



**METRO**

DATE: June 9, 1994  
MEETING: Metro Council  
DAY: Thursday  
TIME: 4:00 p.m.  
PLACE: Metro Council Chamber

Approx.  
Time\*

Presented  
By

4:00 CALL TO ORDER/ROLL CALL

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS**

4:05  
(1 hr.) **3. NON-REFERRED RESOLUTIONS**

**3.1 Consideration of Resolution No. 94-1972, For the Purpose of Ratifying and Approving Contract Amendment No. 4 Between Metro and Oregon Waste Systems, Inc. and Directing Legal Counsel to Issue an Opinion Concerning the Allocation of Power Between the Council and the Executive Officer; and**

Devlin

**Resolution No. 94-1973, For the Purpose of Obtaining a Judicial Declaration of the Validity of Amendment No. 4 to the Contract Between Oregon Waste Systems, Inc. and Metro**

Van Bergen

**4. EXECUTIVE OFFICER COMMUNICATIONS**

5:05  
(20 min.) **4.1 Presentation by GTE of Sponsorship Check for Metro Washington Park Zoo Rhythm and Zoo Concert Series**

5:25  
(20 min.) **4.2 Briefing on Contribution to the Oregon Convention Center**

5:45  
(5 min.) **5. CONSENT AGENDA (Action Requested: Motion to Adopt the Consent Agenda)**

**5.1 Metro Council Workshop Minutes of May 25 and Metro Council Minutes of May 26, 1994**

For assistance/services per the Americans with Disabilities Act (ADA), dial TDD 797-1804 or 797-1534 (Clerk)

\* Times are approximate; items may not be considered in the exact order listed.

**METRO COUNCIL AGENDA**

June 9, 1994

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5:50  
(5 min.)

**6. ORDINANCES, FIRST READINGS**

**6.1 Ordinance No. 94-555, An Ordinance Readopting Metro Code 2.06 (Investment Policy); and Declaring an Emergency (Action Requested: Refer to the Finance Committee)**

**6.2 Ordinance No. 94-556, An Ordinance Relating to Taxation, Establishing a Construction Excise Tax Reducing the Metro Excise Tax, Reducing Solid Waste Rates, and Refunding Payments to Local Governments (Action Requested: Refer to the Finance Committee)**

**7. RESOLUTIONS**

**REFERRED FROM THE PLANNING COMMITTEE**

5:55  
(10 min.)

**7.1 Resolution No. 94-1968, For the Purpose of Approving an Intergovernmental Agreement between Metro and the Oregon Department of Environmental Quality to Complete the Transportation and Land Use Elements of the Portland Ozone Maintenance Plan (Action Requested: Motion to Adopt the Resolution)**

Gardner

6:05  
(10 min.)

**7.2 Resolution No. 94-1967, To Authorize General Counsel Appearance in Beaverton/Portland Urban Service Boundary Cases (Action Requested: Motion To Adopt the Resolution)**

Moore

6:15  
(10 min.)

**8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS**

6:25

**ADJOURN**

Meeting Date: June 9, 1994  
Agenda Item No. 3.1

RESOLUTION NOS. 94-1972 AND 94-1973



## METRO

Date: June 3, 1994  
To: Metro Council  
From: *JW/WR*  
Judy Wyers, Presiding Officer  
Re: Council Consideration of Non-Referred Resolutions on Contracting Authority and Amendment No. 4 to the Oregon Waste Systems Contract

Please find attached copies of two resolutions introduced as a result of the special Council meeting held on May 31, 1994. These resolutions will be placed on the agenda as a single item. The following procedure will be used for consideration of the resolutions:

1. A motion to suspend the rules to consider the non-referred resolutions will be entertained and acted upon;
2. Each proposer of a resolution will briefly explain the purpose and effect of the resolution;
3. Special outside legal counsel will provide information on the basis of Council consideration of the resolutions;
4. A public hearing will be held on the agenda item. Interested persons and members of the public may testify on either or both resolutions;
5. The Council will consider and decide on either or both resolutions.

This procedure should enable the Council to consider all aspects of this important matter when it makes its decision. If you have any questions about the meeting, please let me know.

**BEFORE THE METRO COUNCIL**

<b>FOR THE PURPOSE OF RATIFYING AND</b>	)	
<b>APPROVING CONTRACT AMENDMENT NO. 4</b>	)	<b>RESOLUTION NO. 94-1972</b>
<b>BETWEEN METRO AND OREGON WASTE</b>	)	
<b>SYSTEMS, INC., AND DIRECTING LEGAL</b>	)	<b>Introduced by Councilor Devlin</b>
<b>COUNSEL TO ISSUE AN OPINION</b>	)	
<b>CONCERNING THE ALLOCATION OF POWER</b>	)	
<b>BETWEEN THE COUNCIL AND THE</b>	)	
<b>EXECUTIVE OFFICER</b>	)	

WHEREAS, the voters of the Metropolitan Service District (Metro) adopted a charter on November 3, 1992 which became effective on January 1, 1993 and which established the form of government for Metro; and

WHEREAS, under the Metro Charter, the Council retains all powers of the District that are not expressly assigned elsewhere and, under the Metro Charter, the primary duty of the Executive is to enforce Metro ordinances and otherwise to execute the policies of the Council; and

WHEREAS, the Metro Code expressly provides that amendments to Metro's agreement with designated facilities, including Oregon Waste Systems, Inc., shall be approved by the Council prior to execution by the Executive; and

WHEREAS, the Metro Executive requested a recommendation from the Council on Contract Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc., at the January 4, 1994 Council Solid Waste Committee meeting and the Executive Officer prepared and introduced Resolution No. 94-1904 requesting authority from the Council to execute Contract Amendment No. 4 at the March 1, 1994 Council Solid Waste Committee meeting; and

WHEREAS, the Metro Executive executed Contract Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. on March 16, 1994 without prior approval of the Metro Council and therefore Amendment No. 4 is not valid and not binding on Metro; and

WHEREAS, the Metro Council approved Resolution No. 94-1939 on March 24, 1994 authorizing the General Counsel to employ outside legal counsel to advise the Council regarding its authority under the 1992 Metro Charter to control the approval of contracts and contract amendments; and

WHEREAS, the Metro Council held a special meeting on May 31, 1994, at which time it went into Executive Session to confer with outside legal counsel concerning its authority to approve and control contract amendments; and

WHEREAS, it is in the best interests of Metro and the Citizens of the District to ratify and approve Contract Amendment No. 4 and obtain a formal legal opinion of outside legal counsel concerning the allocation of power between the Council and the Executive Officer pursuant to the 1992 Charter; now therefore,

BE IT RESOLVED,

1. That the Metro Council ratifies and approves Contract Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. executed by the Metro Executive Officer on March 16, 1994; and
2. That the Metro Council direct special legal counsel to prepare and issue a formal legal opinion concerning the allocation of power between the Council and the Executive Officer pursuant to the 1992 Metro Charter.

Adopted by the Metro Council this \_\_\_\_\_ day of June, 1994

\_\_\_\_\_  
Judy Wyers, Presiding Officer

**BEFORE THE METRO COUNCIL**

FOR THE PURPOSE OF OBTAINING A )  
JUDICIAL DECLARATION OF THE VALIDITY ) RESOLUTION NO. 94-1973  
OF AMENDMENT NO. 4 TO THE CONTRACT )  
BETWEEN OREGON WASTE SYSTEMS, INC. ) Introduced by Councilor Van Bergen  
AND METRO )

WHEREAS, the voters of the Metropolitan Service District (Metro) adopted a charter on November 3, 1992 which became effective on January 1, 1993 and which established the form of government for Metro; and

WHEREAS, under the Metro Charter, the Council retains all powers of the District that are not expressly assigned elsewhere and, under the Metro Charter, the primary duty of the Executive is to enforce Metro ordinances and otherwise to execute the policies of the Council; and

WHEREAS, the Metro Code expressly provides that amendments to Metro's agreement with designated facilities, including Oregon Waste Systems, Inc., shall be approved by the Council prior to execution by the Executive; and

WHEREAS, the Metro Executive requested a recommendation from the Council on Contract Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc., at the January 4, 1994 Council Solid Waste Committee meeting and the Executive Officer prepared and introduced Resolution No. 94-1904 requesting authority from the Council to execute Contract Amendment No. 4 at the March 1, 1994 Council Solid Waste Committee meeting; and

WHEREAS, the Metro Executive executed Contract Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. on March 16, 1994 without prior approval of the Metro Council; and

WHEREAS, the Metro Council approved Resolution No. 94-1939 on March 24, 1994 authorizing the General Counsel to employ outside legal counsel to advise the Council regarding its authority under the 1992 Metro Charter to control the approval of contracts and contract amendments; and

WHEREAS, there is a dispute concerning the validity of Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. in that the Council asserts that the amendment is not valid and not binding on Metro without its approval or ratification by the Metro Council; and Oregon Waste Systems, Inc., asserts the amendment is valid and binding on Metro without Council approval or ratification; and

WHEREAS, it is in the best interests of Metro and the Citizens of the District to obtain a judicial determination of the validity of Amendment No. 4 to the contract between Oregon Waste Systems, Inc. and Metro; now therefore,

BE IT RESOLVED,

1. That the Metro Council directs special legal counsel to initiate litigation to obtain a judicial declaration as to the validity of Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc. executed by the Metro Executive Officer on March 16, 1994.

Adopted by the Metro Council this \_\_\_\_\_ day of June, 1994

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Judy Wyers, Presiding Officer



Meeting Date: June 9, 1994  
Agenda Item No. 5.1

MINUTES

MINUTES OF THE METRO COUNCIL WORKSHOP  
ON  
LONG RANGE FUNDING ISSUES

May 25, 1994

Council Chamber Annex

Councilors Present: Judy Wyers (Presiding Officer), Rod Monroe (Chair), Richard Devlin, Jim Gardner, Mike Gates, Ruth McFarland, Susan McLain, Terry Moore, George Van Bergen, Ed Washington

Councilors Absent: Roger Buchanan, Sandi Hansen, Jon Kvistad

Others Present: Rena Cusma (Executive Officer), Donald E. Carlson, Dan Cooper, Jennifer Sims, Craig Prosser

1. Call to Order and Roll Call

Presiding Officer Wyers called the meeting to order at 4:00 p.m.

2. Introduction

Councilor Monroe chaired the meeting and said financial needs of the agency were to be the subject of discussion. Councilors Van Bergen and McFarland commented regarding their viewpoints pertaining to funding needs. Councilor McFarland clarified she held the viewpoint that the funding for Planning should be placed on the backs of the region's garbage rate payers.

