (C) Free admission passes in the form of volunteer identification cards may, at the Director's discretion, be issued to persons who perform volunteer work at the Zoo. Cards shall bear the name of the volunteer, shall be signed by the Director, shall be non-transferrable, and shall terminate at the end of each calendar year or upon termination of volunteer duty, whichever date occurs first. New identification cards may be issued at the beginning of each new calendar year for active Zoo volunteers.
 - (D) Reduced admission passes may be issued to members of any organization approved by the Council, the main purpose of which is to support the Metro Washington Park Zoo. Such passes shall bear the name of the pass holder, shall be signed by an authorized representative of the organization, shall be non-transferrable, and shall terminate not more than one year from the date of issuance.
 - (E) Other free or reduced admission passes may, with the approval of the Director, be issued to other individuals who are working on educational projects or projects valuable to the Zoo. Such passes shall bear an expiration date not to exceed three months from the date of issuance, shall bear the

name of the pass holder, shall be signed by the Director and shall be nontransferable.

(c) Special Admission Days:

- (1) Special admission days are days when the rate established by this ordinance are reduced or eliminated for a designated group or groups. Six special admission days may be allowed, at the discretion of the Director, during each calendar year.
- (2) Three additional special admission days may be allowed each year by the Director for designated groups. Any additional special admission days designated under this subsection must be approved by the Executive Officer.

(d) Special Free Hours: Admission to the Zoo shall be free for all persons from 3:00 p.m. until closing on the second Tuesday of each month.

(e) Commercial Ventures: Proposed commercial or fund-raising ventures with private profit or nonprofit corporations involving admission to the Zoo must be authorized in advance by the Executive Officer. The Executive Officer may approve variances to the admission fees to facilitate such ventures.

(f) Special Events: The Zoo, or portions thereof, may be utilized for special events designed to enhance Zoo revenues during hours that the Zoo is not normally open to the public. The number, nature of and admission fees for such events shall be subject to the approval of the Executive Officer.

(Ordinance No. 81-108, Sec. 2; amended by Ordinance No. 85-185, Sec. 1, Ordinance No. 87-235, Sec. 1; Ordinance No. 89-269, Sec. 1; Ordinance No. 89-326, Sec. 1; Ordinance No. 90-354; Ordinance No. 91-376B, Sec. 1; and Ordinance No. 91-424, Sec. 1)

TITLE V
SOLID WASTE

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CHAPTER 5.01

DISPOSAL SITE FRANCHISING

SECTIONS:

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5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

(m) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

(n) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composing, shredding, milling, or pulverizing, but excluding compaction.

(o) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(p) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

(q) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil,

which materials will be transported or sold to third parties for reuse or resale.

(r) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

(s) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

(t) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum-contaminated soils and other wastes; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; or
- (4) Explosives.

(u) "Solid Waste Management Plan" means the Regional Solid Waste Management Plan.

(v) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(w) "User Fee" means a user fee established by the District under ORS 268.515.

(x) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(Ordinance No. 81-111, Sec. 2; amended by Ordinance No. 91-422B, Sec. 1)

5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities.

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.
- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

(Ordinance No. 81-111, Sec. 3)

5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee or exempted by Section 5.01.040 of this chapter.

(b) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter.

(Ordinance No. 81-111, Sec. 4; amended by Ordinance No. 87-217, Sec. 1)

5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts,

dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

- (5) Persons who process, transfer or dispose of solid wastes which:
 - (A) Are not putrescible, which, for the purposes of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
 - (B) Have been source separated;
 - (C) Are not and will not be mixed by type with other solid wastes; and
 - (D) Are reused or recycled.
- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1).

(Ordinance No. 81-111, Sec. 5; amended by Ordinance No. 82-136, Sec. 1; Ordinance No. 91-422B, Sec. 2)

5.01.050 Administration: The Executive Officer shall be responsible for the administration and enforcement of this chapter.

(Ordinance No. 81-111, Sec. 6)

5.01.060 Applications:

(a) Applications for a franchise or for transfer of any interest in, modification, expansion, or renewal of an existing

franchise shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise;
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law;
- (4) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer;
- (5) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property

owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused;

- (7) Proof that the applicant has received proper land use approval; and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing.

(Ordinance No. 81-111, Sec. 7; amended by Ordinance No. 82-136, Sec. 2, Ordinance No. 91-422B, Sec. 3)

5.01.070 Issuance of Franchise:

(a) Applications filed in accordance with Section 5.01.060 shall be reviewed by the Executive Officer. The Executive Officer or his/her designated representative may make such investigation as the Executive Officer deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this chapter, the Code, DEQ permit and franchise agreement.

(b) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(c) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted, the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises granted, and grant exclusive franchises. If the Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:

- (1) The proximity of existing and planned solid waste disposal facilities to the proposed site.
- (2) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
- (3) The capacity of existing and planned solid waste disposal facilities.
- (4) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
- (5) The hauling time to the proposed facility from waste generation zones established by the District.

(d) If the Council does not act to grant, or deny, a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The one hundred twenty (120) days will not begin until the Executive Officer has accepted the application as complete and ready for processing.

(e) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:

- (1) Enter into a written franchise agreement with the District,

- (2) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) Name the District as an additional insured in the insurance policy required by Section 5.01.060(b)(3).

(f) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise.

- (1) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. Whenever possible the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.
- (2) In emergency situations, to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to codification or revocation by the Council.

(g) In addition to the authority contained in Section 5.01.070(f)(1), for the purposes of this chapter, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay. The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Code Chapter 2.05. However, a request for a contested case hearing shall not stay action under this subsection.

(Ordinance No. 81-111, Sec. 8; amended by Ordinance No. 82-136, Sec. 3)

5.01.080 Term of Franchise:

(a) The term of a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.

(b) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 5.01.070(b), provided that the franchisee files an application for renewal not less than one hundred twenty (120) days prior to the expiration of the franchise term, together with a statement of material changes in its initial application for the franchise and any other information required by the Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise.

(Ordinance No. 81-111, Sec. 9)

5.01.085 Franchises for Major Disposal System Components:

(a) Consistent with the provisions of the Solid Waste Management Plan, the Council may authorize franchise agreements governing the operation of the components of the solid waste disposal system found by the Council to be major components of the system. Prior to authorizing a franchise agreement pursuant to this Section, the Council shall by resolution state Council's intent to authorize such an agreement, describe the system

(Revised 1/2/92)

component which will be the subject of the agreement, describe other terms and conditions deemed necessary by the Council and establish the procedures to be followed by the Council in authorizing any such agreement. The procedures for authorizing any such agreement shall at a minimum meet the requirements of subsection 5.01.085(d)

(b) If the Council elects to authorize a franchise agreement pursuant to this Section the procedural terms and conditions set forth in the resolution stating the intent to authorize an agreement shall govern the approval of any franchise agreement subsequently authorized by the Council. Sections 5.01.060, Application; 5.01.070, Issuance; 5.01.080, Term; 5.01.090, Transfer of Franchise; and 5.01.100, Appeals, of this Chapter, shall not be applicable to such franchise agreements.

(c) Any franchise agreement authorized by the Council pursuant to this Section may contain such substantive terms and conditions as the Council deems appropriate. To the extent a franchise agreement authorized by this Section specifically provides to the contrary the provisions of Sections 5.01.120, Procedures for Franchises; 5.01.140, Franchise Fees; 5.01.150, User Fees; 5.01.180, Determination of Rates; 5.01.190, Enforcement of Franchise Provisions, Appeal; 5.01.200, Right to Purchase; and 5.01.210, Penalties, of this Chapter shall not apply.

(d) Prior to authorizing any franchise agreement pursuant to this section the Council shall establish procedures for receiving applications, review of such applications and criteria to be utilized in determining which, if any, application should be approved.

All applications shall provide information regarding the ownership and legal structure of the applicant, the ownership and legal structure of the property owner of the proposed site location, the status of any required permits from the DEQ and other regulatory bodies including local land use authorities and such other information as the District may find necessary or appropriate. Incomplete or insufficient applications may not be accepted.

All applications shall be investigated and reviewed by the Executive Officer who shall make a recommendation to the Council regarding each applicant.

In determining whether to authorize a franchise agreement the Council shall consider whether the applicant has satisfied the criteria established by the Council for the approval of such franchise agreements. The Council may reject any and all franchise applications. Nothing in this chapter shall be construed as creating a duty on the part of the District to

approve any application for a franchise. Criteria utilized shall at a minimum address the following issues and such other issues as the Council finds appropriate.

- (1) Compliance with the District 's Solid Waste Management Plan.
- (2) The proximity of existing and planned solid waste disposal facilities to the proposed site.
- (3) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
- (4) The capacity of existing and planned solid waste disposal facilities.
- (5) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
- (6) The hauling time to the proposed facility from waste generation zones established by the District.

(e) Franchise agreements authorized by this section shall at a minimum contain provisions requiring the franchisee to obtain public liability insurance policies in a minimum amount of \$500,000 or such greater amount as the District may require and naming the District, its employees and agents as additional named insureds; such surety bonds as the District may require; restrictions on the transfer or assignment or subcontracting out of the franchise or change in control of the franchisee; reports to the District as found appropriate; waste reduction plans of the franchisee and such other terms and conditions found appropriate or necessary by the District.

(Ordinance No. 88-276, Sec. 1)

5.01.090 Transfer of Franchises:

(a) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with Section 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.

(b) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within ninety (90) days after filing of a complete application, the application shall be deemed granted.

(c) The term for any transferred franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

(Ordinance No. 81-111, Sec. 10)

5.01.100 Appeals: Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the Council's suspension modification or revocation or refusal to issue, renew or transfer a franchise or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, the Council's refusal to renew a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(b) The Council's refusal to grant a variance, or to issue or transfer a franchise shall be effective immediately. The franchisee or applicant may request a hearing on such refusal within sixty (60) days of notice of such refusal.

(c) Upon a finding of serious danger to the public health or safety, the Executive Officer may suspend a franchise or the Council may refuse to renew a franchise and such action shall be effective immediately. If a franchise renewal is refused effective immediately, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing.

(Ordinance No. 81-111, Sec. 11)

5.01.110 Variances:

(a) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this chapter to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

- (1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
- (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or

- (3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.

(b) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council within sixty (60) days after receipt of the variance request.

(c) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(d) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

(Ordinance No. 81-111, Sec. 12)

5.01.120 Responsibilities of Franchisees: A franchisee:

(a) Shall provide adequate and reliable service to the citizens of the District.

(b) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.

(c) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for compliance with this chapter and the terms and conditions of the franchise.

(d) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each franchisee for possible review by the Executive Officer.

(e) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 5.01.070(e) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(f) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.

(g) Shall comply with all provisions of this chapter, the Code, ORS Chapter 459, DEQ permit and franchise agreement.

(h) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.

(i) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this chapter.

(j) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.

(k) Shall, if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.

(l) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection.

(Ordinance No. 81-111, Sec. 13)

5.01.130 Administrative Procedures for Franchisees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.
- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained.

(b) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, non-compacted, minimum loads and special loads.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).

- (8) Signature and title of the franchisee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid.

(Ordinance No. 81-111, Sec. 14)

5.01.140 Franchise Fee:

(a) The Council shall establish an annual franchise fee which it may revise at any time upon thirty (30) days written notice to each franchisee and an opportunity to be heard.

(b) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.

(c) The franchisee shall pay the franchise fee in the manner and at the time required by the District.

(Ordinance No. 81-111, Sec. 15)

5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised facilities that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards.

Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid, a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

(Ordinance No. 81-111, Sec. 16; amended by Ordinance No. 86-214, Sec. 1, Ordinance No. 91-422B, Sec. 4)

5.01.160 Reports from Collection Services: Upon request of the Executive Officer, a solid waste collection service shall file periodic reports with the District, containing information required by the Executive Officer.

(Ordinance No. 81-111, Sec. 17)

5.01.170 Determination of Rates:

(a) No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this chapter shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.

(b) At the time the Council grants a franchise, or after the Council grants a franchise it shall establish the rate(s) to

be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this section.

(c) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.

(d) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:

- (1) Operating and nonoperating revenues.
- (2) Direct and indirect operating and nonoperating expenses including franchise fees.
- (3) Non-franchise profits.
- (4) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.
- (5) Any other factors deemed relevant by the Council.

(e) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 5.01.180(c):

- (1) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or
- (2) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or
- (3) In the event the District exercises its right to control the flow of solid waste as provided in Section 5.01.070(f) or 5.01.070(g).

(Ordinance No. 81-111, Sec. 19; amended by Ordinance No. 82-136, Sec. 4)

5.01.180 Enforcement of Franchise Provisions; Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise, the Executive Officer shall notify the franchisee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise be suspended, modified or revoked.

(b) The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise ordinance.

(c) Except as provided in subsection (d) of this section, the Council's revocation, modification or suspension of a franchise shall not become effective until the franchisee has

been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this chapter, the Executive Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise and may take whatever steps may be necessary to abate the danger. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter.

(Ordinance No. 81-111, Sec. 20; amended by Ordinance No. 82-136, Sec. 5)

5.01.190 Right to Purchase: The District may purchase or condemn any real or personal property or any interest therein of the franchisee. If such purchase or condemnation occurs upon revocation or termination of the franchise, valuation of the real and personal property purchased or condemned shall not include any sum for the value of the franchise or any other intangible value.

(Ordinance No. 81-111, Sec. 21)

5.01.200 Penalties:

(a) Each violation of this chapter shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00). Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(b) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by the District upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day for each day of violation.

(Ordinance No. 81-111, Sec. 22)

5.01.210 Acceptance of Tires at a Disposal Site:

(a) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted if the Disposal Site's Franchise Agreement allows such acceptance.

(b) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria: the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(c) The test shall be as follows:

- (1) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and

- (2) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

(Ordinance No. 81-111, Sec. 25)

5.01.220 Additional Provisions Relating to Issuance of a Franchise for a Facility Processing Petroleum Contaminated Soil:

(a) The requirements of this Chapter shall apply to the processing of Petroleum Contaminated Soil as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a franchise under this Chapter. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.
- (2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a franchise under this Chapter, and shall not be required to remit user fees to the District for soil so treated.
- (3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a franchise under this Chapter. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) In addition to any other conditions imposed under this Chapter, a franchisee of a petroleum contaminated soil facility shall be subject to the following conditions:

- (1) The franchisee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;

- (2) In addition to the information required to be submitted under Metro Code Section 5.01.130, the franchisee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:
- (A) Amount and type of material processed at the facility;
 - (B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;
 - (C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

(Created by Ordinance No. 91-422B)

CHAPTER 5.02

DISPOSAL CHARGES AND USER FEES

SECTIONS:

5.02.010	Purpose
5.02.015	Definitions
5.02.016	Scale Weights Required
5.02.020	Disposal Charges at St. Johns Landfill
5.02.025	Disposal Charges at Metro South Station
5.02.030	Waiver of Disposal Charges at St. Johns Landfill
5.02.035	Litter Control Surcharge
5.02.045	User Fees
5.02.050	Regional Transfer Charge
5.02.060	Payment of Disposal Charges and Surcharges; Credit Policy
5.02.065	Special Waste Surcharge and Special Waste Permit Application Fees
5.02.070	Source Separated Yard Debris Disposal Charge
5.02.085	Out-of-District Waste

*NOTE: The effective date of the ordinance amendments contained herein shall be July 1, 1991. This effective date is made in conformity with the requirements of ORS 268.515(7) requiring user or service charges not to become effective until 65 working days after passage of the ordinance.

