

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CLARIFYING)	RESOLUTION NO. 21-5176
LANGUAGE IN THE 2016 TRANSFER SYSTEM)	
CONFIGURATION POLICY ADOPTED BY)	Introduced by Chief Operating Officer
RESOLUTION NO. 16-4716.)	Marissa Madrigal in concurrence with
)	Deputy Council President Shirley Craddick

WHEREAS, in 2016, after a year-long process involving multiple stakeholders from the solid waste industry, local governments and Metro staff, the Metro Council adopted the “Transfer System Configuration Policy” by Resolution No. 16-4716. A copy of that Policy is attached to this Resolution as Exhibit A; and

WHEREAS, one of the primary purposes of the Transfer System Configuration Policy was to improve transparency of solid waste rates at both public and private transfer stations; and

WHEREAS, both prior to and after adoption of the Transfer System Configuration Policy, local governments in the Metro region had publicly requested that Metro take action to improve rate transparency at private transfer stations to better understand the justification for those costs because they affect the residential garbage rates imposed by the local governments on their residents. Examples of these requests are attached to this Resolution as Exhibits B, C, D and E; and

WHEREAS, in response to these local government requests to improve rate transparency at private transfer stations, the Transfer System Configuration Policy provided that, among other things, Metro would endeavor to estimate costs at its own public transfer stations in a manner that would “provide a more detailed and direct comparison of the cost of services offered at private stations;” and

WHEREAS, the specific language in the Transfer System Configuration Policy pertaining to improving rate transparency is found in Section 6 (the “Rate Transparency Section”), which stated that Metro would “[p]rovide a separate accounting of the cost of various discrete public services provided at the public stations i.e., separate out the cost of services such as wet waste consolidation and transfer, dry waste recovery, self-haul, and organics consolidation and transfer to provide a more detailed and direct comparison of the cost of services offered at private stations;” and

WHEREAS, all private transfer stations within the region are regulated by Metro and subject to the requirements of Metro Code Title V, Administrative Rules, and Solid Waste Facility Franchises, but they do not provide identical services as those provided at the public transfer stations and Metro sets putrescible waste tonnage limits for all private transfer stations; and

WHEREAS, although several private transfer stations in the Metro region provide discrete putrescible (“wet”) and non-putrescible (“dry”) waste disposal services, and although Metro distinguishes between wet and dry waste for regulatory purposes, Metro does not now nor has it ever provided “discrete” wet and dry waste disposal services, nor does it distinguish between wet and dry waste for disposal purposes; and

WHEREAS, although Metro only charges a single disposal fee for solid waste received at its public transfer stations, for fiscal years 2017-2020 Metro’s “accounting” was an *estimation* what the costs might be if Metro in fact provided “discrete” wet and dry waste disposal services at the public stations,

using forecast tonnage, working floor space, FTEs and other factors. An example of one of those estimates, labeled “Unit Costs at Metro Transfer Stations,” is attached as Exhibit F; and

WHEREAS, these “Unit Costs” estimates do not indicate *actual* costs for wet and dry waste disposal, nor could they, because Metro does not provide discrete wet and dry waste disposal services or otherwise distinguish between wet and dry waste for disposal purposes; and

WHEREAS, certain individuals and entities have taken the Transfer System Configuration Policy’s Rate Transparency Section language out of context, and they have erroneously and inaccurately asserted in public documents, public testimony and court filings that Metro has either recognized, acknowledged or otherwise admitted that it provides “discrete” wet and dry waste disposal services; and

WHEREAS, certain individuals and entities have mistakenly interpreted Metro’s “Unit Costs” estimates as *actual* costs associated with providing discrete wet and dry waste disposal services, and

WHEREAS, because the Rate Transparency Section language is potentially confusing it would benefit from clarification, especially given that it has already contributed in part to one lawsuit against Metro (*Reilly and Hoover v. Metro*, Clackamas County Circuit Court Case No. 20CV08093), and may lead to future lawsuits if not clarified; now therefore,

BE IT RESOLVED that the Metro Council:

1. Affirms that Metro does not currently, nor has it ever, provided discrete wet and dry waste disposal services.
2. Affirms that Metro provides “solid waste” disposal services as that term is used in Metro Charter Section 6(2) and ORS chapter 268.
3. Clarifies that the language in Section 6 of the 2016 Transfer Station Configuration Policy (the “Rate Transparency Section”) only described Metro’s future efforts to estimate what it might cost if Metro did provide discrete wet and dry waste disposal services, so as to allow local governments to better compare Metro’s costs to those of various private transfer stations that do in fact provide discrete wet and dry waste disposal services.
4. Finds that no further estimates of Metro’s wet and dry waste disposal costs are required to comply with the 2016 Transfer Station Configuration Policy, given that Metro has already provided four years’ worth of estimated public transfer station costs to assist local governments in their local residential garbage franchise ratemaking.

ADOPTED by the Metro Council this 6th day of May 2021.

Shirley Craddick

Shirley Craddick, Deputy Council President

Approved as to Form:

Carrie MacLaren

Carrie MacLaren, Metro Attorney

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING A)	RESOLUTION NO. 16-4716
TRANSFER SYSTEM CONFIGURATION)	
POLICY)	Introduced by Chief Operating Officer Martha Bennett in concurrence with Council President Tom Hughes

WHEREAS, Metro, as the solid waste system planning authority for the region, regulates solid waste facilities and disposal sites within the region and the disposal of solid waste generated in the region, pursuant to Metro’s constitutional, statutory, and charter authority, consistent with the policies included in the Regional Solid Waste Management Plan, and as set forth in Metro Code Title V; and

WHEREAS, solid waste regulation, disposal, and planning are traditional local government functions within Metro’s authority; and

WHEREAS, Metro owns and operates two transfer stations located in the Metro region, and

WHEREAS, Metro Code Chapter 5.01 requires a legislative grant of authority by Metro, through issuance of a solid waste franchise, before a private transfer station located in the region is allocated solid waste that would otherwise flow to a public transfer station; and

WHEREAS, the Chief Operating Officer has developed options regarding the configuration of the public and private transfer station system in the Metro region; and

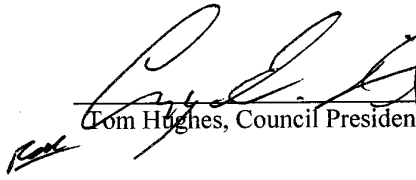
WHEREAS, the Chief Operating Officer recommends, to ensure that the transfer system provides maximum public benefit, that Metro maintain the current configuration of public and private transfer stations and (1) allocate tonnage on a percentage basis to ensure flow to public stations; (2) limit the amount of putrescible solid waste any one private company may transfer; and (3) ensure transparency of rates; and

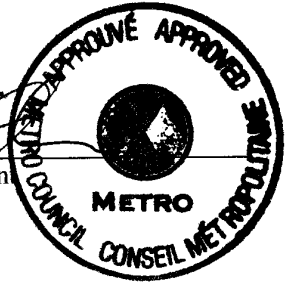
WHEREAS, the Metro Council finds that maintaining two public transfer stations and ensuring flow to those stations results in significant health and environmental public benefits because the public stations provide enhanced services, including longer hours, self-haul capacity, and acceptance of hazardous waste and recyclables; and

WHEREAS, the Metro Council finds that maintaining a consistent flow of solid waste to public transfer stations serves the public benefit of promoting innovative solid waste programs; for example, the Council has identified the recovery of food scraps as a priority policy and flow of solid waste to public transfer stations is key to the success of that policy; now therefore

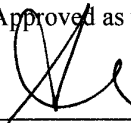
BE IT RESOLVED that the Metro Council (1) adopts the Transfer System Configuration Policy, attached as Exhibit A; (2) directs the Chief Operating Officer to proceed with implementation of the Policy.

ADOPTED by the Metro Council this 21st day of July 2016.