3. Presentation / Overview of Upcoming Financial Projects

- Review Briefing Book Materials
- Major Issues
- Project Timelines

4. Discuss Metro Funding Priorities

5. Discuss Funding Action Plan / Strategies

Jennifer Sims, Director of Finance and Management Information, referenced the document distributed for the workshop entitled: "Metro Long Range Funding Need and Projects Workshop." This document has been made part of the permanent meeting record. Ms. Sims directed attention to a display on the wall that presented a chronological timeline necessary for funding planning for upcoming programs. The timeline indicated key dates for filing of necessary ordinances, negotiations, and implementation.

Ms. Sims referenced page 5 of the document concerned with Regional Growth Management Funding, intended to replace local dues, provide Growth Management funding and Greenspaces planning.

Discussion of a possible construction excise tax and/or real estate transfer tax ensued. Chair Monroe commented regarding the work of the Tax Study Committee and the potential impact should the proposed ballot measure commonly known as "Son of Five" find its way on the ballot. The ballot measure would call for fees to be defined as taxes, and for any new tax to be brought before the people for a vote. Chair Monroe said it was his

hope that the revenues would be put in place prior to "Son of Five" being placed on the ballot and prior to this Council's leave-taking from office.

Councilor Moore suggested the possibility existed that people would be more likely to work harder to get "Son of Five" on the ballot if governments imposed taxes just prior to the elections.

Councilor McLain felt clarification was in order regarding possible replacement packages for revenue against the backdrop of the already approved budget. Councilor McFarland noted the majority of the revenue raised from excise tax came from garbage revenues. Councilor Gates commented on the relationship between the tipping fee and garbage rates back to the customers.

Discussion ensued regarding possible setting of a Construction Excise Tax set at .275% to be implemented November 1994 for the purpose of raising \$3 million. Ms. Sims noted it would range at about \$413 on a \$150,000 house, or \$6,875 on a \$2.5 million building.

Discussion ensued regarding the fluctuation of the building cycle and impact on revenue generated by such a tax. Andy Cotugno, Director of Planning, pointed out the wisdom of starting earlier enough on with such a tax to build up a reserve prior to expenditure.

Councilor Van Bergen expressed concern regarding the extent of such a tax and reconciling it with questions regarding building and occupancy permits.

Daniel B. Cooper, General Counsel, agreed investigation of the questions was necessary, and indicated work on such questions was in progress and would continue.

In response to Councilor Gates, Mr. Cooper said Metro was not currently legally able to charge system development charges.

Discussion ensued regarding collection of such a tax, and whether or not it would be amortized within the mortgage loan or would be a closing cost.

Discussion noted consensus that the potential for a real estate transfer tax was not likely.

Chair Monroe pointed out it was his hope to make this tax a dedicated revenue source. He said he intended to take the matter to the Home Builders Assn. for discussion if consensus to proceed was accomplished.

Councilor Van Bergen expressed concern that such a tax would not be equitable. Presiding Officer Wyers noted she believed the likelihood planning for such a tax being referred to the voters was high.

Councilor McFarland suggested the option of such a tax being referred directly to the voters by Metro itself.

Councilor Gates asked regarding the costs of implementation. Ms. Sims outlined the components of cost of implementation and said she did not have a real figure but felt it would not be proportionately extraordinary.

Mr. Cotugno did not feel the decisions made in the budget process could continue again to fund Planning; i.e., 7.5 or 7.5% excise tax and local dues for one more year. Mr. Cotugno felt such replacement packages for revenue sources were necessary. In response to Councilor Moore, Mr. Cotugno said such funding could be used as a basis for local match funding. Mr. Cotugno said approximately 80% of the funding base for Planning was from volatile outside sources and said Metro's core for funding its portion, 20%, was critical.

Councilor Washington emphasized it was necessary for the Council to know just how much money was needed to fund Planning, and said it was the Council's job to go find out that money. Chair Monroe said the amount budgeted FY 1994-95 should be considered a minimal amount.

In response to Councilor Devlin's concerns, Mr. Cooper said a draft ordinance tied the excise tax and the possible defeat of "Son of Measure Five" together.

Chair Monroe asked for consensus regarding introduction of the proposed draft ordinance to be filed with the Clerk of the Council. Further discussion ensued as to whether or not such an ordinance should be introduced.

Chair Monroe called for a recess at 5:51 p.m.

Chair Monroe called the meeting back to order at 6:07 p.m.

Ms. Sims referenced page 7, the General Purpose Income Tax, which would be an income tax surcharge and would replace the 6% excise tax (\$5 million), the Construction Excise Tax (\$3 million).

Mr. Carlson explained the timing process as detailed on the wall display.

Councilor Van Bergen commented the General Purpose Income Tax would be equitable, although he did not support such a tax. Discussion ensued whether such a tax should be considered. The timing would involve the filing of an ordinance in July 1995 to refer the matter to the people for a vote in November, 1995.

Ms. Sims referenced page 13, South-North Light Rail.

Mr. Cotugno discussed the timing and the type of tax proposed; i.e., a local option motor vehicle registration fee of up to \$50 per year regional add-on to vehicle registration fee and the possibility of a constitutional amendment.

Chair Monroe commented regarding the timing of legislative actions to implement such a tax. Councilor Van Bergen recalled prior defeat for such action, and said he felt general obligation bonds would be the only solution. Councilor McFarland agreed, and commented regarding involvement from the State of Washington on the light rail.

Chair Monroe commented the make up the 1995 legislature was still unknown as well as the governor, and felt it was too early to make a decision. Mr. Cotugno noted the time frame for capital was more critical than the time frame for operating expenses. Councilor Moore supported putting forth a referral of a constitutional amendment for a motor vehicle registration fee. Chair Monroe agreed.

Mr. Cotugno discussed the arterial system and funding options including a possible gas tax for urban arterial funding.

Further discussion ensued regarding such a tax as a possible revenue and its impact to the region, local jurisdictions and businesses.

Mr. Cotugno said the state did not support a regional gas tax, and discussed the possibility of an omnibus general obligation bond. He noted support at the state was more in favor of a constitutional amendment for a motor vehicle registration fee than for a gas tax. Mr. Cotugno indicated if the timing was to be for this year, it involved an input period in the month of June, the subject being dealt with in the month of July at JPACT, and filing in August. Some support was indicated for a gas tax.

Ms. Sims referenced page 15, Greenspaces Acquisition. Discussion ensued regarding timing of filing of a resolution.

Discussion centered around the impact of "Son of Five" on funding applications. Councilor McLain advocated a prioritizing of funding options now and a revisiting of the list of priorities in December. Discussion ensued regarding timing and priorities and whether or not Greenspaces and the Zoo measures should be on the ballot at the same time. Chair Monroe pointed out that the results of a recent Hibbits poll showed an omnibus inclusive of both measures would fail.

Discussion moved to the Zoo needs, the Oregon Territory! Exhibit which would involve a new Zoo exhibit and new Zoo entrance. Ms. Sims discussed the funding needs for the Washington Park Parking Lot as well and the impact of "Son of Five" on the parking lot project. Mr. Cooper felt the parking lot fees could conceivably be judged outside the parameters of "Son of Five."

Sherry Sheng, Director of the Metro Zoo, discussed the Oregon Territory! Exhibit and its potential benefits. She noted approximately \$5 million would be funded from the federal government. She said Friends of the Zoo were interested to know the level of Metro's involvement and commitment. She said a campaign for a measure initiative on the November ballot would be appropriate to serve timing needs.

Discussion ensued regarding the impact of such an exhibit as possibly duplicative or overlapping Greenspaces efforts. Councilor McLain discussed the light rail as an experience, as a means to get to the Zoo and a reason to go. Ms. Sheng felt people would ride the light rail to Washington Park to visit the World Forestry Center that was undergoing a \$10 million renovation timed for completion in 1997, the date the light rail station would open.

Charlie Ciecko, Director of Greenspaces, posed the question as to whether or not both matters should be on the ballot at the same time and asked for response.

Chair Monroe pointed out that for the entrance exhibit to be ready in time would have to be on the ballot in May, 1995.

Ms. Sims explained the allocations for the \$4.8 million for the Washington Park Parking Lot, structured by a General Revenue Bond, backed by the parking fees themselves. Chair Monroe emphasized the decision to connect the light rail to the Zoo was significant. Presiding Officer Wyers pointed out no other option was being offered from the Zoo from which to choose. Councilor Washington advocated for getting the issues out to the ballot in order for the public to express their opinion, and felt in this way the Council would be doing its job.

Chair Monroe suggested placing the Greenspaces measure on the ballot first could be beneficial.

Further discussion ensued whether the two measures should be placed on the ballot at the same time.

Ms. Sheng said a November 1995 ballot would result, if approved, following other matters in a one month construction phase, not enough time to accomplish the project.

Pat LaCrosse, MERC General Manager, discussed the Oregon Convention Center Expansion, a second phase of its operations conceived from its inception. He said the expansion would bring the OCC to 250,000 sq. ft., which would enhance its position in the market. He said a six month to one year process by committee would be established to examine the expansion needs. He said the possibility existed to build a 2 level parking lot below the ground that would house 1200 automobiles.

Chair Monroe raised the question of a Convention Center headquarters hotel. Mr. LaCrosse said the nature of the kinds of shows was altered by the level of hotel/motel accommodations available; i.e. more consumer types of shows, which generate less dollars for the local economy, without a headquarters hotel rather than conventions, which generate more dollars for the economy. Further discussion ensued regarding the expansion.

In response to Councilor Devlin, Mr. LaCrosse said little connection with Blazer Arena activity was foreseen, and said the connection with the Coliseum activities was seen as a greater potential.

Presiding Officer Wyers commented on prioritizing. She said she saw Regional Growth in November,

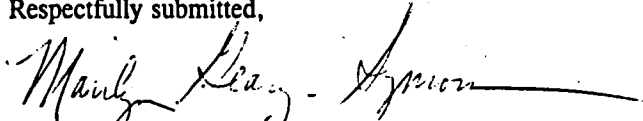
Further discussion on the issue of prioritizing occurred. Mr. Cotugno said he saw Metro's prioritizing of the matters as right on schedule.

Chair Monroe concurred with Councilor McLain regarding a lack of consensus regarding when a changed replacement package should occur, and said he only heard a consensus from the Council that the matter should be introduced for discussion at the Committee level.

Presiding Officer Wyers announced Metro had won an award from the Partners for Livable Communities which was to be presented in Washington, D.C. on June 16, 1994. She indicated she would attend to receive the award.

There being no further business, the meeting adjourned at 8:57 p.m.

Respectfully submitted,

A handwritten signature in cursive script, reading "Marilyn Geary-Symons", followed by a horizontal line extending to the right.