5.02.010 Purpose: The purpose of this chapter is to establish base solid waste disposal rates and charges for the St. Johns Landfill, Metro South Station, Metro Central Station, and the Metro-Riedel Compost Facility, solid waste user fees, a regional transfer charge, an out-of-state surcharge and enhancement fees, and to establish a credit policy at Metro disposal facilities.

(Ordinance No. 82-146, Sec. 1; amended by Ordinance No. 88-257, Sec. 1, Ordinance No. 89-269, Sec. 2, Ordinance No. 90-337, Sec. 1 and Ordinance No. 91-386C, Sec. 1)

5.02.015 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Acceptable Special Wastes" means those special wastes which are approved by the Metro Solid Waste Department in the form of a special waste permit. "Unacceptable Waste," as defined in this section, is expressly excluded.

(b) "Cash Account Customer" means those persons who pay cash for disposal of solid waste at Metro South Station, Metro Central Station, or the Metro-Riedel Compost Facility.

(c) "Credit Account Customer" means those persons who pay for disposal of solid waste through a charge account at Metro South Station, Metro Central Station, or the Metro-Riedel Compost Facility.

(d) "Disposal Fee" means those fees which pay the direct unit costs of transportation and disposal of general purpose solid waste to a landfill. Major cost components are: The long haul transport contract and the Oregon Waste Systems, Inc. disposal contract.

(e) "Enhancement Fees" means those fees which are used to pay for rehabilitation and enhancement projects in the areas immediately surrounding Metro Disposal System facilities. "Enhancement Fees" means those fees collected in addition to general disposal rates that are used to pay for rehabilitation and enhancement projects in the areas immediately surrounding landfills and other solid waste facilities.

(f) "Limited Purpose Solid Waste" means construction, demolition, land clearing waste and non-hazardous industrial dust.

(g) "Metro Central Station" is that Metro solid waste transfer and recycling station located at 6161 N.W. 61st Avenue, Portland, Oregon, 97210.

(h) "Metro Disposal System" means Metro South Station, Metro Central Station, Metro/Riedel Compost Facility, St. Johns Landfill, Columbia Ridge Landfill and such other facilities, or contracts for service with Metro which transfer or cause solid waste to be disposed at the Columbia Ridge Landfill or other disposal facility.

(i) "Metro-Riedel Compost Facility" is that solid waste mass compost facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon, 97232.

(j) "Metro South Station" is that solid waste transfer station owned and operated by Metro and located at 2001 Washington, Oregon City, Oregon 97045.

(k) "Metro User Fee (Tier Two)" means those fees which pay for fixed costs of the Metro Disposal System. This fee is imposed upon all solid waste delivered to any Metro Disposal System facility which delivery will affect Metro's reserved space capacity at the Columbia Ridge Landfill. Fixed costs of the Oregon Waste Systems disposal contract, the long haul transport contract, debt service and capital items directly related to the facilities are paid through this fee.

(l) "Metro Waste Management System" means all associated Metro solid waste services related to management of the whole recycling, processing and disposal system, including administrative, planning, financial, engineering and waste reduction activities.

(m) "Person" means any individual, partnership, association, corporation, trust, firm, estate, joint venture or any other private entity or any public agency.

(n) "Regional Transfer Charge" means those fees which pay the direct unit operating costs of the Metro transfer stations and compost facility. This fee is imposed upon all solid waste delivered to Metro Disposal System facilities.

(o) "Regional User Fee (Tier One)" means those fees which pay for fixed costs associated with administrative, financial and engineering services and waste reduction activities of the Metro Waste Management System. Contingency fees on all costs and general transfers to solid waste funds and other departments for direct services are included in this fee. This fee is collected on all solid waste originating or disposed within the region.

(p) "St. Johns Landfill" is that landfill owned and operated by Metro and located at 9363 N. Columbia Boulevard, Portland, Oregon 97203, which is restricted to limited purpose solid waste disposal.

(q) "Solid Waste" means all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, paper and cardboard, commercial, industrial, demolition and construction waste, home and industrial appliances.

(r) "Source Separated Yard Debris" means twigs, branches, grass clippings, leaves, and tree limbs in a form appropriate for mechanical processing for reuse or sale. Source separated yard debris does not include yard or construction debris that is not appropriate for mechanical processing for reuse or sale or that has unacceptable types or amounts of contaminants mixed with it. The operator or person in charge of accepting this waste shall make the final determination of what is source separated yard debris based on the capability of available machinery to process it. The Director of Solid Waste may establish guidelines for determining what is source separated yard debris within the meaning of this chapter.

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 and 11 of this definition below; or
- (2) Waste transported in a bulk tanker; or
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) which once held commercial products or chemicals are included unless the container is empty. A container is empty when:
 - (A) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating.
 - (B) The ends have been removed (for containers in excess of 25 gallons); and
 - (C) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (D) No more than 1% by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
 - (E) No more than 0.3% by weight of the total capacity of the container remains in the container for containers larger than 110 gallons.

Containers which once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five (5) gallons that hold any regulated

waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or

- (5) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) Waste from an industrial process; or
- (7) Waste from a pollution control process; or
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition; or
- (9) Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in 1 through 8 of this definition; or
- (10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (12) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

(t) "Unacceptable Waste" means any and all waste that is either:

- (1) Waste which is prohibited from disposal at a sanitary landfill by state or federal law, regulation, rule, code, permit or permit condition; or

- (2) A hazardous waste; or
- (3) Special waste without an approved special waste permit; or
- (4) Infectious Medical Waste.

5.02.016 Scale Weights Required: All User Fees or other fees submitted to Metro from any facility receiving solid waste generated within the District shall be calculated on a tonnage basis using certified scale weights.

(Ordinance No. 91-404, Sec. 1)

(Ordinance No. 82-146, Sec. 2; amended by Ordinance No. 86-210, Sec. 1; Ordinance No. 88-257, Sec. 2; Ordinance No. 88-278, Sec. 1; Ordinance No. 89-269, Sec. 2; Ordinance No. 89-295, Sec. 1; and Ordinance No. 90-337, Sec. 2; Ordinance No. 90-372, Sec. 1 and Ordinance No. 91-386C, Sec. 2)

5.02.020 Disposal Charges at St. Johns Landfill:

(a) A base disposal fee of \$27.25 per ton of limited purpose solid waste delivered is established for disposal at the St. Johns Landfill. Said rate shall be in addition to other fees, charges and surcharges established pursuant to this chapter.

(b) The following table summarizes the disposal charges to be collected by the Metropolitan Service District from all persons disposing of solid waste at the St. Johns Landfill. The minimum charge for disposal shall be \$15.00.

(Ordinance No. 82-146; amended by Ordinance No. 83-163, Sec. 1; Ordinance No. 85-191, Sec. 2; Ordinance No. 86-214, Sec. 2; Ordinance No. 88-257, Sec. 3; Ordinance No. 88-278, Sec. 2; Ordinance No. 89-295, Sec. 2; and Ordinance No. 90-337, Sec. 3 and Ordinance No. 91-386C, Sec. 3)

ST. JOHNS LANDFILL

<u>Fee Component</u>	<u>\$/Ton</u>	<u>Tonnage Rate</u>
<u>Credit Account</u>		
Disposal Fee		\$27.25
Regional User Fee (Tier One)	13.00	
Metro User Fee (Tier Two)	<u>8.50</u>	
Total Rate		*\$48.75

* Total Rate does not include state imposed fees which are currently \$.50 DEQ Promotion Program Fee and \$.25 DEQ Orphan Site Program Fee and enhancement fees, or taxes other than excise taxes. The actual fees collected after addition of all taxes and fees shall be rounded up to the closest \$.50.

5.02.025 Disposal Charges at Metro South Station, Metro Central Station and the Metro-Riedel Compost Facility:

(a) A base disposal rate of \$34.75 per ton of solid waste delivered is established for disposal at the Metro South Station, Metro Central Station and the Metro/Riedel Compost Facility.

(b) An enhancement fee of \$.50 per ton is established to be charged at the Metro South Station, Metro Central Station and the Metro/Riedel Compost Facility.

(c) Notwithstanding the provisions of Sections 5.02.025 (a) and (b), persons using Metro South Station, other than Credit Account Customers, who have separated and included in their loads at least one half cubic yard of recyclable material (as defined in ORS 459.005) shall receive a \$3.00 credit toward their disposal charge if their load is transported inside a passenger car or in a pickup truck not greater than a 3/4 ton capacity. The foregoing recyclable material credit shall not apply at Metro Central Station or the Metro-Riedel Compost Facility.

(d) The disposal fee and enhancement fee established by this section shall be in addition to other fees, charges and surcharges established pursuant to this chapter.

(e) The following table summarizes the disposal charges to be collected by the Metropolitan Service District from all persons disposing of solid waste at the Metro South Station, Metro Central Station and the Metro/Riedel Compost Facility. The minimum charge for all vehicles shall be \$15.00.

(Ordinance No. 82-146; amended by Ordinance No. 83-163, Sec. 2; Ordinance No. 85-191, Sec. 3; Ordinance No. 86-214, Sec. 3; Ordinance No. 88-257, Sec. 4; Ordinance No. 88-278, Sec. 3; Ordinance No. 89-269, Sec. 2; Ordinance No. 89-295, Sec. 3.; and Ordinance No. 90-337, Sec. 4; Ordinance No. 90-372, Sec. 2; Ordinance No. 91-386C, Sec. 4; and Ordinance No. 91-405A, Sec. 1)

METRO SOUTH STATION
METRO CENTRAL STATION
METRO-RIEDEL COMPOST FACILITY

<u>Fee Component</u>	<u>\$/Ton</u>	<u>Tonnage Rate</u>
Disposal Fee		\$34.75
Regional User Fee (Tier One)	\$13.00	
Metro User Fee (Tier Two)	8.50	
Regional Transfer Charge	<u>\$10.50</u>	
Total Rate	*	\$66.75
Minimum Charge per Vehicle	\$15.00	

<u>Tires</u>	<u>Type of Tire</u>	<u>Per Unit</u>
	Car tires off rim	\$.85
	Car tires on rim	2.30
	Truck tires off rim	2.30
	Truck tires on rim	7.00
	Any tire 21 inches or larger diameter off or on rim	12.00

* Total Rate does not include state imposed fees which are currently \$.50 DEQ Promotion Program Fee and \$.50 DEQ Orphan Site Program Fee and enhancement fees or taxes other than excise taxes. The actual fees collected after addition of all taxes and fees shall be rounded up to the closest \$.50.

5.02.030 Waiver of Disposal Charges at St. Johns Landfill: A waiver of disposal charges may be made by the operator of the St. Johns Landfill for disposal of inert material including but not limited to earth, sand, stone, crushed concrete and broken asphaltic concrete and wood chips, if, at the discretion of the operator of the landfill, such material is needed at the landfill for cover, road base or other internal use.

(Ordinance No. 82-146, Sec. 5)

5.02.035 Litter Control Surcharge: A surcharge shall be levied against a person who disposes of waste at a Metro-operated solid waste disposal facility, transfer station, recycling center or compost facility, if when entering the facility any portion of the waste is visible to Metro scalehouse personnel, unless the waste is only visible through a secure covering. The surcharge shall be One Hundred (\$100.00) Dollars for a load delivered by a vehicle greater than three-quarter ton capacity, and Twentyfive (\$25.00) Dollars for a load delivered by a vehicle of three-quarter ton capacity or less, and shall be collected in the same manner as other disposal fees are collected at the facility.

(Ordinance No. 82-146, Sec. 6; amended by Ordinance No. 89-269, Sec. 2; Ordinance No. 90-337, Sec. 5; and Ordinance No. 91-397, Sec. 1)

5.02.045 User Fees:

The following user fees are established and shall be collected and paid to Metro by the operators of solid waste disposal facilities, whether within or without the boundaries of Metro, for the disposal of solid waste generated, originating, collected or disposed within Metro boundaries in accordance with Metro Code Section 5.01.150:

(a) Regional User Fee (Tier One):

- (1) For noncompacted solid waste, \$13.00 per ton delivered.
- (2) For compacted solid waste, \$13.00 per ton delivered.

(b) Metro User Fee (Tier Two):

- (1) \$8.50 per ton for all solid waste delivered to Metro owned or operated facilities.

(c) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete, broken asphaltic concrete and wood chips used at a landfill for cover, diking, road base or other internal use and for which disposal charges

have been waived pursuant to Section 5.02.030 of this chapter shall be exempt from the above user fees.

(d) User fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(e) Notwithstanding the provisions of (a) and (b) above, Metro User Fees may be assessed as may be appropriate for solid waste which is the subject of a Non-System License under Chapter 5.05 of the Metro Code.

(Ordinance No. 82-146, Sec. 8; amended Ordinance No. 85-191, Sec. 4; Ordinance No. 86-214, Sec. 4; Ordinance No. 88-257, Sec. 6; Ordinance No. 88-278, Sec. 4; Ordinance No. 89-269, Sec. 2; and Ordinance No. 90-337, Sec. 6; Ordinance No. 90-351, Sec. 1; Ordinance No. 90-372, Sec. 3 and Ordinance No. 91-386C, Sec. 6)

5.02.050 Regional Transfer Charge:

(a) There is hereby established a regional transfer charge which shall be a charge to the users of Metro South Station, Metro Central Station and Metro/Riedel Compost Facility. Such charge shall be collected and paid in the form of an add-on in addition to user fees established by Section 5.02.045 of this chapter.

(b) The following regional transfer charges shall be collected and paid to Metro by the users of Metro South Station, Metro Central Station and the Metro/Riedel Compost Facility for the disposal of solid waste generated, originating, collected or disposed within Metro boundaries: For all solid waste \$10.50 per ton delivered.

(c) Regional transfer charges shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(Ordinance No. 82-146; amended by Ordinance No. 83-163, Sec. 3; Ordinance No. 85-191, Sec. 5; Ordinance No. 86-212, Sec. 1; Ordinance No. 86-214, Sec. 5; Ordinance No. 88-257, Sec. 8; Ordinance No. 88-278, Sec. 5; Ordinance No. 89-269, Sec. 2; and Ordinance No. 90-337, Sec. 7; Ordinance No. 90-372, Sec. 4 and Ordinance No. 91-386C, Sec. 7)

5.02.060 Payment of Disposal Charges and Surcharges; Credit Policy:

(a) Disposal charges and out-of-state surcharges established pursuant to Sections 5.02.020, 5.02.025 and 5.02.055 of this chapter may be paid in cash, credit card, or guaranteed check at the time of disposal, or may be paid pursuant to the credit policy established in this section.

(b) For purposes of this section, the following definitions shall apply:

- (1) Account charges are "due" on or before the last day of the month billed and are "past due" thereafter.
- (2) Account charges are "30 days past due" on the first day of the month following billing.
- (3) Account charges are "45 days past due" on the fifteenth day of the month following billing.
- (4) Account charges are "60 days past due" on the first day of the second month following billing.

(c) Persons wishing to dispose of solid waste at Metro disposal facilities on a credit basis shall be required to first submit and have approved an application for credit on a form provided by Metro. That application shall include such provisions as the Metro Executive Officer deems necessary to secure prompt payment. Approval shall be consistent with prudent credit practices.

(d) A finance charge of one and one-half (1-1/2) percent per month (18 percent per annum), computed from the date an account becomes thirty (30) days past due, will be assessed on all accounts which become sixty (60) days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.