Tom Hughes, Council President



Approved as to Form:



Alison R. Kean, Metro Attorney

Exhibit A:

Transfer System Configuration Policy:

1. **Tonnage Allocation based on Percentage.** Allocating putrescible waste tons on a percentage basis with a minimum percentage reserved for the public facilities will ensure that rising regional tonnage will increase all allocations proportionally. Conversely, if, for example, food waste collection or economic recession reduces wet waste regionally, then flow to **all** transfer stations will be reduced proportionally, and not just reduce flow to the public stations.
2. **Tonnage Allocation Appeals Process.** Emphasize predictability and transparency so that all operators can plan accordingly. Minimize ongoing tonnage allocation “negotiations” and try to prevent continually re-adjusting allocations. However, the collection and transfer system is dynamic, and it may be unreasonable to keep allocations fixed indefinitely. At a minimum, staff should seek to develop a consistent process and framework for adjusting allocations that could be adopted by Council as a matter of policy and the details implemented by the COO.
3. **Flexibility to Pursue Additional or New Services, or Technology.** Ensure that any changes to the transfer system can accommodate future decisions related to important new services with public benefits, such as organics recovery, or pursuing new technology, such as advanced materials recovery (AMR), or waste-to-energy.
4. **Small Business Opportunities.** Support smaller locally-based businesses remaining in the collection system and other small businesses that use the system.
5. **Promote Efficient Off-Route Travel.** For reduction of greenhouse gas and other public benefits, encourage haulers to minimize off-route travel (i.e., trip between collection route and transfer station or base yard).
6. **Improve Transparency about the Cost of Services Provided at the Public Stations.** Provide a separate accounting of the cost of various discrete public services provided at the public stations i.e., separate out the cost of services such as wet waste consolidation and transfer, dry waste recovery, self-haul, and organics consolidation and transfer to provide a more detailed and direct comparison of the cost of services offered at private stations.
7. **Rate Transparency at Private Stations.** Local government staff have stated they would benefit from additional transfer station rate transparency in their collection franchise rate review processes. A number of approaches are described in the implementation details.
8. **Wet Waste Generated in Region Should Utilize the Regional Transfer System.** In order to minimize inefficiencies, all landfill-bound waste should utilize the regions transfer system, or some alternative disposal system (Waste to Energy, Alternative Materials Recovery, etc.).



Date: June 29, 2016

To: Shirley Craddick, Metro Councilor

From: Steve Fancher, Department of Environmental Services Director

Subject: Metro Region Waste Transfer System Configuration Recommendations

The City of Gresham would like to offer a letter of support for Metro Council to consider new options for improving the transparency and regulation of tip fees at private wet waste transfer stations. Improving rate transparency and engaging in rate regulation would help support a level playing field for residential and commercial rates in the City of Gresham.

Regulating transfer tip fees at private facilities would help Gresham promote efficient off-route travel which supports a reduction in fuel use, costs, greenhouse gas emissions, and other public benefits. Most Gresham licensed haulers currently minimize off-route time by taking materials to the Troutdale Transfer Station and pay higher fees. Starting July 1st, 2016, the tip fee at the Troutdale Transfer Station will be \$104.00/ton with a \$20 transaction fee. Gresham residents and businesses are paying \$7.75 more per ton and \$18.00 more per transaction fee compared to Metro Transfer Stations and other private facilities.

Due to this higher tip fee that the City cannot currently control, we are more susceptible to customer rate increases. Licensed haulers are willing to pay the fee given they have a set rate of return and the increased costs may be passed through to the customer. Diverting Gresham solid waste from Troutdale to Metro or Columbia Resource in West Vancouver increases miles traveled, greenhouse gas emissions, truck labor and traffic congestion. The current pricing scheme at Troutdale provides one hauler the economic incentive to drive to West Vancouver for disposal. If the tip fee was comparable to Metro, this hauler would save on average \$35,000 per year for the rate payers by delivering to Troutdale instead of West Vancouver.

It is our understanding that Metro staff have identified three options for Council consideration that could help to address this issue. The City supports all of them to help protect the financial health of our citizens and businesses.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "S. Fancher", written over a horizontal line.