Marilyn Geary-Symons  
Committee Recorder



**METRO**

**DATE:** June 3, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

**FROM:** Paulette Allen, Clerk of the Council

**RE:** AGENDA ITEM NO. 5.1; MAY 26, 1994 COUNCIL MINUTES

The minutes will be provided in advance to Councilors and available at the Council meeting on June 9, 1994.

Meeting Date: June 9, 1994  
Agenda Item No. 6.1

**ORDINANCE NO. 94-555**



## STAFF REPORT

### CONSIDERATION OF ORDINANCE NO. 94-555 CONFIRMING THE ANNUAL READOPTION OF METRO CODE CHAPTER 2.06 (INVESTMENT POLICY)

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Date: May 31, 1994

Presented by: Howard Hansen

## FACTUAL BACKGROUND AND ANALYSIS

Metro Code, Section 2.06, contains the investment policy which applies to all cash-related assets held directly by Metro. The major objectives of the policy are safety, liquidity, yield, and legality, with safety of capital and availability of funds as the overriding objectives.

Section 2.06.160 of the Code provides that the policy be reviewed and readopted annually by the Metro Council.

The Executive Officer is the Investment Officer, who designates staff to manage the day-to-day operations of the portfolio.

An Investment Advisory Board (IAB) is recommended by the Investment Officer for confirmation by the Council. They meet at least quarterly to serve as a forum for discussion and act in an advisory capacity.

The policy was last readopted June 10, 1993. Since that date, the policy was amended on April 14, 1994 by Ordinance 94-538 to increase the membership of the IAB from three to five.

Operations since that time have followed policy with quarterly reports made to, and discussions held with, the IAB. Copies of the quarterly report have been provided to the Executive Officer and the Metro Council.

The portfolio has experienced no loss of principal or interest. Performance of the portfolio compared to 90-day Treasury Bills and the Local Government Investment Pool is displayed as Attachment 1.

Based on the evaluation above, review with and recommendation by the Investment Advisory Board, and in consideration of the existing economy, staff recommends readoption of Metro Code 2.06 without further amendment.

## EXECUTIVE OFFICER'S RECOMMENDATION

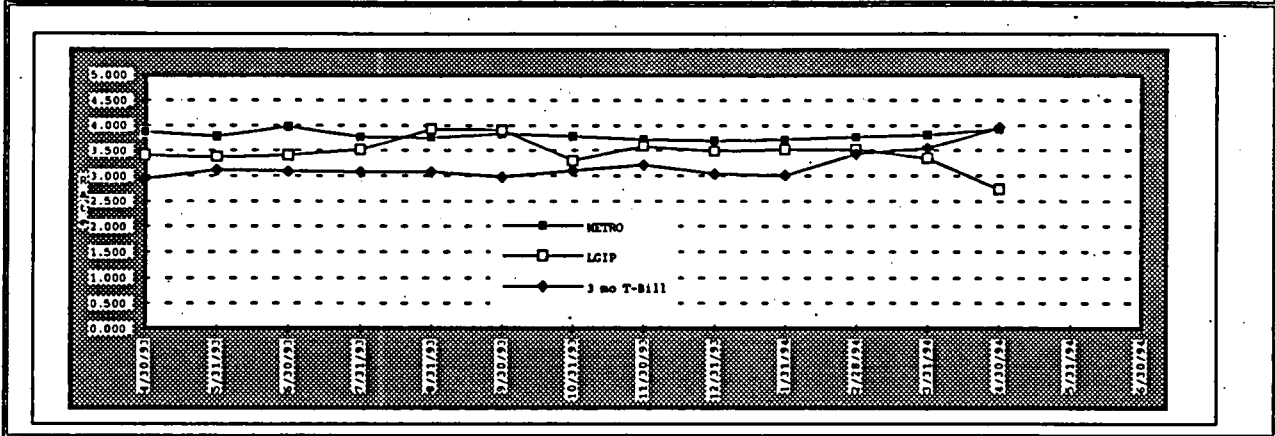
The Executive Officer recommends readoption of Metro Code 2.06 by Ordinance No. 94-555.

## Attachment 1 Performance of the Portfolio

METRO YIELD ANALYSIS (%)															
	4/30/93	5/31/93	6/30/93	7/31/93	8/31/93	9/30/93	10/31/93	11/30/93	12/31/93	1/31/94	2/28/94	3/31/94	4/30/94	5/31/94	6/30/94
METRO	3.871	3.788	3.973	3.767	3.762	3.837	3.781	3.722	3.697	3.717	3.769	3.813	3.923		
LGIP	3.404	3.372	3.409	3.516	3.926	3.903	3.300	3.584	3.483	3.521	3.515	3.344	2.737		
3-mo T-Bill	2.941	3.116	3.085	3.075	3.075	2.972	3.096	3.210	3.034	3.002	3.435	3.549	3.952		

**Footnotes:**

- 1) Yield does not include benefit of trading gains and securities lending for Local Government Investment Pool (LGIP).
- 2) Metro yield is based on portfolio at month end with average rate annualized.
- 3) LGIP yield is the average yield for the entire month. Prior to 7/1/93 it was Act/360. As of 7/1/93 forward, it will be Act/365. This adds @ 50 b.p. to apparent yield.
- 4) 3-mo T-Bill is the yield for the Treasury Bill issue maturing closest to 3 months from month end.



BEFORE THE METRO COUNCIL

AN ORDINANCE READOPTING METRO )  
CODE 2.06 (INVESTMENT POLICY); AND )  
DECLARING AN EMERGENCY )  
)

ORDINANCE NO. 94-555

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Code, Section 2.06, contains the investment policy which applies to all cash-related assets held directly by Metro; and

WHEREAS, The Metro Code, Section 2.06.160 provides that the policy be reviewed and readopted annually; and

WHEREAS, The Investment Advisory Board has received and discussed Quarterly Reports; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Metro Code Chapter 2.06 is readopted.
2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
Judy Wyers, Presiding Officer


ATTEST:

\_\_\_\_\_  
Clerk of the Council

Meeting Date: June 9, 1994  
Agenda Item No. 6.2

ORDINANCE NO. 94-556

**METRO**

**Date:** May 31, 1994  
**To:** Don Carlson, Council Administrator  
**From:** Daniel B. Cooper, General Counsel   
**Regarding:** CONSTRUCTION EXCISE TAX ORDINANCE  
Our file: 2.§7.D

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I am in the process of writing an ordinance at Councilor Monroe's request that would provide for the following:

1. **Adopt a Construction Excise Tax.**

Tax would be imposed on new construction and building of additions or remodeling that results in a change in use or "occupancy."

Tax rate would be set to raise approximately \$3 million per year (a rate of approximately 0.25 percent).

Tax would be collected by local governments pursuant to intergovernmental agreements that provide for cost reimbursement.

Tax would be payable at time of issuance of occupancy/change of occupancy permit. Government and tax exempt nonprofits would be exempt.

2. **Lower the Metro Excise Tax Rate From 7.5 percent to 6 percent.**

3. **Lower Solid Waste Tip Fees from \$75 to \$74 or \$73.**

4. **Rebate pro rata share of (voluntary) local dues payments to local governments based on effective date of ordinance and remaining months of current fiscal year.**

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO TAXATION, )  
ESTABLISHING A CONSTRUCTION EXCISE )  
TAX REDUCING THE METRO EXCISE TAX, )  
REDUCING SOLID WASTE RATES, AND )  
REFUNDING PAYMENTS TO LOCAL )  
GOVERNMENTS )

ORDINANCE NO. 94-556  
Introduced by  
Councilor Rod Monroe

THE METRO COUNCIL HEREBY ORDAINS:

Section 1. Effective November 1, 1994 or the effective date of this Ordinance, whichever is the latest, the following Chapter 7.02 Construction Excise Tax is added to the Metro Code.

CHAPTER 7.02

CONSTRUCTION EXCISE

SECTIONS:

7.02.010	Short title.
7.02.020	Construction.
7.02.030	Definitions.
7.02.040	Exemptions.
7.02.050	Rules and regulations promulgation.
7.02.060	Administration and enforcement authority.
7.02.070	Rate.
7.02.080	Extension.
7.02.090	Failure to pay.
7.02.100	Statement of full cost of improvement required.
7.02.110	Intergovernmental agreements.
7.02.120	Occupation of improvement without payment unlawful.
7.02.130	Enforcement by civil action.
7.02.140	Review.
7.02.150	Failure to pay or apply for exemption -- Penalty.
7.02.160	Violation -- Penalty.

7.02.010 Short title: This chapter shall be known as the "construction excise tax ordinance" and may be so pleaded.

**7.02.020 Construction:** The construction excise tax ordinance and all amendments hereinafter made thereto shall be referred to herein as "this chapter."

**7.02.030 Definitions:** As used in this chapter unless the context requires otherwise:

- (a) "Building official" means any person charged by a municipality with responsibility for the administration and enforcement of a building code.
- (b) "Construction" means any activity for which a building permit is required.
- (c) "Contractor" means any person who performs construction for compensation.
- (d) "Cost of Improvement" means the actual cost of constructing of any improvement whether paid in cash or for other valuable consideration.
- (e) "Executive Officer" (includes designated representative) means the Metro Executive Officer.
- (f) "Improvement" means any newly constructed structure or a modification of any existing structure for which an occupancy permit is required.
- (g) "Occupancy" means the act of putting any improvement to beneficial use or the issuance of any occupancy permit whichever is earlier.
- (h) "Person" means and includes individuals, domestic and foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

**7.02.040 Exemptions:** No obligation to pay the tax imposed by Section 7.02.070 shall arise from the construction of any improvement that is owned by any government entity whether federal, state or local, or nonprofit corporation which is exempted from the payment of Oregon and federal income tax.

**7.02.050 Rules and regulations promulgation:** The Executive Officer may promulgate rules and regulations necessary for the administration and enforcement of this chapter.

**7.02.060 Administration and enforcement authority:**

- (a) The Executive Officer shall be responsible for the administration and enforcement of this chapter.
- (b) In order to carry out the duties imposed by this chapter, the Executive Officer shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require

attendance of witnesses at board meetings or other hearings to determine compliance with this chapter, rules and regulations; to require production of relevant documents at public hearings; to swear witnesses; and take testimony of any person by deposition.

**7.02.070 Rate:** A tax is imposed on the construction of any improvement located within the District the tax shall be at a rate of \_\_\_\_\_ percent of the cost of the improvement. The tax shall be due and payable from the issuance of any occupancy permit for the improvement by any building authority. Liability for this tax shall attach upon every owner or occupant of property on which the improvement is located and every contractor who constructs any improvement; provided, however, that only one tax shall be imposed on the construction of any one improvement.