(e) Accounts 45 days past due may be placed on a "cash only" basis until the account is paid in full or brought to within 30 days past due. If an account is allowed to become 60 days past due, permission to dispose of waste at the facility may be denied until the account and finance charges are paid in full.

(f) If, pursuant to subsection (e) of this section, an account is placed on a "cash only" basis more than once during any consecutive 12-month period, or if service is denied because the account is allowed to become 60 days past due, the account may be required to submit a new application for credit. Such new application must be accompanied by a satisfactory payment

guarantee bond, or other payment guarantee acceptable to the Executive Officer, which is:

- (1) Effective for one year; and
- (2) Collectable if the account again becomes 60 days overdue during the period of the bond; and
- (3) In an amount equal to 150 percent of the amount due when credit was last suspended or service was denied, whichever is greater.

(g) If a credit customer sells, terminates or makes substantial changes in the scope of their business after their application for credit was approved, they must notify Metro of this sale, termination or substantial change immediately. Credit may be discontinued until and unless an application containing the new information is approved.

(h) Adjustment of accounts receivable and reversing of finance charges will follow prudent credit practices; adjustments over \$500 will be reported to the Council in writing on a monthly basis, and adjustments over \$10,000 will require Council approval.

(i) The Executive Officer may end pursuit of accounts receivable, consistent with prudent credit practices, when the likelihood of collecting does not justify further collection costs. Such actions will be reported to the Council in writing on a monthly basis when the amount exceeds \$500, and amounts over \$10,000 will require Council approval.

(Ordinance No. 82-146, Sec. 11; Ordinance No. 90-350 and Ordinance No. 91-386C, Sec. 8)

5.02.065 Special Waste Surcharge and Special Waste Permit Application Fees:

(a) There is hereby established a Special Waste Surcharge and a Special Waste Permit Application Fee which shall be collected on all special wastes disposed at Metro facilities and on all Special Waste Permit Applications. Said Surcharge and fee shall be in addition to any other charge or fee established by this chapter. The purpose of the surcharge and permit application fee is to require disposers of special waste to pay the cost of those services which are provided by the Metro Solid Waste Department to manage special wastes. The said surcharge and fee shall be applied to all acceptable special wastes as defined in Metro Code Section 5.02.015.

(b) The amount of the Special Waste Surcharge collected shall be \$4.00 per ton of special waste delivered.

(c) The minimum charge collected through all fees for each special waste disposal trip shall be \$15.00.

(d) The amount of the Special Waste Permit Application Fee shall be \$25.00. This fee shall be collected at the time Special Waste Permit Applications are received for processing.

(e) Lab or testing costs which are incurred by Metro for evaluation of a particular waste may be charged to the disposer of that waste.

(Ordinance No. 85-191, Sec. 6; amended by Ordinance No. 86-214, Sec. 6; Ordinance No. 88-257, Sec. 9; Ordinance No. 90-337, Sec. 8 and Ordinance No. 91-386C, Sec. 9)

5.02.070 Source Separated Yard Debris Disposal Charge:

(a) There is hereby established a reduced disposal fee for Source Separated Yard Debris that shall be collected on all source separated yard debris disposed at the Metro South Station or Metro Central Station. Said disposal charge is in lieu of other Base Disposal Charges, User Fees, Regional Transfer Charges, Rehabilitation and Enhancement Fees, and Certification Non-Compliance Fees that may be required by Sections 5.02.020, 5.02.025, 5.02.041, 5.02.045, 5.02.046, 5.02.050 and 5.02.075 of this chapter. These other fees shall not be collected on waste which is accepted as Source Separated Yard Debris, under the definition of 5.02.015(d). The purpose of the Source Separated Yard Debris Charge is to encourage greater source separation of yard debris so that material is diverted from land disposal at the Columbia Ridge Landfill and is made available for reuse.

(b) The amount of the Source Separated Yard Debris Charge to be collected at the Metro South Station and Metro Central Station shall be \$49.00 per ton for Source Separated Yard Debris delivered by Credit and Cash Account Customers.

(c) The minimum charge for Credit and Cash Account Customers delivering Source Separated Yard Debris shall be \$10.00. The minimum charge for the delivery of a single Christmas tree as Source Separated Yard Debris shall be \$.50.

(Ordinance No. 86-210, Sec. 2; amended by Ordinance No. 86-211, Sec. 1; Ordinance No. 86-214, Sec. 7; Ordinance No. 88-257, Sec. 10; Ordinance No. 88-278, Sec. 6; Ordinance No. 89-295, Sec. 4.; and Ordinance No. 90-337, Sec. 9; Ordinance No. 90-372, Sec. 5 and Ordinance No. 91-386C, Sec. 10)

(Metro Code Section 5.02.075 repealed by Ordinance No. 91-386C, Sec. 11)

(Metro Code Section 5.02.080 repealed by Ordinance No. 91-386C, Sec. 12)

5.02.085 Out-of-District Waste:

(a) Solid Waste generated outside of the District shall not be accepted at the St. Johns Landfill, Metro South Station, Metro Central Station or Metro/Riedel Compost Facility for disposal unless a special permit to do so is issued by the Metro Executive Officer. Any permit issued shall specify the circumstances justifying such exception. Any permit issued shall be subject to:

- (1) Available landfill or facility capacity considering the capacity needs for disposal of Solid Waste generated within the District;
- (2) No adverse impact upon District rate payers;
- (3) Any Solid Waste authorized to be disposed under this ordinance shall be subject to the same standards and conditions pertaining to "Acceptable Waste" deliveries to the above named facilities; and
- (4) Any additional conditions as specified by the Executive Officer which may be necessary for the safe, efficient or cost effective operation of Metro facilities.

(b) Any special permit issued under Paragraph 1 shall expire in a period of time not to exceed 12 months from date of issuance unless a longer period of time is authorized by the Metro Council. Any renewals or extensions of a permit resulting in a cumulative permit period exceeding 12 months shall require the approval of the Metro Council.

(c) Any special permit issued by the Executive Officer may be revoked upon thirty (30) days notice to the permit holder.

(d) Any permit for a monthly tonnage in excess of one thousand tons (1,000) per month must be referred to Council prior to the approval.

(Ordinance No. 90-352, Sec. 2; amended by Ordinance No. 91-386C, Sec. 13)

CHAPTER 5.03

DISPOSAL SITE FRANCHISE FEES

SECTIONS:

5.03.010	Purpose and Authority
5.03.020	Franchise Application Fees
5.03.030	Annual Franchise Fees
5.03.040	Non-Payment of Franchise Fee
5.03.050	Transfer and Renewal

5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise fees pursuant to Code Section 5.01.140.

(Ordinance No. 81-112, Sec. 1)

5.03.020 Franchise Application Fees: Each application for issuance of a solid waste disposal franchise shall include and be accompanied by a franchise application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise shall be considered without payment of said application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section.

(Ordinance No. 81-112, Sec. 2)

5.03.030 Annual Franchise Fees:

(a) Franchisees, issued a solid waste disposal franchise, shall pay to the District an annual franchise fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be One Hundred (\$100) Dollars per site for each franchised site that only receives waste from the franchisee or a company, partnership or corporation in which the franchisee has a financial interest.

(c) Franchisees who are issued franchises during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any

quarter or portion of a quarter that the franchise is in effect. The franchisee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise fees shall not for any reason be refundable in whole or in part. Annual franchise fees shall be in addition to franchise application fees.

(Ordinance No. 81-112, Sec. 3)

5.03.040 Non-Payment of Franchise Fee:

(a) The issuance of any franchise shall not be effective unless and until the annual franchise fee has been paid for the calendar year for which the franchise is issued.

(b) Annual franchise fees are due and payable on January 1 of each year. Failure to remit said fee by said date shall constitute a violation of the Metro Code and of the franchise and shall subject the franchisee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have.

(Ordinance No. 81-112, Sec. 4)

5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise shall include renewal and transfer of a franchise; provided, however, that no additional annual franchise fee shall be paid upon transfer or renewal when the annual franchise fee for the franchise being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective.

(Ordinance No. 81-112, Sec. 5)

CHAPTER 5.04

ONE PERCENT FOR RECYCLING PROGRAM

SECTIONS:

5.04.010	Policy and Purpose
5.04.020	Funding
5.04.030	Approvals
5.04.040	Recycling Advisory Committee
5.04.050	Administration
5.04.060	Staff Support

5.04.010 Policy and Purpose:

(a) It is the policy of the District to support a program of "One Percent for Recycling" as an innovative program which offers the potential to educate, inform and cultivate citizen participation in the solution to the region's solid waste problem.

(b) It is further policy of the District to support "One Percent for Recycling" as a means to foster implementation of innovative resource recovery technology and methods and that it is a means by which to attain further reuse, recycling and waste reduction in the region.

(Ordinance No. 88-250, Sec. 1)

5.04.020 Funding: The Council shall create a separate account within the Solid Waste Operating Fund equal to 1 percent of each fiscal year's solid waste operating budget, to be set aside to fund small scale projects and proposals to further the policy expressed in this Chapter. Funds not expended in any one budget year shall be carried forward.

(Ordinance No. 88-250, Sec. 1)

5.04.030 Approvals: Contracts brought forward under this program shall be approved in accordance with Chapter 2.04.

(Ordinance No. 88-250, Sec. 1)

5.04.040 Recycling Advisory Committee: In order to implement the One Percent for Recycling Program there shall be created a One Percent Recycling Advisory Committee consisting of seven members, one member of which shall be a Metro Councilor appointed by the Presiding Officer, and six members appointed by the Executive Officer who shall be citizens with experience in or an

interest in promoting recycling, waste reduction or reuse from the community and further representing a geographic diversity of areas within the region. To assure continuity of membership, three (3) citizen appointments shall be made for two (2) year terms in even years and three (3) citizen appointments shall be made for two (2) year terms in odd years. Appointments and terms of office for citizen members shall be on a fiscal year basis. A citizen member shall serve on the Committee until a new member is appointed and confirmed for the position. The Metro Councilor shall serve as chair of the Committee. The citizen appointments to the committee shall be subject to confirmation by the Council.

(Ordinance No. 88-250, Sec. 1; amended by Ordinance No. 88-267, Sec. 1; amended by Ordinance No. 89-324, Sec. 2)

5.04.050 Administration: The administration of the program shall be subject to the approval of the Recycling Advisory Committee provided for in section 5.04.040 above.

(a) On an annual basis a list of eligible projects shall be established by the Recycling Advisory Committee. The Projects List and criteria for allocating funds between projects shall be forwarded to the Council for approval by the Council.

(b) The Recycling Advisory Committee shall approve and publish criteria for selecting projects for funding through an RFP process. The Committee's recommendations and approvals shall be filed with the Council.

(c) The Committee shall annually report to the Council and the Executive Officer all projects approved and the amounts of funds expended on each project.

(Ordinance No. 88-250, Sec. 1)

5.04.060 Staff Support: The Solid Waste Department shall provide administrative and staff support to the Recycling Advisory Committee and ensure that no funds shall be expended from the One Percent for Recycling budget amounts for any administrative or staff support purpose. It is the intent of the Council that the entire amount set aside each year be expended on contracts or grants promoting the purpose of this Chapter and that all overhead and staff support expenses necessary for implementing the program be borne by the Solid Waste Operating Fund separate from the One Percent amount.

(Ordinance No. 88-250, Sec. 1)

CHAPTER 5.05

SOLID WASTE FLOW CONTROL

SECTIONS:

5.05.010	Definitions
5.05.015	Special Findings for Solid Waste Flow Control
5.05.020	Application
5.05.030	Use of Designated Facilities
5.05.038	Limitations on Treatment or Disposal of Petroleum Contaminated Soil
5.05.040	Issuance of Required Use Orders
5.05.050	Content of Required Use Orders; Notice
5.05.052	Requests for Reconsideration
5.05.054	Appeals to the Executive Officer
5.05.060	Solid Waste Tracking System to be Developed
5.05.070	Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
5.05.080	Administrative Rules
5.05.090	Contested Case Proceedings
5.05.095	License to Use Non-System Facility

5.05.010 Definitions: Notwithstanding anything expressed or implied in the Metro Code to the contrary, as used in this Chapter 5.05, the following terms shall have the respective meanings set forth below unless the context requires otherwise:

(a) "Act" shall mean Oregon Revised Statutes Chapter 268, as amended, and other applicable provisions of the laws of the State of Oregon.

(b) "Council" shall have the meaning assigned thereto in Metro Code Section 1.01.040(a).

(c) "Designated Facility" means one of the facilities constituting a part of the system designated from time to time pursuant to Section 5.05.030 of this Chapter 5.05, to which solid waste may be directed by a Required Use Order.

(d) "Director" means the Director of the Metro Department of Solid Waste or the Director's designee.

(e) "Disposal Site" means the land and facilities determined from time to time by Metro as constituting part of the system, whether owned by Metro or another person and whether or not open to the public, used for the disposal of solid wastes, but does not include transfer stations or processing facilities.

(f) "District" shall have the meaning assigned thereto in Metro Code Section 1.01.040(b).

(g) "Executive Officer" shall mean the duly elected or appointed, qualified and acting Executive Officer of Metro, or any officer of Metro hereafter succeeding to the powers and duties of such Executive Officer with respect to the system.

(h) "Metro Code" means the Code of the Metropolitan Service District.

(i) "Non-System Facility" means any solid waste disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste which does not constitute part of the system.

(j) "Non-System License" means a license issued pursuant to and in accordance with Metro Code Section 5.05.030(d).

(k) "Person" shall have the meaning assigned thereto in Metro Code Section 1.01.040(f).

(l) "Processing Facility" shall mean a facility described in Metro Code Section 5.01.010(n) which has been designated by Metro as constituting part of the system.

(m) "Regional Solid Waste Management Plan" means the Metro Regional Solid Waste Management Plan adopted by Ordinance No. 88-266B on October 27, 1988.

(n) "Required Use Order" means a written order issued pursuant to Metro Code Section 5.04.040 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

(o) "Resource Recovery Facility" shall mean a facility described in Metro Code Section 5.01.010(q) which has been designated by Metro as constituting part of the system.

(p) "Service Area" shall mean the area within the jurisdictional boundaries of Issuer within which the system operates to provide solid and liquid waste disposal services, all as contemplated by the Act.

(q) "Solid Waste" shall have the meaning assigned thereto in Metro Code Section 5.01.010(s).

(r) "Source Separated Recyclable Material" shall have the meaning assigned thereto in ORS 459.005(15) and 459.005(21).

(s) "State" shall have the meaning assigned thereto in Metro Code Section 1.01.040(g).

(t) "System" shall mean any and all facilities now or hereafter designated by Metro as part of its system for the management and disposal of solid and liquid waste, including, but not limited to recycling and other volume reduction facilities, sanitary landfills, or other disposal means, resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel), recycling and transfer stations, roads, water lines, wastewater lines and treatment facilities to the extent provided or operated to carry out the provisions of the Act, and all buildings, fixtures, equipment and all property, real and personal now or hereafter owned, leased, operated or used by Metro, all for the purpose of providing for solid and liquid waste disposal; as of the date of enactment of this Chapter 5.05, said system consists of the initial designated facilities described in Section 5.05.030(a) of this Chapter.

(u) "Transfer Station" shall mean a facility described in Metro Code Section 5.01.010(u) which has been designated by Metro as constituting part of the system.

(w) "User Fee" shall have the meaning assigned thereto in Metro Code Section 5.01.010(v).