Steve Fancher
City of Gresham, Director of Environmental Services
steve.fancher@greshamoregon.gov
503-618-2583



WASHINGTON COUNTY
OREGON

EXHIBIT C to Resolution 21-5176

July 13, 2016

Council President Tom Hughes
Metro
600 NE Grand
Portland OR 97232

Dear President Hughes,

Washington County offers its support to Metro Council to consider new options to improve the transparency of how disposal fees at public and private transfer stations are calculated. Our collection rate-setting process would benefit from having a clearer picture of why, for example, the Forest Gove transfer station rates have increased so dramatically in the last few years compared to the other public and private stations. There appears to be little justification or oversight of these rate increases.

With little to no cost details to support transfer station rate increases, our residential and business rate payers are subject to an ever-increasing collection expense burden. Our waste haulers have little realistic alternative to using the Forest Grove transfer station. And because costs associated with waste transfer are treated as a pass-through, the added costs are simply passed onto our rate payers. If our waste haulers were to take their loads to a more distant facility, it would result in lost efficiency, more fuel use, more greenhouse gas emissions and other impacts.

I understand that Metro Council will soon consider new options provided by Metro staff aimed at increasing rate/tip fee transparency at the transfer stations. I support these options to bring increased transparency to this process in order to protect our citizens and businesses from unreasonable collection rate increases.

Sincerely,

A handwritten signature in blue ink that reads "Andy Duyck".

Andy Duyck
Chairman, Washington County Board of Commissioners

Cc: Metro Councilors
Washington County Board of Commissioners
County Administrator Bob Davis
Metro CEO Martha Bennett



May 8, 2017

EXHIBIT D to Resolution 21-5176

Martha Bennett
Chief Operating Officer
Metro
600 NE Grand Ave
Portland, Oregon 97232

Dear Martha:

We received the March 23 letter from Paul Slyman regarding the efforts of Metro to “improve rate transparency at all transfer stations” that receive waste generated within the region. As you may know, since 2010 we have seen a dramatic and unabated increase in rates charged by Waste Management, owner and operator of both the Forest Grove Transfer Station (FGTS), which receives landfill-bound waste from Hillsboro, and the Hillsboro Landfill, which receives a sizable portion of the yard debris collected from Hillsboro homes and businesses. We remain very concerned about the lack of transparency to justify rate increases that have far exceeded those at the public facilities since 2010. Metro has authority to require rate transparency. We have noticed Metro moving quickly to exercise its authority in other areas, such as the action to redirect waste from the Riverbend Landfill, and felt that there was limited notice or engagement with local governments in doing so. Comparatively, there has been only very small and incremental action related to fee increases at the private facilities.

Year	Tip Fee Cost Per Ton – FGTS	Transaction Fee Cost Per Load ¹ – FGTS	Total Fees Per Ton – FGTS	Tip Fee Cost Per Ton – Metro TS's	Transaction Fee Cost Per Load ² – Metro TS's	Total Fees Per Ton – Metro TS's	Total Fees Difference – FGTS vs Metro TS's
2017	\$99.50	\$22.00	\$102.64	\$94.95	\$2.00	\$95.24	+\$7.40
2016	\$99.50	\$20.00	\$102.36	\$96.25	\$2.00	\$96.54	+\$5.82
2015	\$98.00	\$16.00	\$100.29	\$94.98	\$3.00	\$95.41	+\$4.88
2014	\$94.85	\$14.00	\$96.85	\$93.33	\$3.00	\$93.76	+\$3.09
2013	\$95.73	\$14.00	\$97.73	\$94.33	\$3.00	\$94.76	+\$2.97
2012	\$93.53	\$10.00	\$94.96	\$93.84	\$3.00	\$94.27	+\$0.69
2011	\$89.43	\$10.00	\$90.86	\$89.53	\$3.00	\$89.96	+\$0.90
2010	\$85.75	\$3.00	\$86.18	\$85.85	\$3.00	\$86.28	-\$0.10
2009	\$80.75	\$3.00	\$81.18	\$80.78	\$3.00	\$81.21	-\$0.03
2008	\$75.75	\$3.00	\$76.18	\$75.75	\$3.00	\$76.18	\$0

As the rate history table shows, there is now a difference between Forest Grove Transfer Station and the Metro facilities amounting to \$7.40 per ton, and we are not confident that the increases will stop. When considering that over 70,000 tons from Hillsboro go through the Forest Grove facility, and over 123,000 tons from west side jurisdictions, that cost delta is substantial.