**7.02.080 Extension:** A party may in writing to the Executive Officer request a fifteen-day extension in which to pay the tax. The Executive Officer may approve no more than two extensions.

**7.02.090 Failure to pay:** It shall be unlawful for any person to fail to pay all or any portion of the tax imposed by this chapter.

**7.02.100 Statement of full cost of improvement required:** It shall be unlawful for any person to fail to state or to misstate the full cost of any improvement. When any person fails to pay the tax or apply for an exemption, as provided for in Section 7.02.040 herein, within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the cost of improvement is the value of the improvement as determined by the building official at the time of issuance of the building permit. If any improvement is constructed for which multiple building permits are issued the cost of the improvement shall be presumed to be the total of all of the values established for each of the building permits.

**7.02.110 Intergovernmental agreements.** The Executive Officer may enter into intergovernmental agreements with other governments to provide for the enforcement of this chapter and the collection of the Construction Excise Tax.

**7.02.120 Occupation of improvement without payment unlawful:** It shall be unlawful for any person to occupy any improvement unless the payment of the tax imposed by this chapter has been provided as stated in Sections 7.02.070 through 7.02.100 and 7.02.160 of this chapter.

**7.02.130 Enforcement by civil action:** The tax and any penalty imposed by this chapter constitutes a debt of the person liable for the tax as set forth in Section 7.02.070 of this chapter and any be collected by the Executive Officer in an action at law. If litigation is necessary to collect the tax and any penalty, the prevailing party shall be entitled to reasonable attorney fees at trial or on appeal. The Office of General Counsel is authorized to prosecute any action needed to enforce this chapter as requested by the Executive Officer.



**7.02.140 Review:** Review of any action of the Executive Officer taken pursuant to this chapter, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved person may demand such relief by writ of review.

**7.02.150 Failure to pay or apply for exemption -- Penalty:** In addition to any other fine or penalty provided by this chapter, failure to pay the tax or apply for an exemption, as provided for in Section 7.02.040 herein, within fifteen days of the date of issuance of any occupancy permit for any improvement shall result in a penalty equal to the amount of tax owed or fifty dollars, whichever is greater.

**7.02.160 Violation -- Penalty:**

(a) In addition to any other civil enforcement provided herein, violation of this chapter shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars.

(b) Violation of this chapter by any officer, director, partner or other person having direction or control over any person violating this chapter shall subject each such person to such fine.

**Section 2.** Section 7.01.020 of the Metro Code is amended to read as follows:

**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 ~~seven and one-half (7.5) percent~~ **(6)** percent 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 installment payments are paid 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)

unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

Section 3. Sections 5.02.025, 5.02.040, 5.02.045 and 5.02.050 are amended to read as follows:

5.02.025 Disposal Charges at Metro South Station, Metro Central Station and the MSW Compost Facility and the Metro Household Hazardous Waste Facilities:

**NOTE: [These amendments are based on the changes to the current solid waste rate of \$75 per ton. The proposed amounts are left blank to be adjusted as appropriate at either \$74 or \$73 per ton.]**

(a) Total fees for disposal shall be ~~\$75 (seventy-five dollars)~~ \$ [REDACTED] per ton of solid waste delivered for disposal at the Metro South Station, Metro Central Station and the MSW 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 MSW 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 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 MSW 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 MSW Compost Facility. The minimum charge for all vehicles shall be \$19.

(f) Total fees assessed at Metro facilities shall be rounded to the nearest whole dollar amount (a \$.50 charge shall be rounded up) for all cash account customers.

(g) A fee of \$5 is established to be charged at the Metro Household Hazardous Waste facilities for each load of Household Hazardous Waste.

(h) A fee of \$10 is established at the Metro Household Hazardous Waste facilities for special loads.

**5.02.040 Disposal Fees:**

(a) There is hereby established a disposal fee which shall be a charge to the users of Metro South Station, Metro Central Station and the MSW Compost Facility.

(b) The following disposal fees shall be collected and paid to Metro by the users of Metro South Station, Metro Central Station and the MSW Compost Facility for the disposal of solid waste generated, originating, collected or disposed within Metro boundaries: For all solid waste ~~\$38.25~~ per ton delivered.

(c) Disposal Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

**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):

For compacted or noncompacted solid waste, ~~\$19~~ per ton delivered.

(b) Metro User Fee (Tier Two):

~~\$7~~ 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 the St. Johns Landfill for cover, diking, road base or other internal use 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.

**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 the MSW 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 MSW Compost Facility for the disposal of solid waste generated, originating, collected or disposed within Metro boundaries: For all solid waste \$95 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.

Section 4. The Executive Officer shall rebate to each local government that has made a voluntary payment to Metro in lieu of the per capita payments required by the provisions of former ORS 268.513 for fiscal year 1994-95 an amount equal to amount of the payment made to Metro multiplied by a fraction equal to the number of days remaining in fiscal year 1994-95 on the effective date of this Ordinance divided by 365.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
Judy Wyers, Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

gl  
1166

Meeting Date: June 9, 1994  
Agenda Item No. 7.1

**RESOLUTION NO. 94-1968**



**METRO**

**DATE:** June 3, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

**FROM:** Paulette Allen, Clerk of the Council *PA*

**RE:** AGENDA ITEM NO. 7.1; RESOLUTION NO. 94-1968

The Planning Committee report will be distributed in advance to Councilors and available at the Council meeting June 9, 1994.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING ) RESOLUTION NO. 94-1968  
AN INTERGOVERNMENTAL AGREEMENT )  
BETWEEN METRO AND THE OREGON ) Introduced by the  
DEPARTMENT OF ENVIRONMENTAL ) Planning Committee  
QUALITY TO COMPLETE THE )  
TRANSPORTATION AND LAND USE )  
ELEMENTS OF THE PORTLAND OZONE )  
MAINTENANCE PLAN )

WHEREAS, The Clean Air Act Amendments (CAAA) of 1990 designate the Portland metropolitan area as moderate non-attainment for carbon monoxide (CO) and marginal non-attainment for ozone (HC); and

WHEREAS, The CAAA of 1990 requires the Portland metropolitan area to demonstrate conformity for ozone by 1993 and carbon monoxide by 1995; and

WHEREAS, In order to stay in attainment the Governor appointed a Task Force in March 1993 to examine vehicle emission reduction strategies in the Portland metropolitan area; and

WHEREAS, The recommendations from the Task Force form the basis for an ozone maintenance plan as required by the 1990 CAAA to reclassify the Portland area from non-attainment to attainment with federal air quality standards; and

WHEREAS, With no ozone violations in 1993, the region has met the standard and can now begin development of an ozone maintenance plan; and

WHEREAS, The ozone maintenance plan will be incorporated into the 1994 SIP Update and will include TDM strategies identified in Metro's TDM study; and

WHEREAS, Metro will assist the Oregon Department of Environmental Quality in the preparation of the ozone maintenance plan; and

WHEREAS, DEQ has agreed to pay \$60,000 to Metro for tasks performed as part of an Interagency Agreement in completing the ozone maintenance plan; and

WHEREAS, Exhibit A includes the Interagency Agreement and Scope of Work; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute a multi-year Intergovernmental Agreement with the Oregon Department of Environmental Quality for Metro to be lead agency in completing the transportation and land use portions of the ozone maintenance plan.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_,  
1994.

Judy Wyers, Presiding Officer





# METRO

600 NE Grand Ave.  
Portland, OR 97232  
(503) 797-1700

## Procurement Review Summary

To: Procurement and Contracts Division

Vendor

From

Date 5/24/94

DEQ

Department: Planning

Division: Trans

Subject

Name: KS

Bid

Contract

Vendor no.

Title: MA

RFP

Other

Contract no. 903740

Extension: 1590

Purpose: Ozone Maintenance Plan

### Expense

Procurement  Personal/professional services  Services (LM)  Construction  IGA

### Revenue

Contract  
 Grant  
 Other

### Budget code(s)

14012000

### Price basis

Unit  
 Total  
 Other

### Term

Completion  
 Annual  
 Multi-year\*\*

This project is listed in the  
199\_\_-199\_\_ budget.

Yes  Type A  
 No  Type B

### Payment required

Lump sum  
 Progress payments

6-13-94  
Beginning date

6-30-95  
Ending date

Total commitment	Original amount	\$ <u>100,000.00</u>
	Previous amendments	\$ _____
	This transaction	\$ _____
	Total	\$ _____
	A. Amount of contract to be spent fiscal year _____	\$ _____
	B. Amount budgeted for contract _____	\$ _____
	C. Uncommitted/discretionary funds remaining as of _____	\$ _____ ***

### Approvals

Division manager

[Signature]  
Department director

Labor

Fiscal

Budget

Risk

Legal

\* See instructions on reverse. \*\* If multi-year, attach schedule of expenditures. \*\*\* If A or B is less than C, and other line item(s) utilized, attach explanation/justification.

**Competitive quotes, bids or proposals:**

Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____
Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____
Submitted by _____	\$Amount _____	M/W/DBE _____	Foreign or Oregon Contractor _____

**Comments:** \_\_\_\_\_

**Attachments:**

- Ad for bid
- Plans and specifications
- Bidders list (M/W/DBEs included)

**Instructions:**

1. Obtain contract number from procurement division.  
Contract number should appear on the summary form and all copies of the contract.
2. Complete summary form.
3. If contract is:
  - A. Sole source, attach memo detailing justification.
  - B. Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
  - C. More than \$2,500, attach quotes, evaluation form, notification of rejection, etc.
  - D. More than \$10,000 or \$15,000 attach RFP or RFB respectively.
  - E. More than \$50,000, attach agenda management summary from council packet, bids, RFP, etc.
4. Provide packet to procurement for processing.

**Special program requirements:**

General liability: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Liquidated damages \$ \_\_\_\_\_ day

<input type="checkbox"/> Workers comp	<input type="checkbox"/> Prevailing wages
<input type="checkbox"/> Auto	<input type="checkbox"/> Non-standard contract
<input type="checkbox"/> Professional liability	<input type="checkbox"/> Davis/Bacon

**Dates:**

Ads \_\_\_\_\_ (Publication) \_\_\_\_\_

Pre-bid meeting \_\_\_\_\_ Bid opening\*\* \_\_\_\_\_

Filed with council \_\_\_\_\_ For action \_\_\_\_\_

Filed with council committee \_\_\_\_\_ For hearing \_\_\_\_\_

**Project estimate:** \_\_\_\_\_

**Funding:**

- Local/state
- Federal
- Other

**Bond requirements:**

\_\_\_\_\_ % Bid \$ \_\_\_\_\_

\_\_\_\_\_ % Performance \$ \_\_\_\_\_

\_\_\_\_\_ % Performance \$ \_\_\_\_\_

\_\_\_\_\_ % L/M \$ \_\_\_\_\_

\* Separate bonds required if more than \$50,000.