(x) "Waste Hauler" means any person engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated within the service area, including any person engaged in such activities with respect to solid waste generated by such person as well as any person engaged in such activities with respect to solid waste generated by others.

(Ordinance No. 89-319, amended by Ordinance No. 91-388, Sections 1 and 8)

5.05.015 Special Findings for Solid Waste Flow Control: In connection with the enactment of the provisions of this Chapter 5.05 of the Metro Code (as defined below), the Council of Metro hereby finds and determines the following:

(a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste, it is the responsibility of the Council to protect and judiciously utilize such limited land and resources.

(b) Metro is developing the system as a regional waste disposal and recovery system within the framework of a Regional Solid Waste Management Plan in cooperation with federal, state

and local agencies for the benefit of all citizens of the Service Area.

(c) Pursuant to the Regional Solid Waste Management Plan, Metro has made significant contractual commitments of financial resources, including authorization of revenue bonds, to provide for the construction, operation and maintenance of major facilities as part of the system to provide and assure the safe and efficient disposal, transfer and resource recovery of solid waste generated within the Service Area to meet the needs of residents of the Service Area.

(d) The feasibility of construction, operation and maintenance of major facilities as part of the system to meet the present and future needs of the residents of the Service Area and the ability of Metro to generate revenues sufficient to liquidate the bonded indebtedness to be incurred by Metro to finance the construction of major facilities as part of the system depend upon the ability to obtain the type and quantity of operational volumes of solid and liquid waste needed to make such facilities economically viable.

(e) Pursuant to the authority granted to Metro under Oregon Revised Statutes Sections 268.317 and 268.360, as amended, Metro may require any person or class of persons who generate solid or liquid waste to make use of disposal, transfer or resource recovery sites or facilities of the system or disposal, transfer or resource recovery sites designated by Metro.

(f) Oregon Revised Statutes Section 268.317 and 268.360, as amended, also provides Metro the authority to require any person or class of persons who pickup, collect, or transport solid or liquid wastes to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

(g) Further authority to require use of various solid waste facilities as may be designated by Metro to assure financial feasibility of such facilities is provided in the Regional Solid Waste Management Plan, Chapter 10, referred to above.

(h) The provisions of this Chapter 5.05 are intended to be, and they shall constitute, the exercise by Metro of the powers and authority granted to it under Oregon Revised Statutes Section 268.317 and 268.360, as amended, and the Regional Solid Waste Management Plan to require the persons and classes of persons specified herein who generate, pickup, collect or transport solid or liquid wastes to make use of the disposal, transfer or resource recovery sites of the system or disposal, transfer or resource recovery sites or facilities designated by Metro.

(Ordinance No. 89-319)

5.05.020 Application: This Chapter 5.05 shall govern the transportation, transfer, disposal and other processing of all solid waste generated within the service area as authorized by State law, and shall govern all waste haulers and other persons who generate solid waste within the service area or who transport, transfer, dispose or otherwise deal with or process solid waste generated within the service area; provided that notwithstanding the foregoing, this Chapter does not apply to or govern the transportation, transfer or processing of, or other dealing with, source separated recyclable material.

(Ordinance No. 89-319)

5.05.030 Use of Designated Facilities:

(a) Designated Facilities. The following described facilities shall constitute the designated facilities to which Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro-Riedel Compost Facility. The Metro-Riedel Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) Franchise Facilities. All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.

- (7) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (8) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.; provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.04.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to the list of designated facilities one or more additional facility.

(c) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

(Ordinance No. 89-319, amended by Ordinance No. 91-388, Sec. 2)

5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility franchised by Metro under Code Chapter 5.01 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than at a facility franchised by Metro under Code Chapter 5.01.

(Ordinance No. 91-422B, Sec. 6)

5.05.040 Issuance of Required Use Orders:

(a) The Director may issue a Required Use Order to any waste hauler or other person within the Service Area, requiring the recipient to deliver waste to a specific designated facility. In issuing a Required Use Order, the Director shall comply with the provisions of this Section and Section 5.05.050.

(b) The following priorities shall govern the Director in determining whether to issue Required Use Orders:

- (1) To the extent consistent with Metro facility contractual obligations and facility limitations, waste haulers and other persons should be allowed to utilize the designated facility of their choice; and
- (2) It may be necessary for the Director to override the facility choice of a waste hauler or other person if the Director finds that allowing specific haulers to exercise their choice appears likely to result in:
 - (A) Metro's failure to meet contractual obligations for waste deliveries;
 - (B) The overloading or under-utilization of a specific designated facility or facilities; or

(C) Other system inefficiencies specified by the Director.

(c) If, after considering the priorities in subsection (b) of this section, the Director determines that it is necessary to issue or amend Required Use Order(s), the Director may do so giving due regard to the following factors:

- (1) The location of the waste hauler or other person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;
- (2) The equipment being utilized by the hauler at the time of issuance of the order in relation to the equipment handling capabilities of designated facilities;
- (3) The types of waste being disposed of by the waste hauler or other person, in relation to the capabilities of designated facilities to most appropriately process those wastes;
- (4) Geographic and jurisdictional boundaries; and
- (5) Other considerations deemed relevant by the Director, including but not limited to other health, safety and welfare considerations, and other equitable considerations.

(Ordinance No. 89-319, Sec. 5.05.040 repealed and replaced with Ordinance No. 91-388, Sec. 3)

5.05.050 Content of Required Use Orders; Notice:

(a) Required Use Orders issued by the Director shall set forth the following:

- (1) The names of the waste haulers or persons to be subject to the Required Use Order together with their addresses or places of business and telephone numbers;
- (2) The type and quantity of solid waste subject to the Required Use Order;
- (3) The name and location of the designated facility that the recipient is required to use pursuant to the Order;

- (4) The effective date of the Required Use Order, which date, in the absence of an emergency, shall not be less than ten (10) days from the date of the order; and a brief description of the procedure for requesting that the Director reconsider issuance of the Order, or specific details of the Order; and
- (5) A brief description of the procedure for requesting that the Director reconsider issuance of the Order, or specific details of the Order; and
- (6) Such other information as the Director may consider necessary or appropriate.

(b) Within two (2) days after the date of any Required Use Order, the Director shall cause notice of such Required Use Order to be given as follows:

- (1) By United States mail, postage prepaid, to each waste hauler and person to be subject to such Required Use Order at the last known address thereof; and
- (2) By any other method deemed by the Director as necessary, and most likely, to ensure actual notice to the waste hauler or other person subject to the Order.

(c) The failure of any waste hauler or person subject to a Required Use Order to receive notice thereof shall not affect the validity of such Required Use Order nor excuse such waste hauler or person from complying with the terms thereof.

(Ordinance No. 89-319, amended by Ordinance No. 91-388, Sec. 4)

5.05.052 Requests for Reconsideration:

(a) Any waste hauler or other person receiving a Required Use Order may request that the Director reconsider issuance of the Order or specific details of the Order. The request may be premised on any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) A Request for Reconsideration must be in writing, on a form provided by Metro. To be timely, a Request for Reconsideration must be received by the Director within thirty (30) days of the date of issuance of the Required Use Order, as specified in the Order.

(c) The Director shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written affirmance of the original Order, or a modified Order.

(1) The affirmance or modification shall be considered timely if it is deposited in the mail with the fifteen (15) day period, with regular first class postage and addressed to the person requesting review.

(2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the procedure for requesting review of the decision by the Executive Officer.

(d) Review by the Director of a Request for Reconsideration is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other persons and the Director or Solid Waste Department staff.

(e) If the Director fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the decision to the Executive Officer as specified in Metro Code Section 5.05.054.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked.

(Section 5.05.052 created by Ordinance No. 91-388, Sec. 5)

5.05.054 Appeals to the Executive Officer:

(a) A waste hauler or other person receiving a Required Use Order may appeal the Director's affirmance or modification of the Order to the Executive Officer. The Executive Officer may be asked to review any matter that was relevant to issuance of the Order, as specified in Metro Code Section 5.05.040.

(b) An appeal to the Executive Officer shall be in writing and on a form provided by Metro. To be timely, the appeal must be received by the Executive Officer within thirty (30) days of the date of Issuance of the Director's affirmed or modified Order.

(c) The Executive Officer shall review a Request for Reconsideration and, within fifteen (15) days of receipt, issue a written order affirming or modifying the decision of the Director.

- (1) The affirmance or modification shall be considered timely if it is deposited in the mail within the fifteen (15 day) period, with regular first class postage and addressed to the person requesting review.
- (2) The affirmance or modification shall include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the Metro Council.

(d) Review by the Executive Officer of the Director's decision is intended to be informal, and may include personal, written, or telephone contact between the waste hauler or other person and the Executive Officer.

(e) If a waste hauler or other person is not satisfied with the Executive Officer's decision, or if the Executive Officer fails to issue a timely decision, the waste hauler or other person receiving the Order may appeal the decision to the Metro Council as a contested case proceeding. Review in such proceedings shall be limited to the following:

- (1) Whether exceptional circumstances of the waste hauler or other person warrant revocation or modification of the Order; or
- (2) Whether the Order is likely to cause extreme financial hardship to the waste hauler or other person subject to the Order, warranting revocation or modification of the Order.

(f) A Request for Reconsideration shall not stay the Order issued. A Required Use Order shall be effective on the date issued, and shall remain in effect until modified or revoked.

(Section 5.05.054 created by Ordinance No. 91-388, Sec. 5)

5.05.060 Solid Waste Tracking System to be Developed: The Executive Officer shall develop and establish a system for tracking of solid waste generated, collected, transported or disposed within the District for the purpose of ensuring compliance with the requirements of this Chapter and to ensure equitable application of the requirements of this Chapter. The tracking system shall be subject to other review and approval of the Council. The Executive Officer in developing the tracking system shall consider the following:

(a) Establishment of a permit or licensing system for waste haulers or persons generating, collecting, transporting or disposing of solid waste.

(b) Use of franchises.

(c) Use of personnel to monitor compliance with the requirements of this Chapter.

(d) Intergovernmental agreements for exchange of information.

(e) Equipment identification.

(f) Reporting requirements by waste haulers or persons generating, transporting or disposing of solid waste.

(g) Such other criteria or methods which the Executive Officer considers reasonable and appropriate.

(Ordinance No. 89-319)

5.05.070 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations:

(a) Any waste hauler or person who violates or fails to comply with any provision of this Chapter 5.05 or who fails to comply with the terms and conditions of any non-system license or required use order shall be subject to the fines and penalties set forth in this Section, which fines and penalties shall be assessed by the Executive Officer.

(1) A fine in the amount of not to exceed five hundred dollars (\$500.00) for each violation; and

(2) Such waste hauler or person shall not be extended any credit by Metro for the use of any facility constituting a part of the system until such time as all fines owing under this Chapter as a result of such violation or failure to comply have been paid in full.

(b) In addition to the foregoing fines and penalties:

(1) Any waste hauler or person who fails to comply with the terms and conditions of any non-system license shall be required to pay to Metro a fine in the amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the service area

transported, disposed of or otherwise processed in violation of the terms and conditions of such non-system license; and

- (2) Any waste hauler or person who, without having a non-system license then in effect, transports solid waste generated within the service area to, or utilizes or causes to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility shall be required to pay to Metro a fine in an amount equal to the \$500.00 non-system license application fee, plus the \$500.00 non-system license issuance fee, plus an amount equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste generated within the service area transported, recycled, disposed of or otherwise processed to or at any non-system facility.

(c) If in the judgment of the Executive Officer such action is warranted, Metro shall commence an appropriate action in a State court of competent jurisdiction for the purpose of collecting the fines and penalties provided for above and/or enjoining any violations of the provisions of this Chapter 5.05 or any non-compliance with the terms and conditions of any non-system license or required use order.

(d) Within six (6) months from the date of enactment of this Chapter, the Executive Officer shall recommend to Council a schedule of fines which impose sanctions based on the nature and extent of the violation or failure to comply.

(e) A Required Use Order may be enforced by authorized gatehouse employees at any Metro facility, by denying facility access to a waste hauler or other person who is subject to a Required Use Order and is attempting to deliver waste to a facility not specified in the Order. This enforcement shall be in addition to the fines and penalties that may be levied pursuant to this Section.

(Ordinance No. 89-319, amended by Ordinance No. 91-388, Sec. 6)

5.05.080 Administrative Rules. Except for the system tracking pursuant to Section 5.05.060 hereof, the Executive Officer is hereby authorized and empowered to make such administrative rules and regulations as the Executive Officer considers proper to effectively carry out the purposes of this Chapter 5.05.

Ordinance No. 89-319, amended by Ordinance No. 91-388, Sec. 7)

(Revised 1/2/92)

5.05.090 Contested Case Proceedings. Any waste hauler or other person desiring to contest any decision made by the Executive Officer under this Chapter 5.05 shall commence a contested case proceeding pursuant to Chapter 2.05 of the Metro Code.

(Ordinance No. 89-319)

5.05.095 License to Use Non-System Facility. A waste hauler or other person may transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.095.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Executive Officer, which application shall be in writing and accompanied by a non-refundable application fee in the amount of five hundred dollars (\$500.00). Such written application shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected annual tonnage of the solid waste proposed to be covered by the non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license; and
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed.

In addition, the Executive Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Executive Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

(b) Determination Whether to Issue Non-System License.

Within sixty (60) days after receipt of a completed application for a non-system license and any additional information required by the Executive Officer in connection therewith, the Executive Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination. In making such determination, the Executive Officer shall consider the following factors to the extent relevant to such determination:

- (1) Whether the solid waste proposed to be covered by the non-system license is of such a nature as to be valuable to the efficient operation of the system or is likely to cause problems for or disruptions in the efficient operation of the system;
- (2) Whether the facilities of the system are capable of processing or otherwise dealing with solid waste of the nature or quantity proposed to be covered by the non-system license;
- (3) Whether any changes to the operation of the system or the system facilities would be necessary or appropriate in order to efficiently process or otherwise deal with the solid waste proposed to be covered by the non-system license.
- (4) The extent to which the solid waste proposed to be subject to the non-system license has previously been processed or otherwise dealt with through the system and the impact thereof on the efficient operation of the system;
- (5) The impact of the proposed non-system license, either singly or in conjunction with all other non-system licenses theretofore issued in effect, on:
 - (A) The continued safe and efficient operation of the system;
 - (B) Metro's plan for the development of the system; and
 - (C) The revenues generated by the system; and
- (6) Such other factors as the Executive Officer deems appropriate for purposes of making such determination.

At the discretion of the Executive Officer, the Executive Officer may impose such conditions on the issuance of a non-system license as the Executive Officer determines are necessary or appropriate under the circumstances.

(c) Issuance of Non-System License; Contents. In the event the Executive Officer determines to issue a non-system license, then upon payment by the applicant of a five hundred dollar (\$500.00) issuance fee such non-system license shall be issued by the Executive Officer. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than two (2) years from the date of issuance of such non-system license; and
- (6) Any conditions imposed by the Executive Officer as provided above which must be complied with by the licensee during the term of such non-system license.