¹ This amount is factored by load, with the average load at seven tons, so the additional cost is factored at \$3.14 per ton.

² Similar to Forest Grove, the transaction fee has been estimated per ton based on average load size.

Mr. Slyman states that the hope is that greater transparency will help local governments set their local rates. We have no transparency at present with the Forest Grove facility, and we can set rates without it. What we do need is transparency to justify their rate increases in order to protect our constituents from unabated increases. Waste Management, up until 2010, was content to fully describe the justification for increases as detailed by the Metro rate actions – although there was no direct link between the rates at the Metro and private facilities. Today, that justification is gone – replaced by one that reads “This increase is necessary to cover the additional operational costs and changes in fees and taxes.” In fact, in the 2016 rate increase letter for the Hillsboro Landfill, they cited their justification as an increase “...driven by the costs associated with Metro taxes and the fees associated with DEQ.” Why, then, are the rates charged by Waste Management at the Hillsboro Landfill over 7% higher than those charged by Metro? It does not make sense or pass the sniff test. Further, we have not seen any letter regarding the recent major increase in disposal costs for yard debris at the Hillsboro Landfill – where the rate is now between \$5.00 and \$16.00 higher than other facilities in our area. Has there been an attempt to justify that increase? Without being required to do so, it appears the answer is “no”.

What exacerbates our frustration in the lack of action by Metro on this issue is that jurisdictions on the west side do not have a realistic alternative to the Forest Grove Transfer Station. We can explore the diversion of yard debris from the Hillsboro Landfill to other facilities, with some significant logistical and transportation impacts for the affected haulers and our community, but we do not have that luxury with landfill-bound waste. We are entirely at the behest of the private facility that is not only becoming prohibitively expensive, but it also is not well situated for the long term and does not provide other value-add services that customers of the Metro transfer stations enjoy.

We urge you to use your authority to require ALL facilities receiving waste from the region to provide at least the established level of rate setting detail that Mr. Slyman included in his letter for the Metro facilities. We also ask that you work with us to determine the true, long-term solution for waste transfer for the hundreds of thousands of west side customers, to ensure the long-term equity of service for the entirety of the region. We stand ready to work with you to achieve those ends.

Sincerely,



Michael Brown
City Manager

cc: Hillsboro City Council
Rob Dixon, Assistant City Manager
Peter Brandom, Senior Project Manager



August 23, 2019

Council President Lynn Peterson
Councilor Juan Carlos Gonzalez

Metro
600 NE Grand Ave
Portland, Oregon 97232

Dear President Peterson and Councilor Gonzalez:

We appreciate Metro's efforts to better understand the components involved in rate setting at the private solid waste transfer stations. The February 1, 2019 letter from Metro staff summarizing the step process to understand private facility rates, and the accompanying report which estimates the cost drivers relative to fees charged at the private stations substantiates our belief that the rates charged at the private facilities are not justified. We strongly believe that Metro should move to 'option 3,' a full review of rates and costs at the private transfer stations. We believe this is imperative to bring transparency and equity into the cost profile of the regional solid waste system. There has been inequity in those rates since 2011, and it has steadily increased since then. We also see this in rates charged for self-hauling of waste, which has a direct impact on our lower income community members.

Thank you for taking these important steps on behalf of our communities.

Sincerely,

Handwritten signature of Steve Callaway in black ink.

Steve Callaway
Mayor of Hillsboro

Handwritten signature of Jeffrey C. Dalin in black ink.

Jeffrey Dalin
Mayor of Cornelius

Handwritten signature of Frank Bubenik in blue ink.

Frank Bubenik
Mayor of Tualatin

Handwritten signature of Keith Mays in black ink.

Keith Mays
Mayor of Sherwood

Handwritten signature of Terry Lenahan in black ink.