\*\* Minimum period: two weeks from last day advertised.

**PORTLAND OZONE MAINTENANCE PLAN DEVELOPMENT**

**INTERAGENCY AGREEMENT  
BETWEEN METRO AND THE STATE OF OREGON,  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

This agreement is between the State of Oregon acting by and through its Department of Environmental Quality, hereafter called Agency, and Metro, hereafter call Contractor. Agency's supervising representative for this agreement is Andy Ginsburg.

1. Effective Date and Duration:

This agreement shall become effective on March 21, 1994 (or on the date at which every party has signed this contract, whichever date is later). This agreement shall expire, unless otherwise terminated or extended, on June 30, 1995.

2. Statement of Work

- a) The statement of work is contained in Exhibit A attached hereto and by this reference made a part hereof.
- b) The delivery schedule for the work is identified in Exhibit A.

3. Consideration

- a) The Agency shall pay Contractor a total amount of \$60,000 for the accomplishment of the work. This shall be the sole monetary obligation of the Agency.
- b) Interim payments shall be made to Contractor upon receipt and approval of payment requests for work specified in Exhibit A.

4. Subcontracts

Contractor shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from the Agency's Project Officer.

5. Amendments

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

6. Termination

- A. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 days notice in writing and delivered by certified mail or in person to the project officer of the other party.
- B. The Agency may terminate this agreement effective upon delivery of written notice to the Contractor, or at such later date as may be established by the Agency:
  - 1. If Agency funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified to accommodate a reduction in funds; or
  - 2. If federal or state laws, rules, regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
- C. Any termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

7. Funds Available and Authorized

The Agency certifies at the time the agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this agreement within the Agency's current appropriation and limitation.

8. Captions

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this agreement.

9. Access to Records

The Agency, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records not otherwise privileged under law of the Contractor which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts and transcripts.

10. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. Recycled Paper

Contractor agrees to use recycled paper for all reports which are prepared as a part of this agreement. This requirement applied even when the cost of recycled paper is higher than that of virgin paper.

12. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

13. Contractor Data

The Project Officer for the Agreement will be:

Mike Hoglund  
Metro  
600 NE Grand  
Portland, Oregon 97232-2799  
797-1743

14. Agency Data

The Project Officer for the Agreement will be:

Andy Ginsburg  
Department of Environmental Quality  
811 SW 6th Avenue  
Portland, Oregon 97204  
229-5581

15. Signatures:

Contractor:

\_\_\_\_\_ Date

\_\_\_\_\_ Date

Agency:

\_\_\_\_\_ Administrator Date

\_\_\_\_\_ Fred Hansen, Director Date

DEQ.IAA  
bc

**Exhibit A**  
**Portland Ozone Maintenance**

**Work Plan**

1. Conduct activities as lead agency for the transportation and land-use elements of the Portland ozone maintenance plan. This includes:
  - a. preparation of 1992 and 2006 population, employment and travel information and forecasts;
  - b. calculation of 1992 and 2006 on-road vehicle emissions;
  - c. revisions to travel forecast models necessary to support maintenance plan forecasts;
  - d. documentation of forecast methodology;
  - e. documentation of the existing and financially constrained 2006 transportation systems;
  - f. preparation of maps depicting the nonattainment area boundary and other significant boundaries;
  - g. coordination of the maintenance plan with the 1995 Regional Transportation Plan update, the Region 2040 Study, the Transportation Planning Rule and other appropriate regional studies and activities;
  - h. development of an emission budget for conformity purposes; and
  - i. other activities necessary to support the maintenance plan.
2. Development of TDM strategies to achieve reductions in VMT/capita and parking/capita to meet the goals of the Transportation Planning Rule. This includes:
  - a. analysis of potential TDM strategies regarding VMT reduction, emission reduction, implementation feasibility, and other appropriate parameters;
  - b. calculation of the need for VMT and parking reduction from additional TDM measures in 2005, 2006, 2015 and 2025 considering land-use constraints selected by the region, the financially constrained transportation system developed to support the selected land-use pattern, and other TDM measures included in the maintenance plan;
  - c. identification of potential TDM strategies and strategy packages to meet the calculated need, including details and enforceable methods necessary to allow for emission reduction credit in the maintenance plan if feasible; and

- d. calculation of emission reduction credit from strategies selected for the 1995 RTP update, if any.
3. Review and implementation of TDM strategies, including:
- a. presentation of strategy packages to TPAC and JPACT;
  - b. documentation of strategies selected;
  - c. integration of selected strategies with the 1995 RTP update; and
  - d. other activities necessary to support the analysis and selection of TDM measures.

**Schedule**

<u>Date</u>	<u>Complete Tasks</u>
December 1994:	1.a. through 1.c. 2.a. through 2.c. 3.a.
March 1995:	1.d. through 1.h. 2.d. 3.b.
June 1995:	1.i. 3.c. and 3.d.

DEQ-IAA



STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-1968 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY TO COMPLETE THE TRANSPORTATION AND LAND USE ELEMENTS OF THE PORTLAND OZONE MAINTENANCE PLAN

Date: May 24, 1994

Presented by: Andrew Cotugno

PROPOSED ACTION

This resolution provides for the Metro Council approval of a multi-year Intergovernmental Agreement with the Oregon Department of Environmental Quality in the amount of \$60,000, to be paid to Metro as lead agency in completing the transportation and land use elements of the Portland ozone maintenance plan. Under the agreement, Metro will develop a typology of TDM strategies to achieve reductions in VMT per capita and parking per capita to meet the goals of the Transportation Planning Rule and integrate strategies approved by JPACT/Metro Council in the 1995 Regional Transportation Plan update.

FACTUAL BACKGROUND AND ANALYSIS

The Portland area is designated as marginal non-attainment for ozone and moderate non-attainment for carbon monoxide (CO). In order to reclassify the Portland area from non-attainment to attainment with federal air quality standards, the region must submit an air quality maintenance plan as required by the Clean Air Act Amendments (CAAA) of 1990. House Bill 2175, enacted by the 1991 Oregon Legislature, required the Governor to appoint a Task Force to study alternatives for reducing motor vehicle emissions in the Portland area. The recommendations from the Task Force would become the basis for the air quality maintenance plan.

In accordance with federal law, the standard for ozone was to be met by November 1993 and for CO by November 1995. With no ozone violations in 1993, the region has met the standard and can now begin development of an ozone maintenance plan for incorporation into the State Implementation Plan (SIP). With completion of the maintenance plan, the region can apply for attainment status with EPA.

Metro, with DEQ, will prepare an ozone maintenance plan for submittal to EPA. The plan will show how the region will stay in attainment for a period of at least 10 years. The plan will include base strategies designed to keep the region in attainment and contingency strategies that will be automatically triggered if the region slips out of attainment after being reclassified. The latest travel and emission forecasts provided by Metro will

be used in the preparation of the plan. In addition, the plan will be based on the recommendations of the 1993 legislative actions on air quality (HB 2214) and on follow-up measures prepared as part of Metro's Transportation Demand Management (TDM) Study and the 1995 RTP Update.

For Metro's TDM Study, results will be used to identify transportation control measures to assist DEQ to implement various elements of the ozone maintenance plan and to help the region meet the VMT per capita and parking per capita reduction targets required by the Transportation Planning Rule.

The attached resolution establishes an Intergovernmental Agreement between Metro and the Oregon Department of Environmental Quality authorizing \$60,000 for Metro to complete the following:

1. Conduct activities as the lead agency for the transportation and land use elements of the Portland ozone maintenance plan;
2. Develop TDM strategies to achieve reductions in VMT/capita and parking/capita to meet the goals of the Transportation Planning Rule; and
3. Review and implement the TDM strategies.

It is requested that the Metro Council approve the attached resolution and Intergovernmental Agreement with DEQ so that work on the ozone maintenance plan and SIP update can commence.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 94-1968.

Meeting Date: June 9, 1994  
Agenda Item No. 7.2

RESOLUTION NO. 94-1967



**METRO**

**DATE:** June 3, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

**FROM:** Paulette Allen, Clerk of the Council *PA*

**RE:** AGENDA ITEM NO. 7.2; RESOLUTION NO. 94-1967

The Planning Committee report will be distributed in advance to Councilors and available at the Council meeting June 9, 1994.

**BEFORE THE METRO COUNCIL**

<b>TO AUTHORIZE GENERAL COUNSEL )</b>	<b>RESOLUTION NO. 94-1967</b>
<b>APPEARANCE IN BEAVERTON/ )</b>	
<b>PORTLAND URBAN SERVICE )</b>	<b>Introduced by Council Planning</b>
<b>BOUNDARY CASES )</b>	<b>Committee</b>

**WHEREAS, Metro attempted formal mediation of the long-standing dispute over an ultimate annexation service boundary between Portland and Beaverton in Fall, 1993; and**

**WHEREAS, Beaverton and Portland adopted inconsistent service boundaries in unincorporated Washington County near the Washington-Multnomah County boundary line into their comprehensive plans; and**

**WHEREAS, Washington County amended its comprehensive plan to reflect Beaverton's adopted service boundary; and**

**WHEREAS, The Land Use Board of Appeals (LUBA) remanded all three comprehensive plan amendments, ruling that Metro action to resolve the inconsistent Beaverton and Portland plans was required before Washington County could amend its plan; and**

**WHEREAS, Metro Code 2.08.040(e) requires that the General Counsel not appear on behalf of Metro without the mutual consent of the Executive Officer and Council; and**

**WHEREAS, The Executive Officer consents to Metro appearance as a friend of the court in this case; now, therefore**

**BE IT RESOLVED,**

**That the Office of General Counsel is hereby authorized to appear on behalf of Metro before the Court of Appeals of the State of Oregon as a friend of the court in the**

appeal of three LUBA cases contesting Portland-Beaverton urban service boundaries if the case is not resolved so that the appeal is dismissed.

ADOPTED by the Metro Council this \_\_\_\_\_ day of May, 1994.

---

Judy Wyers, Presiding Officer

ka  
1167



METRO

Council  
6/9/94  
3.1

To: Metro Councilors

From: John Houser, Senior Council Analyst

Date: June 8, 1994

Re: Historical Background Related to Council and Solid Waste Committee Consideration of Contract Amendment #4 to the Oregon Waste Systems Contract For Disposal Services at Columbia Ridge Landfill

You requested that I prepare a document outlining the history of the Council's consideration of Contract Amendment #4 to the Oregon Waste Systems (OWS) contract to provide disposal services at the Columbia Ridge Landfill. The following memo is divided into several sections: 1) a description of the original proposed amendment, 2) principal issues addressed during committee consideration of the amendment, 3) changes in the amendment considered by the committee, 4) events related to the amendment that have occurred since the Executive Officer's signing of the amendment, and 5) estimated savings since the signing of the amendment.