(d) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three (3) days written notice from Metro;

- (2) Report in writing to Metro, not later than the fifteenth day of each month, commencing the fifteenth day of the month following the month in which the non-system license is issued and continuing through the fifteenth day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month;
- (3) Pay to Metro, not later than the fifteenth day of each month, commencing the fifteenth day of the month following the month in which the non-system license is issued and continuing through the fifteenth day of the month next following the month in which the non-system license expires, a fee equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(e) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.095(d) above or any conditions of such non-system license imposed pursuant to Section 5.05.095(b), then, upon discovery of such non-compliance, the Executive Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within twenty (20) days following the date of such notice of non-compliance or such longer period as the Executive Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Executive Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Executive Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such twentieth day or on the last day of such longer period as

the Executive Officer may determine to grant as provided below. If, in the judgment of the Executive Officer, such non-compliance cannot be corrected within such twenty (20) day period but the licensee is capable of correcting it and within such twenty (20) day period diligently commences such appropriate corrective action as shall be approved by the Executive Officer, then and in such event such twenty (20) day period shall be extended for such additional number of days as shall be specified by the Executive Officer in writing, but in no event shall such the local period as so extended be more than sixty (60) days from the date of the notice of non-compliance.

(f) Effect on Existing Arrangements for Use of Non-System Facilities. Notwithstanding the foregoing provisions of this Section 5.05.095, any agreements or authorizations which permit any waste hauler or other person to transport solid waste generated within the service area to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility and which were entered into or given prior to the effective date of Metro Ordinance No. 89-319 shall remain in full force and effect for a period of one hundred and eighty (180) days following said effective date, subject in all respects to the terms and conditions of such agreements or authorizations, at the end of which one hundred eighty (180) day period all such agreements shall automatically terminate and all uses of non-system facilities shall only be allowed pursuant to a non-system license obtained as provided above; provided that the foregoing shall in no way prevent Metro from exercising during such one hundred eighty (180) day period any right it may have to terminate any such agreement or authorization.

(g) Executive Officer to Recommend License Application and Issuance Fee Schedules. Within six (6) months from the date of enactment of this Chapter, the Executive Officer shall recommend to Council non-system license application and issuance fee schedules which vary for each applicant and licensee based on the type and quantity of solid waste subject to the non-system license and other appropriate factors.

(Ordinance No. 89-319; amended by Ordinance No. 91-388, Sec. 2)

CHAPTER 5.06

COMMUNITY ENHANCEMENT PROGRAMS

SECTIONS:

- 5.06.010 Policy and Purpose
- 5.06.020 Funding
- 5.06.030 Approval
- 5.06.040 Composter Community Enhancement Committee
- 5.06.045 Metro Central Station Community Enhancement Committee
- 5.06.050 Administration
- 5.06.060 Criteria for Funding Composter Community Enhancement Projects/Programs
- 5.06.065 Criteria for Funding Metro Central Station Community Enhancement Projects/Programs
- 5.06.070 Composter Community Enhancement Boundary
- 5.06.075 Metro Central Station Community Enhancement Boundary
- 5.06.080 Staff Support

5.06.010 Policy and Purpose:

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

(b) It is further policy of the District to support community enhancement programs in the area of the mass composter facility at 54th and Columbia Boulevard, and in the area of Metro Central Station, 6161 N.W. 61st Avenue, both in Portland, Oregon.

(Ordinance No. 90-331A, Sec. 1; amended by Ord. 91-437, Sec. 1)

5.06.020 Funding: The Council shall create separate funds entitled the "Composter Community Enhancement Fund" and the "Metro Central Station Community Enhancement Fund." For each ton of waste deposited at the mass composting facility, \$.50 shall be budgeted and accounted for in the Composter Community Enhancement Fund. For each ton of waste deposited at Metro Central Station, \$.50 shall be budgeted and accounted for in the Metro Central Station Community Enhancement Fund. Funds not expended in any one budget year shall be carried forward. Revenue accruing to each fund shall be invested in accordance with Metro's investment policies.

(Ordinance No. 90-331A, Sec. 1; amended by Ord. 91-437, Sec. 1)

5.06.030 Approvals: Contracts brought forward under this program shall be approved in accordance with Chapter 2.04. No expenditure from the Composter Community Enhancement Fund shall be made without the positive vote of a majority of the full Committee created pursuant to Section 5.06.040. No expenditure from the Metro Central Station Community Enhancement Fund shall be made without the position vote of a majority of the full Committee created pursuant to Metro Code Section 5.06.045.

(Ordinance No. 90-331A, Sec. 1; amended by Ord. 91-437, Sec. 1)

5.06.040 Composter Community Enhancement Committee: In order to implement the Composter Community Enhancement Program there shall be created a Composter Community Enhancement Committee consisting of ten members to be appointed and serve terms as follows:

(a) Eight members to be appointed by the Executive Officer subject to confirmation by the Council. The Executive Officer shall make appointments as follows:

- (1) Three members shall be appointed from a list of nominees submitted by the Cully Association of Neighbors.
- (2) One member shall be appointed from a list of nominees submitted by the Concordia Community Association.
- (3) One member shall be appointed from a list of nominees submitted by the Beaumont-Wilshire Neighborhood Association.
- (4) One member shall be appointed from a list of nominees submitted by the Madison North Neighborhood Association.
- (5) One member shall be appointed from a list of nominees submitted by the Rose City Park Neighborhood Association.
- (6) All of these members shall reside within the Composter Community Enhancement Programs boundary.
- (7) One member, representing the business community, shall be appointed from nominees submitted by the businesses and the business associations located within the Composter Community Enhancement Program area. This member shall reside or work within the Composter Community Enhancement Program Boundary.

(b) The Metro Councilors representing Council Districts 10 and 11 shall serve on the Committee. The Presiding Officer of

the Council annually shall appoint one of these members to serve as chair person.

(c) The effective date for all appointments of all members except the Metro Councilors shall be the date of membership confirmation by the Metro Council. The initial terms of service for the eight non-Council members shall be four members for three years and four members for two years, designation to be determined by lot. Committee members may be reappointed for consecutive terms not to exceed two full terms. Following the initial term, terms for all non-Council members shall be two years each. Appointments to fill vacancies shall be for the remainder of the vacant term.

(d) In the case of a vacancy in a position appointed pursuant to subsections (a)(1) through (a)(7), the Executive Officer shall solicit nominations from all organizations who were eligible to submit nominations for the original appointment.

(Ordinance No. 90-331A, Sec. 1; amended by Ord. No. 91-429B, Sec. 1; and Ord. 91-437, Sec. 1)

5.06.045 Metro Central Station Community Enhancement Committee:

In order to implement the Metro Central Station Community Enhancement Program, there shall be created a Metro Central Station Community Enhancement Committee consisting of seven members to be appointed and serve terms as follows:

(a) Six members to be appointed by the Executive Officer subject to confirmation by the Council. The Executive Officer shall make appointments as follows:

- (1) One member shall be appointed from a list of nominees submitted by the Forest Park Neighborhood Association.
- (2) One member shall be appointed from a list of nominees submitted by the Friends of Cathedral Park.
- (3) One member shall be appointed from a list of nominees submitted by the Linnton Neighborhood Association.
- (4) One member shall be appointed from a list of nominees submitted by the Northwest District Neighborhood Association.
- (5) One member shall be appointed from a list of nominees submitted by the Northwest Industrial Neighborhood Association.

- (6) One member shall be appointed from a list or lists of nominees submitted by environmental organizations that have or will have an interest in the enhancement area.

(b) The Committee shall be chaired by the Metro Councilor representing District No. 12.

(c) The effective date for all appointments of all members except the Metro Councilor shall be the date of membership confirmation by the Metro Council. The initial terms of service for the six non-Council members shall be three members for two years and three members for one year, designation to be determined by lot. A member initially serving a one-year term may be reappointed for consecutive terms not to exceed two full terms. All other non-Council members may be reappointed for a consecutive term not to exceed one full term. Following the initial term, terms for all non-Council members shall be two years each. Appointments to fill vacancies shall be for the remainder of the vacant term.

(d) In the case of a vacancy in a non-Council position on the Committee, the Executive Officer shall solicit nominations from the same organizations that were eligible to submit nominations for the original appointment.

(e) In all instances, the Executive Officer may reject all nominations for a non-Council position on the Committee, and request that new nominations be submitted by the affected group.

(Created by Ordinance No. 91-437, Sec. 1)

5.06.050 Administration: The administration of a Community Enhancement Program shall be subject to the approval of the Community Enhancement Committee established for that purpose.

(a) Each Committee shall propose an annual budget for the Community Enhancement Fund under its jurisdiction for approval by the Council. Each budget shall be prepared and considered in Metro's annual budget process. Each budget shall at a minimum identify general program or project areas for the fiscal year, except that a Committee may recommend that no expenditures be made during a fiscal year. A Committee and the Council shall endeavor to preserve each Community Enhancement Fund principal.

(b) A Committee may solicit requests for proposals or projects which may be funded from the Community Enhancement Fund under its jurisdiction. Any project or proposal to be funded through a Community Enhancement Fund shall be approved according to Metro contract procedures. Projects or proposals shall not be split into components when approved. No project or proposal

shall be considered by Metro which has not been recommended by the Committee exercising jurisdiction.

(c) The Composter Community Enhancement Committee shall publish and use the criteria in Section 5.06.060 below, and the Metro Central Station Community Enhancement Committee shall publish and use the criteria in Section 5.06.065, in selecting projects/programs for funding through a Request for Proposals (RFP) process. Each Committee's recommendations and approvals shall be filed with the Council. A Committee may at any time request the Council to modify or change the criteria.

(d) Each Committee shall annually report to the Council and the Executive Officer all projects approved and the amounts of funds expended on each project, from the fund under its jurisdiction.

(Ordinance No. 90-331A; amended by Ord. No. 91-437, Sec. 1)

5.06.060 Criteria for Funding Composter Community Enhancement Projects/Programs:

(a) Composter Community Enhancement Projects/Programs will be funded within the boundaries as specified in Section 5.06.070.

(b) Any person or any organization may submit written proposals.

(c) The Committee will provide an open public process for project/program review and recommendation which shall include the reasons for acceptance or rejection of proposals.

(d) The Fund shall not substitute for projects/programs funded by other sources.

(e) Projects/Programs may be funded in part or in full.

(f) Projects/Programs that best enhance or rehabilitate areas most severely impacted by the Composter facility will receive priority consideration for approval.

(g) Projects/Programs shall be directed to the aid of residents, nonprofit corporations and businesses (as defined by the Small Business Administration) and shall meet one or more of the following guidelines:

(1) Result in increased employment/economic opportunities.

(2) Result in rehabilitation, upgrading or direct increase in the housing stock.

- (3) Result in the preservation or enhancement of wildlife and marine areas and improve public awareness and the opportunities to enjoy them.
- (4) Result in physical improvements and programs in new and existing parks and recreational areas.
- (5) Result in improvement in the safety of the area.
- (6) Result in an improvement in the safety of the area.
- (7) Result in a significant increase in the utilization or occupancy of a commercial area.
- (8) Result in programs which benefit low-income youth and seniors.

(Ordinance No. 91-331A, Sec. 1; amended by Ord. 91-437, Sec. 1)

5.06.065 Criteria for Funding Metro Central Station Community Enhancement Projects/Programs:

(a) Metro Central Station Community Enhancement Projects/Programs will be funded within the area specified in Section 5.06.075.

(b) Only a nonprofit association, including but not limited to a neighborhood association or a charitable organization with 501(c)(3) status under the Internal Revenue Code, may submit proposals. All proposals must be in writing.

(c) The Committee will provide an open public process for project/program review and recommendation which shall include the reasons for acceptance or rejection of proposals.

(d) The enhancement fund shall not substitute for projects/programs funded by other sources.

(e) Projects/programs may funded in part or in full.

(f) Funds will not be provided in a manner that unconstitutionally promotes or inhibits a religious establishment.

(g) Projects/programs that best enhance or rehabilitate areas most severely impacted by the facility will receive priority consideration for approval.

(h) Projects/programs shall meet one or more of the following goals. Priority will be given to projects/programs that meet the greatest number of goals and which offer benefits

to the areas most directly impacted by the facility. The order of the following listing does not imply ranking nor weighting:

- (1) Result in rehabilitation, upgrading or direct increase in the real property owned or operated by a nonprofit organization having 501(c)(3) status under the Internal Revenue Code.
- (2) Result in the preservation or enhancement of wildlife, riparian zones, wetlands, forest lands and marine areas, and improve the public awareness and the opportunities to enjoy them.
- (3) Result in improvement to, or increase in, recreational areas and programs within the boundaries.
- (4) Result in improvement in the safety of the area.
- (5) Result in an improvement of the appearance or cleanliness or environmental quality of the area/neighborhood within the boundaries.
- (6) Result in projects/programs which are located within the boundaries and/or benefit youth and seniors within the boundaries.
- (7) Results in projects/programs which are located within the boundaries and/or benefit low-income persons within the boundaries.
- (8) Result in projects/programs which are located within the boundaries and/or increase recycling opportunities with the project boundaries.

(Created by Ordinance No. 91-437, Sec. 1)

5.06.070 Composter Community Enhancement Boundary:

(a) The boundary of the Composter Community Enhancement Community Program shall encompass the area between the Columbia Slough on the north; N.E. 33rd Boulevard on the West; N.E. Fremont Street and Sandy Boulevard on the South (from N.E. 33rd Avenue to N.E. 57th Avenue south to Sandy Boulevard, from Sandy Boulevard to N.E. 82nd Avenue); and N.E. 82nd Avenue on the East.

(b) Two years after the facility opens, Metro staff shall conduct a traffic study to determine the impact of the facility. The Metro Council may use this study to revise the boundary.

(Ordinance No. 91-331A, Sec. 1)

(Revised 1/2/92)

5.06.075 Metro Central Station Community Enhancement Boundary:

(a) The boundary of the Metro Central Station Community Enhancement Program shall begin at the intersection of Newberry Road with the shore of the west bank of the Willamette River; proceed south along the west bank to Interstate 405 at the Fremont Bridge; south on Interstate 405 to Pettygrove Street; west on Pettygrove Street to Cornell Road; west on Cornell Road to N.W. Thompson Road; north on N.W. Thompson Road to Skyline Boulevard; north on Skyline Boulevard to Newberry Road; east on Newberry Road to the shore of the west bank of the Willamette River. The Program area shall also include the St. Johns Bridge, and an area bounded by the shore of the east bank of the Willamette River to Baltimore Street; east on Baltimore Street to Lombard Street; south on Lombard Street to Richmond Street; and west on Richmond Street to the shore of the East Bank of the Willamette River.

(b) In addition to the area described in this section, the Program area shall include all properties outside of, and immediately adjacent to, a boundary street.

(Created by Ordinance No. 91-437, Sec. 1)

5.06.080 Staff Support: The Executive Officer shall assign staff to assist each Committee in carrying out its duties and responsibilities at the level budgeted in the appropriate Community Enhancement Fund. Before assigning staff, the Executive Officer shall consult with each Committee about Committee needs and qualifications of proposed staff. Additional assistance may be acquired following Metro's contract procedures. Direct costs incurred to administer a Community Enhancement Program shall be paid by the appropriate Community Enhancement Fund. The Council shall not charge overhead costs to a Community Enhancement Fund.

(Ordinance No. 91-331A, Sec. 1; amended by Ord. 91-437, Sec. 1)

CHAPTER 5.07

RECYCLING CREDITS

SECTIONS:

5.07.010	Purpose
5.07.020	Program Description
5.07.030	Eligibility Criteria
5.07.040	Annual Agreements for Credits
5.07.050	Budget Authorization

Section 5.07.010 Purpose: The purpose of this chapter is to provide disposal cost relief at Metro solid waste disposal facilities for charitable, nonprofit entities that accomplish a significant level of waste reduction and recycling in operating programs that also have significant benefits to the region.