Terry Lenahan
Mayor of North Plains

Page 2

President Peterson and Councilor Gonzalez

August 23, 2019

cc: Hillsboro City Council
Metro Council
Paul Slyman, Metro
Roy Brower, Metro
Robby Hammond, City Manager
Andy Smith, Government Affairs Manager
Peter Brandom, Senior Project Manager

Draft (For Analysis Only)

Description	Wet Mixed Solid Waste (refuse)	Dry Mixed Solid Waste (refuse)	MSW Blended Rate	Clean Wood	Yard Debris	Residential Organics	Commercial Organics
Tons:	337,477	219,303	556,780	1,844	13,389	36,471	16,585
Transaction Fee (Per Load)							
Staffed Scalehouse Equivalent	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00
Automated Scalehouse Equivalent	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00
Tip Fee							
Tip Fee Components:							
Tonnage Charge Equivalent	\$ 56.83	\$ 74.62	\$ 63.84	\$ 64.32	\$ 55.06	\$ 77.09	\$ 79.10
<i>Covers the cost of Metro's disposal and recovery operations.</i>							
Tonnage Charge Components (Per Ton):							
Fuels - Waste Transport	\$4.97	\$4.87	\$4.93	\$0.00	\$0.00	\$0.00	\$0.00
Disposal Fees - Landfill	\$18.21	\$17.85	\$18.07	\$0.00	\$0.00	\$0.00	\$0.00
Waste Transport	\$20.10	\$19.70	\$19.94	\$0.00	\$0.00	\$0.00	\$0.00
Transfer Station Operations	\$9.64	\$28.21	\$16.96	\$64.87	\$56.23	\$15.12	\$10.87
Organics Processing Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$62.82	\$69.44
SW Operating & Maintenance	\$3.91	\$3.98	\$3.94	-\$0.55	-\$1.16	-\$0.85	-\$1.21
Fees and Taxes							
<i>Add-on and pass-through charges.</i>							
Regional System Fee Equivalent	\$ 20.74	\$ 20.74	\$ 20.74	\$ -	\$ -	\$ -	\$ -
<i>Covers costs of regional solid waste programs and services.</i>							
Metro Excise Tax Equivalent	\$ 11.57	\$ 11.57	\$ 11.57	\$ -	\$ -	\$ -	\$ -
<i>Contributes toward Metro general government revenue.</i>							
DEQ Fees Equivalent*	\$ 1.89	\$ 1.89	\$ 1.89	\$ -	\$ -	\$ -	\$ -
<i>Fees collected on behalf of DEQ.</i>							
Enhancement Fee Equivalent	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00	\$ 1.00
<i>Fee collected on behalf of host communities.</i>							
Total Tip Fee Equivalent (Per Ton):	\$ 92.03	\$ 109.82	\$ 99.04	\$ 65.32	\$ 56.06	\$ 78.09	\$ 80.10
Adopted Tip Fee (Per Ton):	\$ 97.45	\$ 65.23	\$ 56.00	\$ 77.99	\$ 66.23		
Adopted Transaction Fee (Per Staffed Load):	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00		
Adopted Transaction Fee (Per Auto Load):	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00	\$ 2.00		

*DEQ Fee will increase from \$1.82 per ton to \$1.89 per ton on April 1, 2019

Explanation and Notes on the Table

Transaction Fees: Users of staffed scales pay the higher fee; users of automated scales pay the lower fee.

Disposal and recovery operations: Include transfer station operations, recovery, oversight, management, maintenance, and capital costs; and the cost of transport, organics processing, and waste disposal.

Regional programs and services: Revenue from the Regional System Fee is dedicated to Metro's regional solid waste programs and services: household hazardous waste, latex paint recovery, waste reduction planning and programs (including waste reduction education), St. Johns Landfill post-closure activities, solid waste facility regulation, and illegal dumpsite monitoring and cleanup. The Regional System Fee is charged on solid waste generated in the region and ultimately disposed. The fee is collected at all landfills and mass burners serving the region and at the Metro stations. Revenue from this fee does not cover any of Metro's direct cost for disposal and processing operations.