#### Original Amendment

The Executive Officer initiated discussion of the proposed amendment in a meeting with the Presiding Officer and the Finance Committee Chair held in early December 1993. The Executive Officer indicated that the contract changes had been negotiated and Bob Martin outlined the nature of amendment. The Executive Officer explained that she had been advised by the Office of General Counsel that she had the administrative authority to sign the amendment without referring it to the Council. However, she indicated that she felt it was appropriate to consult with the Council concerning the amendment, particularly because of its potentially large fiscal impact. The Executive Officer agreed to submit the amendment for Council review and recommendation. The amendment was placed on the January 4 Solid Waste Committee Agenda as an informational item.

Beginning with the January 4 meeting, the Solid Waste Committee heard considerable testimony on the issue of the amendment at each of its next six meetings through March 15. The original contract amendment submitted by the Executive Officer for Council consideration made five significant changes in the existing contract. These include:

1) **Repeal of the "most favored rate" (MFR) provision.** The existing contract contained language which provides that if OWS disposes of waste from another jurisdiction at a disposal rate that is less than the rate paid by Metro, OWS must pay Metro an amount equal to this rate differential for all Metro tons sent to the Columbia Ridge Landfill. Under the amendment, this provision would be placed by the following system of per ton credits:

1) If waste under an existing OWS contract with the city of Seattle continues to come to Columbia Ridge after January 1, 1995, Metro would receive a \$1.00/ton credit and an additional \$.50/ton after January 1, 1996.

2) For other contracts for over 75,000 tons/year Metro would receive a \$1.00/ton credit beginning of the effective date of the amendment and an additional \$.50/ton beginning January 1, 1996. New contracts also would be subject to these same credits.

3) For contracts smaller than 75,000 tons/yr., Metro would receive a \$.50/ton credit.

Each of these credits would be subject to an annual inflationary adjustment.

2) **Disposition of Waste From the Forest Grove Transfer Station.** The amendment provides that should Metro exercise its authority under the Forest Grove franchise agreement and agree to send the Forest Grove waste to Columbia Ridge, Metro would receive an additional \$.65/ton credit on all tonnage sent to Columbia Ridge and this credit would increase to \$1.00/ton on January 1, 1995.

3) **Calculation of the Annual Inflation Factor.** Under the existing contract, OWS receives an annual rate adjustment equal to 100% of the Consumer Price Index (CPI). Under the original amendment, OWS would continue to receive 100% of the CPI up to 3%, 85% of the CPI between 3% and 9%, and 90% of the CPI over 9%.

4) **Waiver of Claims.** Under the amendment, OWS agreed to waive any claims that Metro had failed to send 90% of all acceptable waste that Metro delivered to a general purpose landfill during calendar years 1991, 1992 and 1993.

5) **Elimination of Bond Requirement.** Metro agreed to eliminate the OWS bond requirements established under Contract Amendment #2, but the corporate guarantee provided by Waste Management of North America would remain in effect.

Metro staff initially estimated that savings for Metro under the proposed amendment would range from \$26 to \$52 million over the remaining sixteen years of the contract. Actual savings would be dependent on the inflation rate, the number of new customers using Columbia Ridge and whether the Seattle wastestream continues to come to Columbia Ridge.

### **Principal Issues Related to the Amendment**

During the six Solid Waste Committee hearings on the proposed amendment many issues were raised by the proponents and opponents. The following discussion summarizes the eight principal issues that were discussed and presents the views of the proponents and opponents concerning these issues. These include: 1) the most favored rate provision of the existing contract, 2) the potential, cost and effect of Waste Management building another landfill in Adams County, Washington, 3) issues related to the potential continued use of Columbia Ridge by the city of Seattle, 4) disposal of waste from the Forest Grove Transfer Station, 5) differing interpretations of amendment language, 6) Metro's disposal rates versus the rates of other large

*John - only 7 listed. Any more? Mike Dexter*



jurisdictions in the Northwest, and 7) the relative value of delaying action on the amendment in an effort to obtain a better deal.

Proponents of the amendment included Metro Solid Waste Staff, the Executive Officer, Waste Management, Gilliam County and the City of Arlington. Opponents included many of Waste Management's competitors such as Sanifill, Rabanco and Columbia Resources. Much of the committee debate and discussion centered on differing data and conclusions presented in a series of economic and financial analyses prepared by Metro staff (and Public Financial Management at Metro's request) and the accounting firm of Deloitte and Touche (D&T) on behalf of its client, Sanifill,

### **The Most Favored Rate Provision**

**Issue:** Under the proposed amendment Metro would give up the most favored rate provision of the existing contract. The original intent of this contract provision was to insure that Metro would benefit if future Columbia Ridge customers obtained disposal rates that were lower than the Metro rate. Basically, the MFR provides that OWS would pay Metro the difference between the Metro rate and any lower rate on all Metro tonnage for any contract under which Columbia Ridge would receive more than 75,000 tons annually. For contracts under 75,000 tons Metro would receive the rate differential on a comparable number of tons. The issue raised during committee discussion focused on determining the present and future economic value of the MFR and whether this value exceeded the estimated savings under the proposed amendment.

**Pro:** Solid Waste Department staff testified that one of the principal reasons for adopting the amendment is that Metro has not, and likely will not receive any economic benefit from the MFR. Staff noted that during the first four years of the existing contract that Metro had received less than \$100,000 in MFR-related revenue from a single small contract between OWS and Whitman County in Washington. OWS had obtained the contract for the city of Seattle, but the disposal and transportation components of the contract are structured such that the disposal rate is currently actually higher than the Metro rate. Staff noted that having to pay Metro under the MFR when its competitors had no such burden clearly put OWS at a competitive disadvantage.

Staff contended that the lack of MFR benefits will likely continue into the future because the potential magnitude of MFR-related payments to Metro is so large that OWS cannot economically compete for new disposal contracts that would trigger such payments. Staff argued that the difference between the current rate of \$26.96/ton and the market rate of \$21/ton would require OWS to pay Metro about \$4 million annually if OWS obtained a contract that triggered the MFR. As a result, staff contended that the total disposal costs for such a new contract would cause OWS to operate at a loss.

**Con:** The D&T economic analysis also examined MFR-related issues and came to a set of conclusions that were in all cases the opposite of the conclusions drawn by Metro staff. The D&T conclusions included:

1) OWS' competitiveness had not and would not be affected by the MFR. They noted that OWS had obtained the Seattle contract and had only narrowly missed obtaining another major Puget Sound area contract since the MFR has been in effect.

2) OWS makes a substantial profit from the Metro contract based on D&T's assumption that operating costs at Columbia Ridge were about \$12/ton. D&T argued that this profit would allow OWS to make the MFR payments required under the existing contract and make a profit on new contracts bid at the current market rate. OWS responded that D&T had no reliable source concerning Columbia Ridge's actual operating costs and that they had underestimated labor and equipment costs, closure costs, costs related to road maintenance, and the impact of the payment of DEQ fees.

3) As volumes at Columbia Ridge increased the total OWS profits at the facility would increase, even with the MFR payments to Metro.

4) The MFR may have significant value in the future. Their initial analysis estimated that, if OWS obtained all future contracts in region on which they could make a profit, Metro would receive about \$132 million in benefits from the MFR. This analysis was subsequently revised and the estimate reduced to \$114 million. D&T concluded that Metro may be "leaving \$60 million on the negotiating table," due to the potential value of the MFR.

Opponents noted that there are several disposal contracts from major Northwest metropolitan areas that will be rebid during the next five years including: Snohomish, Pierce and King Counties in Washington. The total wastestream from these three jurisdictions has been estimated at about 450,000 tons annually. Opponents argued that if Waste Management successfully bid for any of these contracts and the waste came to Columbia Ridge, this would trigger significant MFR-related payments to Metro.

Other amendment opponents contended that the elimination of the MFR could give OWS a significant edge in bidding on future contracts which could ultimately reduce competitiveness among large and small landfills in the Northwest.

### Adams County Landfill

**Issue:** Another MFR-related issue is the potential that Waste Management may build a new regional landfill in Adams County, Washington. Waste Management has invested about \$3 million in the siting and development of this landfill. It has obtained the necessary local permits to proceed and is awaiting action on the required state permits. Local opponents have filed a lawsuit seeking to block development of the facility and have applied to have the landfill site receive federal designation as a sole-source aquifer. Timelines for these permitting and designation processes are uncertain.

Two factors appear to be driving the development of this new landfill: 1) provisions in the OWS contract with the city of Seattle that require OWS to pay damages if Seattle waste is disposed of at an out-of-state landfill, such as Columbia Ridge, after January 1, 1995 (these damages would escalate in January 1996.); and 2) the potential of MFR-related payments to Metro for

other waste coming to Columbia Ridge.

**Pro:** Metro staff testified that construction of the Adams County site would virtually eliminate any potential for payments to Metro under the MFR. They argued that construction and operation costs at the Adams County site would be between \$18 and \$30 million. They questioned that if the D&T estimate of the future value of the MFR (\$114 million) is correct, why would Waste Management not build the Adams County facility and save having to pay MFR payments to Metro. They also questioned why a company would spend more than \$3 million in development costs if they did not intend to build the facility.

**Con:** The D&T analysis estimated that Waste Management revenue through the year 2009 would be about \$316 million if the amendment was passed, \$237 million if the existing contract were maintained and only \$120 million if the Adams County facility is built. D&T contended that the \$117 to \$196 million lost revenue differential would make construction of the new landfill unlikely. They contended that their estimate of costs associated with the Adams County site was significantly higher than the Metro staff because of the real potential of additional environmental, closure and transportation costs associated with the site.

Amendment opponents asked why would Waste Management build a new facility when it already has one large facility serving the region (Columbia Ridge) and has two major competitors bidding on the same disposal contracts. They contended that the addition of another OWS would cause both facilities to operate at far less than optimum levels. They argued that OWS was using the potential of another landfill to coerce Metro into giving up the MFR when it made no economic sense to build a new facility.