(Ordinance No. 90-362A, Sec. 1)

Section 5.07.020 Program Description: Recycling credits are established to provide disposal cost relief at Metro disposal facilities to organizations that qualify under the eligibility criteria listed in Section 5.07.030.

Recycling credits are based on an eligible organization's overall waste reduction level (summarized in this program as "recycling level"). The waste reduction level includes both reuse and recycling activities. The following formula establishes the amount of the recycling credit relative to the organization's recycling level. Recycling credits will be applied to total disposal costs at the time Metro bills the eligible organization:

If the recycling level is 70% or above, a 100% credit is granted;

If the recycling level is 65% or above, a 90% credit is granted;

If the recycling level is 60% or above, an 80% credit is granted;

If the recycling level is 55% or above, a 70% credit is granted;

If the recycling level is 50% or above, a 60% credit is granted;

If the recycling level is below 50%, no credit is granted.

The recycling level of the eligible organization will be based on documentation provided to Metro's Solid Waste Director on an annual basis. Recycling credits are not available at facilities where Metro does not serve as the billing entity.

(Ordinance No. 90-362A, Sec. 1)

Section 5.07.030 Eligibility Criteria. An organization qualifies to receive a recycling credit if the following criteria have been documented during the annual application process:

(a) The organization must be classified as a nonprofit organization under Section 501(c)(3) of the United States Internal Revenue Code. Furthermore, the organization submits an annual report on Federal Form 990 (Return of Organization Exempt for Income Tax).

(b) The organization must be registered as a nonprofit organization with the Corporation Commission of the State of Oregon.

(c) The organization submits an annual report to the Oregon Department of Justice Charitable Trust Section and provides assistance to needy citizens of the region and opportunities for employment to those in need of assistance and rehabilitation.

(d) The organization does not contract with for-profit organizations to collect, process, or sell used goods.

(e) The organization must be engaged, as a primary form of revenue, in the processing of donated goods for resale or reuse.

(f) The organization facilitates the opportunity to reuse and recycle for the general public via curbside collection of donated goods or staffing of drop-off sites.

(g) The waste reduction activities of the organization divert a significant amount of material that might otherwise be landfilled. A significant amount is defined as a minimum of 250 tons per year of donated goods that are either reused or recycled.

(h) The organization is a credit customer in good standing at Metro disposal facilities.

(i) The organization submits annual waste reduction data to the Metro Solid Waste Director by February 15th of each year which documents the organization's recycling level for the preceding calendar year using a methodology approved by Metro.

(j) No portion of the District funds authorized by this program will benefit any religious function of any religious organization.

(Ordinance No. 90-362A, Sec. 1)

Section 5.07.040 Annual Agreements for Credits: The Executive Officer is hereby authorized to enter into annual agreements which may not extend beyond the end of the current fiscal year with organizations determined by the Executive Officer to be eligible and who meet the waste reduction levels established herein. Consistent with the budget authorization adopted by the Council of the Metropolitan Service District as provided for in Section 5.07.050 herein the Executive Officer shall on an annual basis enter into agreements with eligible organizations so desiring and allocate available funds for recycling credits to such organizations that continue to meet the eligibility criteria and program requirements provided for herein. In the event that sufficient funds are not available to provide the level of recycling credit established in Section 5.07.020 provided for herein each agreement shall provide that the organization shall only be entitled to the receipt of the credit for tonnages actually delivered until such time as the total authorized amount has been credited throughout the program. Once the annual authorized amount is exhausted by the combined efforts of the eligible organizations then recycling credits shall no longer be available during the remaining portion of that fiscal year unless a further authorization is approved.

The form of such agreements entered into by the Executive Officer shall be consistent with the terms and provisions of this chapter and shall be in a form approved by the Office of General Counsel.

(Ordinance No. 90-362A, Sec. 1)

Section 5.07.050 Budget Authorization: The Council shall establish by Ordinance, which may be the annual budget ordinance, the amount available for applying for recycling credits pursuant to this program. The Executive Officer may not enter into agreements or authorize the credits in an amount greater than that provided for by the Council. The agreements authorized under Section 5.07.040 are hereby exempted from the requirements of Chapter 2.04 but may be entered into with any eligible organization making application therefore within thirty (30) days prior to funds being available for recycling credits as authorized by the Council.

(Ordinance No. 90-362A, Sec. 1)

CHAPTER 5.08

RATE REVIEW COMMITTEE

SECTIONS:

5.08.010	Purpose
5.08.020	Authority and Responsibility
5.08.030	Committee Membership
5.08.040	Meetings and Scheduling
5.08.050	Rate Review Criteria

5.08.010 Purpose: The Rate Review Committee is established for the following purposes:

- (a) To enhance the credibility of solid waste disposal rates and the rate setting process;
- (b) To provide a rational, consistent, stable and predictable process for establishing solid waste disposal rates; and
- (c) To make recommendations to the Metro Council regarding proposed solid waste disposal rates.

(Ordinance No. 91-436A, Sec. 1)

5.08.020 Authority and Responsibility: The Rate Review Committee has the authority and responsibility to review and make recommendations to the Metro Council regarding:

- (a) Proposed solid waste disposal rates and charges at facilities owned, operated or under contract to Metro (see Metro Code Chapter 5.02) and at Metro franchised facilities as provided under the terms of a franchise agreement (see Metro Code Chapter 5.01);
- (b) All policy and technical issues related to solid waste disposal rate setting;
- (c) Direct and indirect expenses included in proposed solid waste disposal rates before the Committee; and
- (d) Any technical analysis of proposed rates or rate setting procedures, developed by Metro staff or a consultant to Metro, for facilities under the purview of the Committee.

(Created by Ordinance No. 91-436A, Sec. 1)

5.08.030 Committee Membership:

(a) The Rate Review Committee shall be composed of seven members as follows:

- (1) One Metro Councilor, who shall serve as Committee chair;
- (2) Two persons engaged in the business of hauling solid waste;
- (3) One person with business-related financial experience;
- (4) One person with experience in establishing rates;
- (5) One person involved with a local recycling or waste reduction program; and
- (6) One citizen ratepayer.

(b) The Metro Councilor serving on the Committee shall be appointed by the Council Presiding Officer. All other members shall be appointed by the Executive Officer, subject to confirmation by the Council.

(c) The Metro Councilor on the Committee shall serve a one-year term, subject to reappointment. The initial terms for the six non-Council members shall be two members for four years, two members for three years, and two members for two years, designation to be determined by lot. Following the initial term, terms for all non-Council members shall be four years each. A non-Council member may be reappointed for a consecutive term, not to exceed one full term. Appointments to fill vacancies shall be for the remainder of the vacant term.

(Created by Ordinance No. 91-436A, Sec. 1)

5.08.040 Meetings and Scheduling:

(a) The Committee shall meet at least once every two months, unless a majority of the Committee establishes otherwise.

(b) All rates impacting Metro's budget shall be reviewed on a time line intended to facilitate simultaneous Council adoption of the rates and proposed budget in early May. At the beginning of the annual process leading to adoption of Metro rates, the Solid Waste Department shall present to the Committee an overview of the process and prior rate-setting efforts, anticipated deadlines, and related data.

(c) Committee review of all other rates within the purview of the Committee shall be scheduled in a manner likely to result in timely consideration by the Council.

(Created by Ordinance No. 91-436A, Sec. 1)

5.08.050 Rate Review Criteria:

(a) In reviewing and making recommendations to the Council regarding solid waste Disposal rates impacting Metro's budget, the Committee shall apply criteria established by resolution of the Council. The Council shall review the established criteria annually, and make revisions as necessary. The Committee may recommend to the Council changes in established criteria deemed appropriate by the Committee.

(b) In reviewing and making recommendations to the Council regarding rates charged by a Metro-franchised solid waste facility under the purview of the Committee, the Committee shall comply with Metro Code Section 5.01.180.

(Created by Ordinance No. 91-436A, Sec. 1)

TITLE VI

COMMISSIONS

CHAPTERS:

6.01 Metropolitan Exposition-Recreation Commission

CHAPTER 6.01

METROPOLITAN EXPOSITION-RECREATION COMMISSION

SECTIONS:

6.01.010	Purpose
6.02.020	Definitions
6.01.030	Commission Created
6.01.040	Powers
6.01.050	Budget
6.01.060	Form of Action
6.01.070	Delegation
6.01.080	Review
6.01.090	Initial Charge to Commission
6.01.100	Council Convention Center Committee

6.01.010 Purpose: The purpose of this chapter is to establish a metropolitan commission to renovate, maintain and operate metropolitan convention, trade and spectator facilities pursuant to ORS 268.395, 268.400, and 268.310(6).

(Ordinance No. 87-225, Sec. 1)

6.01.020 Definitions: As used herein:

(a) "Adversely affected or aggrieved" means a person who appeared orally or in writing before the Commission prior to and regarding a final Commission action and who:

- (1) Has suffered or will suffer an injury to some substantial interest of the person caused by the final Commission action; or
- (2) Had an interest in the final Commission action that was recognized by the Commission, asserted a position on the merits of the final Commission action, and suffered a final Commission action contrary to the position asserted by the person. Persons who sign petitions are not considered to have submitted oral or written testimony.

(b) "Commission" means the Metropolitan Exposition-Recreation Commission established hereunder;

(c) "Council" means the Council of the Metropolitan Service District;

(d) "Councilor" means a member of the Council;

(e) "District" means the Metropolitan Service District;

(f) "Executive" means the Executive Officer of the Metropolitan Service District.

(g) "Final action" means an action taken by resolution of the Commission that is not a ministerial action and that is not a tentative or preliminary action that:

(1) Precedes final action; or

(2) Does not preclude further consideration of the action.

(h) "Just cause" means habitual absence from meetings of the Commission, physical or mental disability that prevents meaningful participation as a Commission member, failure to remain a resident of the District, the commission of substantive violation of ORS chapter 244 (Government Ethics) or substantive regulations adopted pursuant thereto, conviction of any felony, or the commission of any action or failure to act of a similar nature that brings into serious question the ethical or legal integrity of the Commission member's official actions.

(Ordinance No. 87-225, Sec. 1)

6.01.030 Commission Created: There is hereby created a Metropolitan Exposition-Recreation Commission consisting of seven (7) members. All members shall be residents of the District. One of the members shall be appointed by the Executive Officer to be the initial Chairperson of the Commission. The Commission members shall be appointed as follows:

(a) Members of the Commission shall be appointed by the Executive Officer and confirmed by a majority of the members of the Council in accordance with the following procedures:

(1) Nomination Process. The Executive Officer will accept nomination to the Metropolitan Exposition-Recreation Commission as follows:

(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one (1) candidate. The candidates must be residents of the District and nominating county.

(B) The City Council of the City of Portland shall nominate one (1) candidate for each of two (2) positions. The candidates must be residents of the District and the City of Portland.

(C) Two (2) nominees shall be at the sole discretion of the Executive Officer. The candidates must be residents of the District.

- (2) Appointment Process. The Executive Officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Council of the Metropolitan Service District as appointments for confirmation. In addition, the Executive Officer shall transmit two (2) additional names as appointments for confirmation.

For those positions on the Commission which are subject to nomination by a local governmental body, the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer fails to concur with any candidate so nominated by a local government, the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed.

If the Council fails to confirm an appointment made at the sole discretion of the Executive Officer, the Executive Officer may submit the name of another person for confirmation by the Council.

(b) Of the initial appointments, one (1) shall be for a one (1) year term; two (2) shall be for a two (2) year term; two (2) shall be for a three (3) year term; and two (2) including the Chairperson shall be for a four (4) year term. Thereafter appointments shall be for a four (4) year term.

(c) Provided further that the initial terms of members shall expire on the fifteenth (15) day of January closest to the appropriate anniversary of the appointment.

(d) Of the initial appointments, the Executive Officer shall designate one (1) member as the initial chairperson to hold that position for a four (4) year term. If a vacancy occurs before the end of the term, the Executive Officer shall appoint a new chairperson to complete the unexpired term in the same manner as in the case of the member whose term was not completed.

(e) A vacancy shall occur from the death, resignation, failure to continue residency within the District and in the case of members nominated by a local government residency within the boundaries of the nominating government, or inability to serve of any member or from the removal of a member by the Executive for just cause, subject to approval of the removal by a majority of the members of the Council.

(f) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section or pursuant to Metro Executive Order No. 36 shall be filled by the nomination, appointment and confirmation process provided for in this section so that five (5) members of the Commission shall be the nominees of the four local government bodies as specified herein.

(g) No person who is elected to a public office, or appointed to fill a vacancy in a public office, shall be eligible to serve.

(h) The Commission may adopt its own rules of organization and procedure and except as provided for the appointment of the initial chairperson in subsection (c) above, may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the Commission determines appropriate.

(Ordinance No. 87-225, Sec. 1; amended by Ordinance No. 89-325, Sec. 1)

6.01.040 Powers: The Commission shall have the following power and authority:

(a) To renovate, equip, maintain and repair any convention, trade, and spectator buildings and facilities for which the Commission is responsible;

(b) To operate and market the use of the Oregon Convention Center and other buildings and facilities for which the Commission is responsible; and to advise the District on operating and marketing matters that relate to the initial construction of facilities;

(c) To acquire in the name of the District by purchase, devise, gift, or grant real and personal property or any interest therein as the Commission may find necessary for its purposes. The Commission may recommend to the Council the condemnation of property for use by the Commission but may not itself exercise the condemnation power;

(d) To lease and dispose of property in accordance with ORS 271.300 to 271.360;

(e) To maintain and repair any real and personal property acquired for the purposes of the Commission;

(f) To lease, rent, and otherwise authorize the use of its buildings, structures and facilities; to fix fees and charges relating to the use of said buildings, structures and facilities, provided the Commission pursuant to Section 6.01.050 shall obtain the prior approval of all revenue sources by the Council; to establish any other terms and conditions governing use of its buildings and facilities; and to adopt any regulations deemed necessary or appropriate for the protection of users and for the protection and public use and enjoyment of its buildings and facilities;

(g) To perform planning and feasibility studies for convention, trade, and spectator facilities within the District;

(h) To employ, manage, and terminate such personnel as the Commission may find necessary, appropriate, or convenient for its purposes under personnel rules adopted by the Commission;

(i) Except as provided in subsection (m) below, to employ professional, technical, and other assistance as the Commission may find necessary, appropriate, or convenient for its purposes;

(j) To enter into contracts of such types and in such amounts, including intergovernmental agreements, as the Commission may deem necessary, appropriate, or convenient for the renovation, equipment, maintenance, repair, operation, and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services, under contracting rules adopted by the Commission;

(k) To enter into intergovernmental agreements for the transfer of convention, trade, or spectator buildings and facilities to the District, or for the transfer of operating and administrative responsibilities for such buildings and facilities to the Commission, provided that the Council has approved such acquisition or transfer;

(l) To accept gifts and donations and to contract for and receive federal and other aid and assistance;

(m) Services of the District including accounting, legal, personnel, risk management, public affairs, and other services, shall be provided by the District subject to compensation being provided by the Commission to the District as the District may require; The Commission may acquire such services by other means subject to budget approval by the Council, provided the employment of legal counsel shall be subject to the approval of the District's General Counsel;

(n) To recommend to the Council such long-term revenue and general obligation measures and other revenue-raising measures for the benefit of the Commission's purposes as the Commission may deem appropriate for consideration by the Council or the electors of the District, but the Commission may not adopt such measures itself;

(o) To recommend to the Council the adoption of ordinances carrying criminal and civil penalties for their violation, but the Commission may not adopt such ordinances itself;

(p) To do all other acts and things necessary, appropriate, or convenient to the exercise of the powers of the Commission.