Metro general government. The excise tax is a source of revenue for Metro's general government activities including the Metro Council. Excise taxes are levied on Metro's enterprise activities (including the Oregon Convention Center, Expo, Metro parks, and other activities), and solid waste disposal. As with the Regional System Fee, the solid waste excise tax is charged on solid waste generated in the region and ultimately disposed. It is collected at the same disposal sites as the Regional System Fee.

IN CONSIDERATION OF RESOLUTION NO. 21-5176 FOR THE PURPOSE OF CLARIFYING LANGUAGE IN THE 2016 TRANSFER SYSTEM CONFIGURATION POLICY ADOPTED BY RESOLUTION NO. 16-4716.

Date: April 21, 2021

Prepared by: Shane Abma
(503) 797-1533
Shane.Abma@oregonmetro.gov

Department: Office of Metro Attorney

Presenter(s): Shane Abma

Meeting date: May 6, 2021

Length: 30 minutes

ISSUE STATEMENT

Metro does not provide discrete putrescible (“wet”) and non-putrescible (“dry”) waste disposal services at the public transfer stations. However, some have interpreted the 2016 Transfer System Configuration Policy to reflect that Metro transfer stations provide two discrete services, one for wet and another for dry waste disposal services. Therefore, Metro should clarify certain rate transparency language in the 2016 Transfer System Configuration Policy to make clear its purpose and meaning.

ACTION REQUESTED

Adopt Resolution No. 21-5176.

IDENTIFIED POLICY OUTCOMES

Reduce potential confusion regarding the services that Metro provides at its public transfers stations and how those services differ from services provided at private transfer stations. Specifically, clarify that Metro does not provide discrete putrescible and non-putrescible waste disposal services, unlike some private transfer stations.

POLICY QUESTION

Should the Metro Council adopt Resolution 21-5176 to clarify the type of disposal services provided at Metro’s public transfer stations?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to clarify language in the 2016 Transfer System Configuration Policy.

2. Do not approve the resolution as proposed and keep the current language in the Transfer System Configuration Policy without any further clarification.

STAFF RECOMMENDATIONS

OMA recommends approval of Resolution No. 21-5176 to clarify the rate transparency language in the 2016 Transfer System Configuration Policy and further make clear that Metro provides solid waste disposal services at its public transfer stations rather than discrete putrescible and non-putrescible disposal services.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The primary context is the 2016 Transfer System Configuration Policy, and requests by local governments, examples of which are attached as Exhibits B-E of the resolution. .

KNOWN OPPOSITION

There is no known opposition, but, as noted below, given the nature of this action, there has also been no formal public outreach. It is possible that there could be opposition from those individuals and entities who have asserted in public documents and court filings that Metro provides discrete putrescible and non-putrescible disposal services.

PUBLIC OUTREACH

There has been no formal public outreach regarding this resolution because it only clarifies language in the existing 2016 Transfer System Configuration Policy.

LEGAL ANTECEDENTS

Metro Charter, Title V of the Metro Code and ORS Chapter 268.

ANTICIPATED EFFECTS

Staff does not anticipate any particular effect as a result of adopting this resolution, other than a potential reduced likelihood that Metro will face future litigation regarding the disposal services provided at Metro's public transfer stations.

BUDGET IMPACTS

None.

BACKGROUND

In 2015 and 2016, Metro staff convened a task force of solid waste industry stakeholders, and it worked with the Solid Waste Alternatives Advisory Committee (SWAAC) and local

government solid waste representatives to discuss the region's solid waste transfer system and ensure that it is managed to best serve the public's interest. This task force included representatives from both private transfer stations and material recovery facilities.

Based on input received from the task force, SWAAC, and local governments, Metro staff drafted a "Transfer System Configuration Policy" for the Council's consideration. The draft policy recommended a set of proposed changes related to the solid waste transfer system, including: enhanced rate transparency at the public and private transfer stations, the need for a putrescible waste tonnage allocation methodology, the need to increase opportunities for small businesses in the region's solid waste system, and the need to reduce greenhouse gases generated from transporting solid waste. The Council adopted the Transfer System Configuration Policy in July 2016. (Exhibit A to the resolution).