### Seattle

**Issue:** OWS has a contract for disposal of waste from the city of Seattle through the year 2001. This waste currently is disposed of at Columbia Ridge. The contract was structured in such a manner as to make the disposal cost component higher than the current Metro disposal rate. Though it is difficult to break out the specific per ton disposal cost in the contract, it was estimated to currently be about \$.50/ton higher than the Metro rate of \$26.96/ton. As a result, this contract has never triggered payments under the MFR. But, the contract does contain language that provides that if Seattle waste is still being sent to an out-of-state landfill on January 1, 1995, OWS must pay damages to Seattle equal to 50% of the difference between the Columbia Ridge disposal rate and the projected disposal rate at a Washington-based landfill. In January 1996, these damages would increase to 100% of this differential. In addition, the contract provides that, if Seattle annually disposes of more than 450,000 tons of waste, it will receive an additional rate reduction of more than \$2/ton.

Committee discussion of the Seattle contract centered on two questions: 1) to what extent would Metro receive payments under the MFR if the Seattle waste continued to go to Columbia Ridge and the rate declined during both 1995 and 1996 under the contract damage clauses described above, and 2) how would the future Seattle disposal rates compare both under the existing contract and under the proposed amendment.

**Pro:** The Metro staff analysis concluded that savings under the proposed would be approximately equal to any MFR-related payments in 1995. In 1996, under the amendment, the Seattle disposal rate would be \$.38/ton below the Metro rate. But, the analysis concluded that beyond 1996, the Seattle rate would escalate at a higher rate due to the historically higher inflation rates in Seattle and that by the year 2000, the Metro rate would be \$.31/ton lower than the Seattle rate. The analysis concludes that the differential in the two rates would continue to grow through the year 2009, at which time the Metro rate would be \$2.24/ton less than the Seattle rate.

Opponents criticized the Metro analysis, arguing that it failed to account for the potential reduction in the Seattle rate due to tonnages in excess of 450,000 tons and that it failed to recognize that Seattle could rebid its waste in 2001 which could result in a rate reduction to the prevailing market rate. D&T estimated the size of this reduction to be about \$2.40/ton. Metro staff responded that it had not included a tonnage-related rate reduction because the city of Seattle does not currently project that its tonnage levels will exceed 450,000 tons/yr.

**Con.** The D&T analysis of Seattle vs. Metro rates yielded significantly different results. D&T estimated that the reduction in the Seattle rate in 1995 would result in MFR-related payments to Metro totalling \$822,000 which they contended far exceeded Metro's estimated \$400,000 in savings under the proposed amendment. They also contended that as additional reductions in the Seattle rate occurred in 1996, in 1998 when tonnages exceeded 450,000 tons and in 2001 when Seattle rebid its waste, that by the year 2001 the Seattle disposal rate would be about \$8.50/ton less than the current contract and about \$4/ton less than under the proposed amendment. Thus, they contended that under the current contract any rate differential would be equalized through MFR-related payments while under the amendment there would be a significant difference between the Metro and Seattle that would increase in subsequent years.

Metro staff criticized the D&T analysis, contending that it had improperly inflated certain portions of the Metro rate and used an inflation rate for the Seattle rate that was less than the historic trend.

### **Forest Grove Wastestream**

**Issue:** The Forest Grove Transfer Station franchise agreement approved by the Council in January gives Metro permissive authority to send the station's wastestream to a specific disposal site. The proposed OWS contract amendment provided that, if Metro choose to send the waste to Columbia Ridge, Metro would receive an initial credit of \$.65/ton on all tonnage sent to Columbia Ridge and an additional \$.35/ton beginning January 1, 1995.

**Pro:** Metro staff testified that, while the amendment simply gives Metro the option of sending the Forest Grove waste to Columbia Ridge, the rate reduction proposed in the amendment would effectively reduce the cost of disposing of the Forest Grove waste to about \$14/ton. They contended that this effective rate would be well below the current market rate of \$21/ton and the \$25.83/ton disposal rate at the Riverbend landfill, which currently receives this waste. Staff indicated that it would be unlikely that any competitor could match the OWS offer.

**Con:** Opponents raised two principal concerns regarding sending the Forest Grove waste to Columbia Ridge. First, they complained that Metro should not arbitrarily choose to send the waste to Columbia Ridge without giving OWS's competitors an opportunity to compete for the waste. They noted that, while the OWS proposal was a good one, Metro should not automatically assume that a competitor could not present a better offer. For example, representatives of the Riverbend Landfill suggested that they could make an offer that would be competitive with the OWS proposal. Opponents recommended that conduct an open competitive bidding for the Forest Grove waste, noting that such a process would allow the free enterprise system to work and provide fairness to all potential vendors.

Bob Martin raised several concerns about using a bidding process. He noted that a bid process would be costly and time-consuming while offering no guarantees that anyone could meet or beat the OWS offer. He also contended that in a bidding process contained an element of risk, in that the winning bid could actually be less financially lucrative than the proposal contained in the amendment. OWS also noted that they would be at a disadvantage in any bidding process they in effect had already put their best offer on the table and that their competitors were aware of the details of that offer.

Opponents contended that sending the Forest Grove waste to Columbia Ridge would give OWS a monopoly on putrescible waste from the Metro region. They noted that this would reduce Metro's flexibility in addressing disposal cost issues for the remaining 16 years of the OWS contract. They also argued that such an action would be harmful to OWS's competitors, particularly Riverbend Landfill and Yamhill County garbage ratepayers, and that it would reduce competitiveness in the disposal marketplace now and well into the future.

### **Metro Disposal vs. Market Disposal Rates**

**Issue:** It is generally agreed that the current Metro disposal rate of \$26.96 is significantly higher than the average market rate of \$21/ton paid by most other jurisdictions. At the time Metro signed its contract with OWS, Metro had little flexibility because there were no major competitors to the Columbia Ridge Landfill. The current marketplace has three major landfills bidding for disposal contracts resulting in very competitive disposal rates.

**Pro:** Metro staff contended that, while the proposed amendment would not completely eliminate the current gap between the Metro and market rates, it would provide a certain reduction in the gap of up to \$2.50/ton. They also emphasized that obtaining this benefit was far less risky than waiting to see if OWS would obtain additional contracts that would trigger payments under the MFR.

**Con:** Opponents argued that adoption of the amendment would create a permanent gap of at least \$5.44/ton between the Metro rate and the market rate. They noted that at any time that a new larger contract triggered payments under the MFR, this rate gap could be eliminated. They contended that the risk factors related to potential savings under the amendment were as great as those associated with the triggering of MFR payments. They contended that savings under either scenario were based on the assumption that the Seattle waste would continue to go to Columbia Ridge and that the facility would new larger customers in the future.

## Amendment Language

**Issue:** Attorneys representing amendment opponents raised several issues concerning the interpretation of language in the amendment. Among these were:

1) whether the definition of "general purpose landfill" would apply to the Hillsboro Landfill and therefore require waste now going to Hillsboro to be sent to Columbia Ridge,

2) whether the definition of "putrescible waste" would include yard debris and therefore require this wastestream to go to Columbia Ridge,

3) the potential for continuing claims under the "90% clause" in the existing contract because the definition of the terms "Metro delivers" and "acceptable waste" are unclear,

4) the scope and definition of the amendment provision which provides that Metro can only receive the rate credits for the Forest Grove waste if it sends "100 percent of all acceptable waste generated in the Metro region" to Columbia Ridge, and

5) the effect of the amendment on language in the existing franchise agreement with Wastech that appears to permit the facility to take putrescible waste.

Issues #1 and #2 noted above were addressed in language changes to the proposed amendments described later in this memo. Problems with the definition of terms related to the "90% clause" was not addressed in the amendment. These issues have been a subject of negotiation between Metro and OWS for several years. To date, the parties have been unable to develop mutually acceptable revised language. Both parties have expressed a continuing interest in addressing and resolving these issues. Metro legal staff advised the committee that the amendment language clearly provides that the phrase "100% of all acceptable waste generated in the Metro region" applies only to transfer station waste and that it was not intended to apply to commercial or industrial wastestreams to use other disposal options. Legal staff also advised that issues related to the acceptance of putrescible waste at Wastech could be better addressed through a review of the specific provisions in the Wastech franchise agreement.

## Better Deal

**Issue:** Throughout the committee debate concerning the amendment, the opponents argued that it would be in Metro's best interest to defeat or delay action on the amendment for up to 18 months to two years. They contended that such a delay would generate a much better financial deal from OWS.

**Pro:** Proponents contended that delaying action on the amendment would pose significant risks to any potential future savings from the existing contract. These risks include:

1) If OWS proceeds to build the Adams County Landfill, it will send waste from its other disposal contracts to avoid making MFR payments to Metro,

2) OWS has claimed that it has made its best and final offer to Metro. OWS could simply reject any negotiations at a future date if it is no longer in their financial interest to do so,

3) Delay would result in loss of revenue from the guaranteed savings provided in the proposed amendment,

4) Only one major Northwest disposal contract will be rebid before 1997. If OWS does not obtain this contract, the MFR would not be triggered before 1997,

5) The opponents are asking Metro to gamble with its ratepayers revenue, not their own money.

**Con:** Opponents contended that a delay could result in substantial financial benefits to Metro. Their arguments included:

1) Delay would allow Metro to determine if OWS will seriously pursue the Adams County Landfill,

2) Delay would allow Metro to begin to receive MFR payments in 1995 under the Seattle contract and cause OWS to return to the negotiating table with a better offer the fiscal impact of these payments, and

3) Delay would permit the potential resolution of outstanding legal issues such as flow control and the validity of Oregon's out-of-state waste surcharge.

### Committee Amendments

At the March 1 meeting, Resolution 94-1904 was introduced. The resolution called for Council adoption of an amended version of the original proposed amendment. These amendments had resulted from earlier committee discussion, issues related to interpreting the original proposed language, suggestions from individual Councilors and direct negotiation between Councilors and OWS. These amendments included:

1) replacing the proposed language relating the annual inflation adjustment calculation with language which provides that the inflation factor shall be equal to the CPI, less 1/2 of one percent. Under this language, Metro would receive a greater benefit than under the original proposed amendment at all inflation rates less than about 6.3%.

2) The proposed rate adjustment for sending the Forest Grove waste to Columbia Ridge would be revised to provide that Metro would receive the full \$1/ton credit, if this waste began to go to Columbia Ridge prior to July 1, 1994.

3) The definition of "general purpose landfill" was modified to clarify to the term did not apply to the Hillsboro or Lakeside (Grabhorn) Landfills.

4) The definition of "putrescible waste" was changed to exclude yard debris.

5) Other technical amendments included: a) correctly identifying Waste Management as a Delaware corporation, b) repealing special language dealing with waste from Whitman County, Washington due to OWS' decision to send this waste to another facility, and c) modifying the exemption of eastern Oregon waste from applicability of the rate credits to exclude Deschutes County from the exemption.

At the March 15 meeting, additional amendments were offered by Councilors McLain and Wyers which dealt with the structure of the rate credits, the CPI adjustment, non-competition agreements, the DEQ out-of-state surcharge, bidding out the Forest Grove wastestream, and the clarification of contract terms.