(Ordinance No. 87-225, Sec. 1)

6.01.050 Budget and Accounts: The Commission accounts shall be kept in conformity with the accounting practices of the District, and the accounts shall be audited yearly at the same time and by the same auditor as are the District's accounts. The Commission annually shall prepare a proposed budget in accordance with the local budget law and the schedule and requirements of the District and shall submit the budget to the Executive for inclusion in the Executive's budget submission to the Council. The Commission's budget shall be subject to review and approval by the Council. The Commission's proposed budget shall include a schedule of the items, services and facilities for which the Commission intends to fix fees and charges relating to the use of its buildings, structures and facilities during the budget year together with any other proposed revenue raising measures. Any additions to the schedule of items, services and facilities and any other new revenue sources not previously approved by the Council must be ratified in advance by the Council.

(Ordinance No. 87-225, Sec. 1)

6.01.060 Form of Action: All final actions of the Commission shall be by resolution.

(Ordinance No. 87-225, Sec. 1)

6.01.070 Delegation: The Commission may delegate to its employees any of the power and authority of the Commission subject to those limitations the Commission deems appropriate. Any delegation shall be by resolution of the Commission.

(Ordinance No. 87-225, Sec. 1)

6.01.080 Review:

(a) Within five (5) days after the passage of any resolution, the Commission shall file a copy of the resolution with the Council Clerk, who shall maintain a special record of the Commission's resolutions which shall be accessible to the public under like terms as the ordinances of the District. Except as provided in subsection (c) of this section, no resolution of the Commission shall become effective until 5:00 p.m. on the 10th day following the filing of a copy thereof with the Council Clerk. The Council Clerk shall immediately notify the Executive and Council of the receipt of the resolution.

(b) Except as provided in subsection (c) of this section, a resolution of the Commission shall not become effective if, within ten (10) days after the filing by the Commission of a copy of the resolution with the Council Clerk, either the Executive, three (3) members of the Council acting jointly, or any person adversely affected or aggrieved by a final action of the Commission files a request with the Council Clerk for Council review of the Commission resolution. All requests for review shall be in writing and shall include (1) a description of the resolution to be reviewed including the resolution number; (2) a clear statement of the specific reasons for the review and the requested Council action; and (3) the name and address of the person requesting review. Upon receipt of a request for Council review of Commission action, the Council Clerk forthwith shall notify the Commission of the request for review and shall deliver to the Commission a copy of the request for review. The resolution to be reviewed shall be placed on the agenda for the next regular Council meeting, subject to compliance with rules for placing items on the agenda; provided, however, that the Council may review the resolution at any meeting under a suspension of the rules. For any review, the Executive may submit a recommendation as to the action to be taken by the Council or review. In conducting the review the Council shall hear and consider statements from the person requesting the review, the Executive, the Commission and other interested persons. After hearing the matter, the Council shall upon motion act to approve the Commission action, modify the action or return the matter to the Commission.

If the Council approves or modifies the Commission resolution it shall become effective immediately. If the Council returns the resolution to the Commission it shall not become

effective until such time as the Commission takes further action on the matter subject to the Review procedures of this Code.

(c) Resolutions of the Commission which pertain solely to the following matters shall be effective upon adoption or at such other time as specified by the Commission:

- (1) Scheduling the use of buildings and facilities; operated by the Commission;
- (2) Entering into agreements for the use of buildings and facilities operated by the Commission, including all of the terms and conditions of the agreements, provided the agreements do not transfer operation, management, and control of the buildings and facilities;
- (3) Matters of employment, dismissal, or disciplining of employees;
- (4) Purchasing supplies, consumables, services, and equipment, in accordance with a budget approved by the Council;

(d) The Council may on its own initiative or at the request of the Executive, by regularly adopted ordinance, repeal, amend, or alter any resolutions adopted by the Commission. Any repeal, amendment, or alteration may be made retroactive or prospective in effect but shall not invalidate any contract or agreement that has become effective under this section prior to adoption of the ordinance.

(Ordinance No. 87-225, Sec. 1)

6.01.090 Initial Charge to Commission: Following appointment of its members and during the time prior to the completion of construction of the convention center, the Commission shall do the following:

(a) Adopt a five-year (5) operating plan which includes but is not limited to staffing requirements, personnel rules and contract rules, rental schedules, marketing programs and expenditure and revenue requirements. In preparing the operating plan the Commission shall consider Metro policies and services and incorporate those policies and services if they are found to offer advantages for efficient operation. The Commission shall propose operating procedures which take into account the unique functions of the Commission and the business practices of the convention, trade and spectator industry. Prior to the adoption of the plan the Commission shall submit the plan to the Council for review and recommendation no later than June 30, 1988.

(b) Not later than September 1, 1988, report to the Council on the progress of, and make recommendations to the Council of appropriate action regarding negotiations with local governments within the District for the transfer of appropriate facilities or operations to the Commission. The negotiations may include but are not limited to transfer of assets and liabilities and operational responsibilities; transfer of employees; revenue and expenditure requirements; and schedules and charges and methods of determining charges.

(c) Identify statutory changes needed for the Commission to carry out its responsibilities. The Commission shall submit proposed statutory changes to the Council for review and appropriate action no later than August 15, 1988.

(d) To facilitate this initial Charge the Council shall forthwith upon appointment of the Commission adopt a budget for operation of the Commission and assign to the Commission for implementation any contracts entered into by the District for the operation and marketing of the convention center.

(Ordinance No. 87-225, Sec. 1)

6.01.100 Council Convention Center Committee: The Commission regularly shall report to the Council Convention Center Committee for purposes of review and recommendation on the adoption of the five-year plan and on general policy and budget matters.

(Ordinance No. 87-225, Sec. 1)

TITLE VII
EXCISE TAXES

CHAPTERS:

7.01 Excise Taxes

CHAPTER 7.01

EXCISE TAXES

SECTIONS:

7.01.010	Definitions
7.01.020	Tax Imposed
7.01.025	Collection of Tax by District
7.01.030	Collection of Tax by Operator; Rules for Collection
7.01.040	Operator's Duties
7.01.050	Exemptions
7.01.060	Registration of Operator; Form and Contents; Execution; Certification of Authority.
7.01.070	Due Date; Returns and Payments
7.01.080	Penalties and Interest
7.01.090	Deficiency Determination; Fraud, Evasion, Operator Delay
7.01.100	Hearings, Contested Cases
7.01.110	Security for Collection of Tax
7.01.120	Refunds
7.01.130	Administration
7.01.150	Violations

7.01.010 Definitions: Except where the context otherwise requires, the definitions given in this Section govern the construction of this Chapter:

(a) "Accrual basis accounting" means as this term relates to revenue recognition the operator records the revenue from a user on his/her records when the revenue is earned, whether or not it is paid.

(b) "Cash basis accounting" means the operator records the revenue from a user on his/her records when cash is received.

(c) "District facility" means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by the District. District facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, the Metro Washington Park Zoo, Metropolitan Exposition-Recreation Facilities including but not limited to the Oregon Convention Center, the Metro South Station, the St. Johns Landfill, the Metro East Station, the Riedel Oregon Compost Company, Inc. Solid Waste Compost Facility, any other solid waste transfer, processing, disposal or recycling center owned, operated or financed by or for the District, all solid waste facilities subject to the issuance of a franchise pursuant to Metro Code Chapter 5.01, and any other facility, equipment, system,

function, service or improvement owned, operated, franchised or provided by the District.

(d) "Metro ERC Facility" means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

(e) "Operator" means a person who receives compensation from any source arising out of the use of a District facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this Chapter by either the principal or managing agent shall be considered to be compliance by both.

(f) "Person" means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

(g) "Payment" means the consideration charged, whether or not received by the operator, for the use of a District facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

(h) "Tax" means either the tax payable by the user or the aggregate amount of taxes due from an operator during the period for which he/she is required to report his/her collections.

(i) "User" means any person who pays compensation for the use of a District facility or receives a product or service from a District facility subject to the payment of compensation.

(Ordinance No. 90-333A, Sec. 2)

7.01.020 Tax Imposed:

(a) For the privilege of use of the facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by the District, each user shall pay a tax in the amount established in subsection 7.01.020(b) but not to exceed six percent (6%) of the payment charged by the operator or the District for such use. The tax constitutes a debt owed by the user to the District which is extinguished only by payment of the tax directly to the District or by the operator to the District. The user shall pay the tax to the District or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If payment is paid in

installments to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any annual period commencing July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) by so providing in the annual budget ordinance adopted by the District. If the Council so establishes a lower rate of tax, the Executive Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unless further action to establish a lower rate is adopted by the Council as provided for herein.

(Ordinance No. 90-333A, Sec. 2)

7.01.025 Collection of Tax by District:

(a) The District shall allocate from all payments made directly to the District by any user the amount of the tax provided for in Section 7.01.020.

(b) Unless stated separately on any request for payment or charge imposed or established by the District the excise tax shall be presumed to be included in the amount imposed or established by the District so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to the District plus the excise tax at the rate established herein. To the extent necessary to give effect to this provision all rates and charges established by the District and in effect on the effective date of this Chapter shall be deemed decreased by such percentage amount so that after such date the amount of the rate or charge together with the amount of the excise tax provided for in Section 7.01.020 shall be equal to the previously established rate or charge. Thereafter rates and charges shall be subject to amendment as provided by law.

(c) In the case of installment payments to the District a proportionate share of the tax shall be deemed paid by the user with each installment.

(Ordinance No. 90-333A, Sec. 2)

7.01.030 Collection of Tax by Operator; Rules for Collection:

(a) Every operator unless specifically exempted under the terms of this Chapter, shall collect a tax from users. The tax collected or accrued by the operator constitutes a debt owing by the operator to the District.

(b) In all cases of credit or deferred payments, the payment of tax to the operator may be deferred until the payment is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.

(c) The Executive Officer shall enforce provisions of this Chapter and shall have the power to adopt rules and regulations not inconsistent with this Chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the Executive Officer shall give public notice of intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of this Code to violate rules and regulations duly adopted by the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

7.01.040 Operator's Duties: Each operator shall collect the tax imposed by this Chapter at the same time as payment is collected from every user. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator.

(Ordinance No. 90-333A, Sec. 2)

7.01.050 Exemptions:

(a) The following persons, users and operators are exempt from the requirements of this Chapter:

- (1) Persons, users and operators whom the District is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the State of Oregon.
- (2) Persons who are users and operators of the Memorial Coliseum, Portland Civic Stadium or the Portland Center for the Performing Arts.
- (3) Persons whose payments to the District or to an operator constitute a donation, gift or bequest for the receipt of which neither the District nor any operator is under any contractual obligation related thereto.
- (4) Any persons making payment to the District for a business license pursuant to ORS 701.015.

- (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to the District for any purpose other than solid waste disposal, use of a Metro ERC Facility, or use of the Metro Washington Park Zoo.
- (6) Users who are sublessees, subtenants, sublicensees, or other persons paying compensation for the use of Metro ERC Facilities including payments by users for concessions or catering services made to the Commission or its agents but not users who purchase admission tickets for events at Metro ERC Facilities that are available to members of the general public.
- (7) An operator of a franchised processing center that accomplishes material recovery and recycling as a primary operation.
- (8) Persons making payments to the District on behalf of the Metro Washington Park Zoo for the following purposes:
 - (A) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether the District agrees to utilize the payment for a specific purpose including all payments to the Zoo Parents program;
 - (B) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects conducted at the Zoo;.
 - (C) Payments that entitle a person to admission to a fund-raising event benefiting the Zoo that is not held on the grounds of the Zoo;
 - (D) Payments that entitle a person to admission to a special fund-raising event held at the Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Zoo and the proceeds of the event are contributed to the Zoo;

- (E) Notwithstanding the provisions of subsection (A) through (D) above, all payments received by the District for admission to the Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Zoo train shall be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.

(b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this Chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this Chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a District facility is exempt from the provisions of this Chapter shall be deemed to be a user and not an operator.

(Ordinance No. 90-333A; amended by Ordinance No. 90-355, Sec. 2)

7.01.060 Registration of Operator; Form and Contents; Execution; Certification of Authority:

(a) Every person engaging or about to engage in business as an operator in the District shall register with the Executive Officer on a form provided by the Executive Officer. Operators starting business must register within fifteen (15) calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his/her place of business and such other information to facilitate the collection of the tax as the Executive Officer may require. The registration shall be signed by the operator.

(b) The Executive Officer shall, within ten (10) days after registration, issue without charge a certificate of authority to each registrant to collect the tax from users, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Executive Officer upon the cessation of business at the location named or upon the business sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed thereon so as to be seen and come to notice readily of all users.

(c) Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the facility;
- (3) The date upon which the certificate was issued;
- (4) "This Excise Tax Registration Certificate signifies that the person named has fulfilled the requirements of the Excise Tax Chapter of the Code of the Metropolitan Service District for the purpose of collecting and remitting the excise tax. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a facility without strictly complying with all local applicable laws. This certificate does not constitute a permit or a franchise."

(Ordinance No. 90-333A, Sec. 2)

7.01.070 Due Date; Returns and Payments:

(a) The tax imposed by this Chapter shall be paid by the user to the operator at the time that payment is made. All amounts of such taxes collected by any operator are due and payable to the District on the 15th day of each month for the preceding month; and are delinquent on the last day of the month in which they are due. If the last day of the month falls on a holiday or weekend, amounts are delinquent on the first business day that follows. The initial return under this Chapter may be for less than a full month preceding the due date; thereafter returns shall be made for the applicable monthly period.

(b) On or before the 15th day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the Executive Officer. The return shall be filed in such form as the Executive Officer may prescribe by every operator liable for payment of tax.

(c) Returns shall show the amount of tax collected or otherwise due for the related period. The Executive Officer may require returns to show the total receipts upon which tax was collected or otherwise due, gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of receipts exempt, if any.

(d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax

due, to the Executive Officer, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(e) For good cause, the Executive Officer may extend for not to exceed one (1) month the time for making any return or payment of tax. No further extension shall be granted, except by the Executive Officer. Any operator to whom an extension is granted shall pay interest at the rate of 1.25 percent (1.25%) per month on the amount of tax due without proration for a portion of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall be added to the tax due for computation of penalties described elsewhere in this Chapter.

(f) The Executive Officer, if deemed necessary in order to ensure payment or facilitate collection by the District of the amount of taxes in any individual case, may require returns and payment of the amount of taxes more frequently than monthly periods. (Ordinance No. 90-333A, Sec. 2)

7.01.080 Penalties and Interest:

(a) Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Chapter prior to delinquency shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.

(b) Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due plus the amount of the ten percent (10%) penalty first imposed.

(c) Fraud. If the Executive Officer determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions thereof, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this Section.

(d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Chapter shall pay interest at the rate of 1.25 percent (1.25%) per month or fraction thereof without proration for portions of a month, on the amount of the tax due from the date on which the remittance first became delinquent until paid. Interest shall be compounded monthly.

(e) Penalties and Interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this Section shall be merged with and become a part of the tax herein required to be paid. If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new base for calculating new penalty and interest amounts.