Many local governments consider rate transparency at both the public¹ and private transfer stations to be an essential aspect of the system in order to protect the public's interest. Prior to the Metro Council adopting the Transfer System Configuration Policy, several local governments in the Metro region had publicly requested that Metro take action to improve rate transparency at private transfer stations (and they continued to do so following policy adoption, just as they continue to do so today). Exhibits B-E to the resolution provide some examples of these requests. Specifically, local governments wanted to better understand the justification for the private transfer station costs because those costs affect the residential garbage rates imposed by the local governments on their residents.

Local governments were noticing what they considered to be a concerning rise in the disposal rates at some private transfer stations, but they lacked the resources and regulatory authority to further pursue the underlying basis for those costs. In order to assist local governments in this area, Section 6 of the policy stated that Metro would "[p]rovide a separate accounting of the cost of various discrete public services provided at the public stations i.e., separate out the cost of services such as wet waste consolidation and transfer, dry waste recovery, self-haul, and organics consolidation and transfer to provide a more detailed and direct comparison of the cost of services offered at private stations."²

For purposes of this clarifying resolution, it is important to note that Metro *does not* provide "discrete" (separate) wet and dry waste disposal services. However, some private transfer stations do. Thus, in order for Metro's public transfer station cost estimates to

¹ Rate transparency at Metro's public transfer stations is provided through the annual rate setting process.

² At the time of the policy's adoption, Metro was considering three options to improve transparency: (1) estimate Metro's public transfer station costs as though Metro provided discrete wet and dry waste disposal services, (2) estimate private transfer stations' costs using publicly available information, and (3) conduct an audit of private transfer station costs. Metro ultimately completed options 1 and 2.

have any value to the local governments, Metro needed to estimate its costs *as though it did* provide discrete wet and dry waste disposal services. Unfortunately, the policy language in Section 6 stating that Metro would “provide a separate accounting of the costs of various *discrete public services such as wet waste consolidation and transfer, dry waste recovery*” could be confusing or misinterpreted, especially when taken out of context. The remainder of the sentence in Section 6 adds the necessary context: Metro is estimating these discrete costs “to provide a more detailed *and direct comparison* of the costs of services *offered at private stations.*” In other words, Metro would estimate its public transfer station costs as though it provided discrete wet and dry waste disposal services—as some private stations do—in order to more “directly compare” the public station service costs to those services “offered at private transfer stations.” Metro then provided these estimated public transfer station costs for fiscal years 2017-2020, an example of which is attached as Exhibit F to the resolution (“Unit Costs at Metro Transfer Stations”).

In 2020, two Clackamas County residents filed a Declaratory Judgment action against Metro, alleging that Metro had “expressly recognized” that it provided “discrete” wet and dry waste disposal services. (*Reilly and Hoover v. Metro*, Clackamas County Circuit Court Case No. 20CV08093). Plaintiffs based this allegation in part on the language found in Section 6 of the 2016 Transfer System Configuration Policy. Plaintiffs then used the estimated public transfer station costs that Metro had created to assist local governments (the “Unit Costs”) to further allege that, based on those estimates, Metro was also illegally charging more for “wet waste” disposal than the cost of that service. Plaintiffs finally alleged that this practice violated Metro Charter Section 15’s prohibition against Metro charging more for a service than the cost to provide that service. Plaintiffs made these allegations despite the fact that Metro does not, in fact, provide discrete “wet waste” disposal services and, consequently, Metro cannot overcharge for a service that it does not provide.

Although the court ultimately dismissed the case with prejudice, the case identified potential ambiguity in the policy language in Section 6, particularly if read in isolation and out of context. Therefore, OMA recommends that Council clarify the purpose and intent of Section 6, and also reaffirm that Metro does not provide discrete wet and dry waste disposal services. By making the purpose and intent clear, OMA hopes to reduce the likelihood of future litigation on this issue.

ATTACHMENTS

None.