(f) Petition for waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated, provided, however, the operator may petition the Executive Officer for waiver and refund of the penalty or any portion thereof and the Executive Officer may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

(Ordinance No. 90-333A, Sec. 2)

7.01.090 Deficiency Determination; Fraud, Evasion, Operator Delay.

(a) Deficiency determinations. If the Executive Officer determines that the results are incorrect, it may compute and determine the amount required to be paid on the basis of the facts contained in the return or returns, or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties or deficiencies shall be applied as set forth in Section 7.01.080.

- (1) In making a determination the Executive Officer may offset overpayments, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 7.01.080.
- (2) The Executive Officer shall give to the operator a written notice of its determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his/her address as it appears on the records of the Executive Officer. In case of service by mail or any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.

- (3) Except in the case of fraud or intent to evade this Chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.
- (4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Executive Officer has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(b) Fraud, refusal to collect, evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this Chapter any report and remittance of said tax or any portion thereof required by this Chapter, or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Executive Officer shall proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the Executive Officer has determined the tax due that is imposed by this Chapter from any operator who has failed or refused to collect the same and to report and remit said tax, it shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this Chapter. In case such determination is made, the Executive Officer shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Executive Officer of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within ten (10) days after the Executive Officer has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

(c) Operator delay. If the Executive Officer believes that the collection of any tax or any amount of tax required to be collected and paid to the District will be jeopardized by delay, or if any determination will be jeopardized by delay, the Executive Officer shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall

immediately pay such determination to the Executive Officer after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within ten (10) days from the date of service of notice by the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

7.01.100 Hearings, Contested Cases:

(a) Any person against whom a determination is made under Section 7.01.090 or any person directly interested may request a hearing on the matter in contest and request redemption and refund within the time required in Section 7.01.090. The determination becomes final at the expiration of the allowable time and no hearing may be requested thereafter. Hearings shall be conducted as provided for in Chapter 2.05 except that the deadline for requesting a hearing shall be as provided for herein.

(b) No request for a hearing and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof.

(Ordinance No. 90-333A, Sec. 2)

7.01.110 Security for Collection of Tax: The Executive Officer, whenever deemed necessary to ensure compliance with this Chapter, may require any operator subject thereto to deposit with it such security in the form of cash, bond, or other security as the Executive Officer may determine. The amount of the security shall be fixed by the Executive Officer but shall not be greater than twice the operator's estimated average liability for the period for which he/she files returns, determined in such manner as the Executive Officer deems proper. The amount of the security may be increased or decreased by the Executive Officer subject to the limitation herein provided.

(Ordinance No. 90-333A, Sec. 2)

7.01.120 Refunds:

(a) Refunds by District to operator. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously collected or received by the Executive Officer under this Chapter, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Executive Officer within three (3) years from the date of payment. The claim shall be made on forms provided by the Executive Officer. If the claim is approved by the Executive Officer, the excess amount collected or paid may be refunded or may be credited on

any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his/her administrators, executors, or assignees.

(b) Refunds by District to users. Whenever the tax required by this Chapter has been collected by the District or by an operator, and deposited by the operator with the Executive Officer, and it is later determined that the tax was erroneously collected or received by the Executive Officer, it may be refunded by the Executive Officer to the user, provided a verified claim in writing therefore, stating the specific reason on which the claim is founded, is filed with the Executive Officer within three (3) years from the date of payment.

(Ordinance No. 90-333A, Sec. 2)

7.01.130 Administration:

(a) Records required from operator, et cetera; form. Every operator shall keep records of all sales and transactions. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.

(b) Examination of records; investigations. The Executive Officer, or any person authorized in writing by the Executive Officer, may examine during normal business hours the books, papers and accounting records relating to any operator, after notification to the operator liable for the collection and payment of the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Executive Officer may cause the General Counsel to bring an action in the courts of this state, or any other state, or of the United States in the name of the District to collect the amount delinquent together with penalties and interest.

(d) Confidential financial information. Except as otherwise required by law, it shall be unlawful for the Executive Officer, or any officer, employee, or agent, to divulge, release, or make known in any manner any financial information submitted or disclosed to the Executive Officer under the terms of this Chapter. Nothing in this subsection shall be construed to prohibit:

- (1) The disclosure to, or the examination of, financial records by District officials, employees

or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting taxes imposed under the terms of this Chapter; or

- (2) The disclosure to the taxpayer or his/her authorized representative of financial information, including amounts of excise taxes, penalties, or interest, after filing of a written request by the taxpayer or his/her authorized representative and approval of the request by the Executive Officer; or
- (3) The disclosure of the names and addresses of any persons to whom Excise Tax Registration Certificates have been issued; or
- (4) The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular taxpayer's return or application; or
- (5) The disclosure of financial information to the Office of General Counsel, to the extent the Executive Officer deems disclosure or access necessary for the performance of the duties of advising or representing the Executive Officer.

(Ordinance No. 90-333A, Sec. 2)

7.01.150 Violations. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Executive Officer or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this Chapter. The Executive Officer may impose a civil penalty of up to \$500 for each violation of this Chapter. A violation includes, but is not limited to:

(a) Failure to file any required Tax payment and report, including any penalties and interest, within sixty (60) days of the due date;

(b) Filing a false or fraudulent report;

(c) Failure to register a facility with the Executive Officer as described in Section 7.01.060;

(d) Failure to maintain a separate account for the excise tax collected.

(Ordinance No. 90-333A, Sec. 2).

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87-216	2	87-231		2.04.160
87-216	2	87-231		2.04.165
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87-228	1	90-365		2.06.030
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87-231	1	88-252		2.04.110
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87-231	1			2.04.120
87-231	1			2.04.125
87-231	1			2.04.130
87-231	1			2.04.135
87-231	1	88-252		2.04.140
87-231	1	88-252		2.04.145
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88-248	1	91-411		2.09.080
88-248	1	91-411		2.09.090
88-248	1	91-411		2.09.100
88-248	1	91-411		2.09.110
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88-251	1			4.01.030
88-252	1			2.04.110
88-252	1			2.04.140
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88-265				UGB Amendment
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88-271	1			2.04.041
88-271	1			2.40.042
88-271	1	91-378A		2.04.043
88-271	1	91-378A		2.04.045
88-271	1	91-378A		2.04.053
88-271	1	91-378A		2.04.054
88-271	1			2.04.060
88-271	1			2.04.070
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88-275	1			3.02.001
88-276	1			5.01.085
88-277				Budget Amendment
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89-282				Amendment: Regional Transportation Plan
89-283				Budget Amendment
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89-285	1			2.02.285
89-286				UGB Amendment
89-287				Budget Amendment
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89-289	1			2.01.170
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89-299				Budget Amendment
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90-328A				Budget Amendment
90-329	6			4.01.070
90-330A				2.10.010 2.10.020 2.10.030 2.10.040 2.10.050 2.10.060 2.10.070
90-331	1	91-437		5.06.010
90-331	1	91-437		5.06.020
90-331	1	91-437		5.06.030
90-331	1	91-429B,91-437		5.06.040
90-331	1	91-437		5.06.050
90-331	1			5.06.060
90-331	1			5.06.070
90-331	1	91-437		5.06.080
90-333A	2			7.01.010
90-333A	2			7.01.020
90-333A	2			7.01.025
90-333A	2			7.01.030
90-333A	2			7.01.040
90-333A	2	90-355		7.01.050
90-333A	2			7.01.060
90-333A	2			7.01.070
90-333A	2			7.01.080
90-333A	2			7.01.090
90-333A	2			7.01.100
90-333A	2			7.01.110
90-333A	2			7.01.120
90-333A	2			7.01.130

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<u>Ordinance No.</u>	<u>Section</u>	<u>Amended By Ordinance No.</u>	<u>Repealed By Ordinance No.</u>	<u>Codification</u>
90-333A	2			7.01.150
90-334				2.02.080
90-335				Correction Ballot Title Zoo Tax Base
90-336	1			3.05.010
90-336	1			3.05.020
90-336	1			3.05.030
90-336	1			3.05.040
90-336	1			3.05.050
90-336	1			3.05.060
90-337	1	91-386C		5.02.010
90-337	2	91-386C		5.02.015
90-337	3	91-386C		5.02.020
90-337	4	91-386C, 91-405A		5.02.025
90-337	5	91-386C, 91-397		5.02.035
90-337	6	90-351, 91-386C		5.02.045
90-337	7	90-358, 91-386C		5.02.050
90-337	8	91-386C		5.02.065
90-337	9			5.02.070
90-338				Budget Amendment
90-339				Not Adopted
90-340				FY90-91 Budget
90-343				Budget Amendment
90-344				Amendment: Regional Transportation Plan
90-345				Amendment: Metro UGB

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90-346				Budget Amendment
90-347A	2			2.08.080
90-349				Budget Amendment
90-350		91-386C		5.02.060
90-351	1	91-386C		5.02.045
90-352	3			5.02.055
90-352	2	91-386C		5.02.085
90-354		90-376B,91-424		4.01.060
90-355				7.01.050
90-358				4.01.050
90-359				Amendment: Regional Solid Waste Mgt Plan
90-360				Budget Amendment
90-361				Amending Regional Wastewater Mgt Plan
90-362A	1			5.07.010
90-362A	1			5.07.020
90-362A	1			5.07.030
90-362A	1			5.07.040
90-362A	1			5.07.050
90-363				Not Adopted
90-365				2.06.010
90-365				2.06.020
90-365				2.06.030
90-365				2.06.040

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90-365				2.06.060
90-365				2.06.070
90-365				2.06.080
90-365				2.06.090
90-365				2.06.100
90-365				2.06.110
90-365				2.06.120
90-365				2.06.130
90-365				2.06.140
90-365				2.06.150
90-365				2.06.160
90-367				Natural Resources Mgt Plan Smith & Bybee Lakes Amendment:
90-368				Regional Solid Waste Mgt Plan
90-369	1			2.11.010
	1			2.11.020
	1			2.11.030
	1			2.11.040
90-370				Budget Amendment
90-371				Replaced by Ord. No. 90-23
90-372	1	91-386C		5.02.015
90-372	1			5.02.020
90-373				Budget Amendment
90-374				Budget Amendment
90-375				Budget Amendment

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91-376B	1	91-424		4.01.060
91-377				Amendment: Regional Solid Waste Mgt Plan
91-378A	5			2.02.040
	6			2.04.043
	6			2.04.044
	6			2.04.045
	6			2.04.052
	6			2.04.053
	6			2.04.054
	6			2.04.090
91-381				Budget Amendment
91-382				Budget Amendment
91-383				Auth. Rev. Bond Issu.
91-384				UGB Amendment
91-386C	1			5.02.010
	2			5.02.015
	4	91-405A		5.02.025
		91-397		5.02.035
	5			5.02.040
	6			5.02.045
	7			5.02.050
	3			5.02.050
	8			5.02.060
	9			5.02.065
	10			5.02.070
	11			5.02.075
	12			5.02.080
91-387				Budget Amendment

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91-388	1			5.05.010
	8			5.05.010A
	8			5.05.015
	2			5.05.030
	8			5.05.030A
	3			5.05.040
	4			5.05.050
91-388	5			5.05.052
	5			5.05.054
	6			5.05.070
	7			5.05.080
	8			5.05.095
91-389				Excise Tax Exemption
91-390A				FY1990-91 Budget
91-392				Budget Amendment
91-393A				RSWMP Amendment; Identifying Options for Imp. Local Govt. Standards
91-395A				UGB Amendment
91-396				Budget Amendment
91-397	1			5.02.035
91-398				Budget Amendment
91-399				Budget Amendment

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91-400A				Budget Amendment
91-401				Budget Amendment
91-402A				Budget Amendment
91-403				Budget Amendment
91-404	1			5.02.016
91-405A	1			5.02.025
91-406A				RSWMP Amendment; Illegal Dumping Chapter
91-407A	1			2.01.070
	2			2.01.090
	3			2.01.120
	4			2.01.130
	5			2.01.140
91-408A	1			3.06.010
	1			3.06.020
91-409	1			2.01.090
91-410				Budget Amendment
91-411	2			2.09.010
	3			2.09.020
	4			2.09.030
	5			2.09.040
	6			2.09.050
	7			2.09.060
	8			2.09.070
	9			2.09.080
	10			2.09.090

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91-411	11			2.09.100
	12			2.09.110
	14			2.09.120
	15			2.09.130
	16			2.09.140
	17			2.09.150
	18			2.09.160
	19			2.09.170
91-413				Transfer Rate Increase Forest Grove Transfer Stn.
91-414				Budget Amendment
91-415D				Reapportioning Council Subdistricts
91-416				RSWMP Amendment; Metro West Transfer & Recovery System Chapter
91-417				Franchise renewal w/ East County Recycling
91-418B				RUGGOS; Repealing CRAG Goals and Objectives
91-419				Budget Amendment
91-422B	1			5.01.010
	2			5.01.040
	3			5.01.060

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91-422B	4			5.01.150
	5			5.01.220
	6			5.05.038
91-424	1			4.01.060
91-425				Budget Amendment
91-426A	1			2.02.180
	2			2.02.185
	3			2.02.200
91-427				Budget Amendment
91-428				Budget Amendment
91-429B	1	91-437		5.06.040
91-431				Budget Amendment
91-432				Budget Amendment
91-434A				Petroleum Contaminated Soil Franchise; Hydrocarbons, Inc.
91-436A				5.08.010 5.08.020 5.08.030 5.08.040 5.08.050
91-437	1			5.06.010
	1			5.06.020
	1			5.06.030
	1			5.06.040
	1			5.06.045

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	1			5.06.050
	1			5.06.060
	1			5.06.065
	1			5.06.075
	1			5.06.080
91-438				Petroleum Contaminated Soils Franchise; RMAC Intl.
91-439B				Sears Building Financing Bond
91-440A				Supplemental Sears Building Financing Bond

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79-1			Ord. 79-65
79-2			Ord. 79-65
79-3		Metro Rule 81-5	2.05.005 2.05.050
79-4			Ord. 79-65
81-5		82-137	2.05.005- 2.05.050

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77-1B				
77-2				
77-3				
78-1				
78-2				
78-3	Not Adopted			
78-4		80-102, 81-121		3.02.001 3.02.011
78-5				
78-6				
78-7				
78-8	Not Adopted			
78-9				
78-10	Not Adopted			
78-11				
78-12				
78-13	Not Adopted			
78-14				
78-15				
78-16				
78-17				
78-18				
78-19				



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503-221-1646

Memorandum

DATE: January 22, 1992

TO: Metro Council
Executive Officer
Code Users

FROM: Paulette Allen, Clerk of the Council *PA*

RE: JANUARY 2, 1992 METRO CODE UPDATES

Attached are updates to the Metro Code. The last update was issued on August 19, 1991 and these attachments represent all ordinances effective upon adoption from the September 12 Council meeting to the December 19, 1991 Council meeting. These updates have "Revised 1/2/92" in the lower left hand corner. Metro Code Section 4.01 attached reflects Ordinance No. 91-424 which became effective on January 2, 1992 (revised Zoo admission fees). Ordinance No. 91-421A adopted December 12, 1991 will be issued when it becomes effective 90 days from its date of adoption.

Also attached is new Chapter 3.06. Ordinance No. 86-207 created the chapter which was not codified after it was adopted. Legal Counsel submitted Ordinance No. 91-408A which was adopted and has now been officially codified.

Also attached are updated content pages, title pages, and a complete set of tables to reflect annotations made over the last year. (The tables are not reissued with every Code update.)

Contact me if you have questions, comments or corrections to these updates at ext. 206. Thank you.