The committee voted 3-2 against sending Resolution 94-1904 with to the full Council with a "do pass" recommendation.

On March 16, the Executive Officer signed the amendment as it had been amended in Resolution 94-1904.

### Recent Events

The following events related to the amendment have occurred since the Executive Officer's signing of the amendment:

**Court Decisions.** Two recent U.S. Supreme Court decisions may effect the OWS contract amendment. First, the court held in Oregon Waste Systems, Inc v. Department of Environmental Quality of the State of Oregon, that the state surcharge on out-of-state waste was unconstitutional. The decision will remove a significant implement to the competitiveness of OWS when bidding on out-of-state disposal contracts, particularly when bidding against the Roosevelt Landfill for contracts in Washington. This could impact the potential for MFR payments under the original contract or additional waste that would provide greater revenue from the per ton credits in the contract amendment.

In C&A Carbone, Inc. v. Town of Clarkston, the Court struck down a local flow control ordinance. The effect on Metro's ability to direct flow to specific facilities is uncertain, though the Office of General Counsel has concluded that Metro's authority would be held to be constitutional. If Metro were to lose the ability to direct its waste flow, our ability to comply with the provisions of either the original or amended OWS contract could be questioned.

**Budget Action.** The approved budget recognizes and includes an estimated \$727,000 in savings from the OWS amendment for fiscal year 94-95. These savings have not been appropriated to any specific expenditures, but have been allocated to the general account in the unappropriated balance. If the savings did not occur, the balance in this account would be reduced by this amount.

**Adams County Landfill.** A spokesperson for the principal opposition groups indicates



that its lawsuit to stop the facility will likely be heard in two separate trials beginning as early as late June. The first trial would deal with alleged violations of open meetings requirements and due process while the second trial would address issues related to the draft environmental impact statement for the facility.

The group's filing to seek federal designation of the landfill site as a sole source aquifer is being reviewed at the regional level with a final decision anticipated by the end of the year.

**Forest Grove Wastestream.** Metro staff has solicited two proposals for the interim disposal of the waste from the Forest Grove Transfer Station. These proposals were received from A.C. Trucking, the station operator, and Riverbend Landfill, which currently receives the waste from the station. The A.C. Trucking proposal would use Columbia Ridge for final disposal, while the Riverbend proposal would continue to direct the waste to Riverbend. Bob Martin indicates that the staff is reviewing the proposals and that he hopes to resolve this issue by the end of June. Staff is continuing to explore long-term disposal options for Forest Grove that could include competitive bidding or directing the waste to a specific facility.

**Savings From the Signed Contract Amendment.** Data are available on savings under the signed amended contract only for April (the amendment was signed on March 16). These data show that Metro saved a total of \$9,113.51. Of these total, \$7,330 resulted from the impact of the CPI inflation factor which became effective on April 1. The remaining \$1,783 in savings resulted from tonnage credits from three small Washington and Idaho jurisdictions that use Columbia Ridge. It should be noted that the significant savings anticipated under the contract amendment will not occur unless the Forest Grove waste is directed to Columbia River or Seattle continues to use the facility after January 1, 1995.

Council  
6/19/94  
3.1

May 25, 1994 1:30 p.m

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
<b>Case 1.</b>						
Solid Waste Disposal Rate	\$75.00	\$75.00	\$75.00	\$76.26	\$78.53	\$79.61
Rate Increase		\$0.00	\$0.00	\$1.26	\$2.27	\$1.08
Unappropriated Fund Balance	3,712,798	3,134,082	3,000,000	3,000,000	3,000,090	3,182,700
Rate Stabilization Fund	1,500,000	1,545,000	300,203	0	0	0
Contingency	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902

Excise Tax: 7.7% for 1994-95  
7% after 1994-95

**Case 2**

Solid Waste Disposal Rate	\$73.00	\$73.00	\$76.11	\$76.03	\$77.81	\$78.88
Rate Increase		\$0.00	\$3.11	(\$0.08)	\$1.78	\$1.07
Unappropriated Fund Balance	3,084,544	3,000,000	3,000,090	3,182,700	3,278,181	3,376,527
Rate Stabilization Fund	1,500,000	0	0	0	0	0
Contingency	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902

Excise Tax: 6% from 1994-95

**Case 3**

Solid Waste Disposal Rate	\$74.00	\$74.00	\$74.00	\$76.03	\$77.81	\$78.88
Rate Increase		\$0.00	\$0.00	\$2.03	\$1.78	\$1.07
Unappropriated Fund Balance	3,784,030	3,065,913	3,000,000	3,000,090	3,182,700	3,278,181
Rate Stabilization Fund	1,500,000	1,545,000	0	0	0	0
Contingency	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902	3,726,902

Excise Tax: 6% from 1994-95

NOTE: Minimum unappropriated fund balance for cash flow purposes \$3,000,000.

NOTE: About \$800,000 are needed to lower the rate by \$1.00

Council  
6/9/94  
8.1

MINUTES OF THE METRO COUNCIL

May 26, 1994

Council Chamber

Councilors Present: Presiding Officer Judy Wyers, Deputy Presiding Officer Ed Washington, Richard Devlin, Mike Gates, Sandi Hansen, Ruth McFarland, Susan McLain, Rod Monroe, Terry Moore and George Van Bergen

Councilors Absent: Roger Buchanan, Jim Gardner and Jon Kvistad

Also Present: Executive Officer Rena Cusma

Presiding Officer Wyers called the regular meeting to order at 4:05 p.m.

3.1 Briefing by the Portland Metropolitan Sports Authority on Their Activities To-Date

Will Glasgow, president, Portland Metropolitan Sports Authority (PMSA) and Craig Honeyman, executive director, PMSA, briefed the Council on PMSA's activities to-date and distributed the PMSA's annual report for 1993 to the Council.

The Council and Mr. Glasgow and Mr. Honeyman briefly discussed their report further.

3.2 Briefing on FOCUS Discussion on Regional Financing Strategies

Jennifer Sims, Director of Finance and Management Information, briefed the Council on the Forum on Cooperative Urban Services discussion to-date on regional financing strategies.

The Council and Ms. Sims briefly discussed the issues further.

4. CONSENT AGENDA

4.1 Minutes of May 12, 1994

Motion: Councilor Gates moved, seconded by Councilor Devlin, for adoption of the Consent Agenda.

Vote: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and the Consent Agenda was adopted.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 94-553, An Ordinance Amending the FY 1993-94 Budget and Appropriations Schedule For the Purpose of Funding Outside Counsel Opinion Regarding Contract Authority; and Declaring an Emergency

The Clerk read the ordinance for a first time by title only.

Presiding Officer Wyers announced that Ordinance No. 94-553 had been referred to the Finance Committee for consideration.

5.2 Ordinance No. 94-554, Relating to Contract Procedures Amending Metro Code Chapter 2.04 to Increase to \$25,000 the Maximum Amount of Contracts That May Be Let Without Using a Formal Bid or Request for Proposals Process

The Clerk read the ordinance for a first time by title only.

Presiding Officer Wyers announced that Ordinance No. 94-554 had been referred to the Finance Committee for consideration.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 94-551A, An Ordinance Amending the FY 1993-94 Budget and Appropriations Schedule to Revise the Building Management Fund to Reflect the Change in Operational Requirements and the Agreement with AMCO Portland for the Early Termination of the Lease of Metro Center, and Declaring an Emergency (Public Hearing)

The Clerk read the ordinance for a second time by title only.

Presiding Officer Wyers announced that Ordinance No. 94-551 was first read on May 12, 1994 and referred to the Finance Committee for consideration, but explained the Finance Committee meeting scheduled for May 25 had been canceled and that the ordinance had been scheduled for this agenda for second reading and consideration.

Main Motion: Councilor Monroe moved, seconded by Councilor Hansen, for adoption of Ordinance No. 94-551.

Motion to Amend: Councilor Monroe moved, seconded by Councilor Gates, to amend Ordinance No. 94-551 with Exhibits A and B corrected for typographical errors by Finance and Management Information staff.

Councilor Monroe explained the ordinance would fund Metro's agreement with AMCO Portland to terminate the lease of Metro Center. He said \$394,000 would be transferred from the General Fund to the Building Management Fund.

Presiding Officer Wyers opened the public hearing. No persons present appeared to testify and the public hearing was closed.

Vote on Motion to Amend: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Wyers were absent. The vote was 10/0 in favor and Ordinance No. 94-551 was amended.

Vote on Main Motion as Amended: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and Ordinance No. 94-551A was adopted.

Councilor McLain thanked Executive Officer Cusma and Doug Butler, Director of General Services, for their work to resolve the issue. Councilors Hansen and McFarland concurred with Councilor McLain and thanked them for their work on the issues also.

6.2 Ordinance No. 94-549A, An Ordinance Relating to the Metro Excise Tax Amending the Code and Increasing the Tax Rate on Users of the Solid Waste System (Public Hearing)

The Clerk read the ordinance for a second time by title only.

Presiding Officer Wyers announced that Ordinance No. 94-549 was first read on May 5, 1994, and referred to the Finance Committee for consideration. The Finance Committee considered it on May 11 and forwarded Ordinance No. 94-549A to the Council with no recommendation.

Main Motion: Councilor Monroe moved, seconded by Councilor McLain, for adoption of Ordinance No. 94-549A.

Councilor Monroe gave the Finance Committee's report. He said the ordinance was necessary to fund Metro operations and discussed amendments made to the ordinance at committee. He said Section Nos. 2 and 3 provided for a split rate excise tax effective September 1, 1994 and that Section Nos. 4 and 5 provided for a uniform excise tax of 7.5 percent effective September 1, 1995. He said he planned to introduce an ordinance to provide for broad-based funding of Metro's planning operations at a later date.

Motion to Substitute: Councilor Devlin moved, seconded by Councilor McLain, to substitute Ordinance No. 94-549B for Ordinance No. 94-549A.

Councilor Devlin explained Ordinance No. 94-549B would impose a uniform excise tax rate effective September 1, 1994, of 7.5 percent on Metro goods and services. He said he anticipated that, when the Council adopted the FY 1994-95 Budget in June, the excise tax rate necessary to fund Metro operations would be 7.4 percent, but said the ordinance would limit the excise tax rate to 7.5 percent.

Presiding Officer Wyers opened the public hearing.

Susan Ziolko, Clackamas County waste reduction manager, 902 Abernethy Road, Oregon Road, said the Clackamas County Board of Commissioners did not support a higher, split excise tax rate imposed on solid waste services to fund other, Metro non-solid waste functions. She said Clackamas County could support the ordinance proposed by Councilor Devlin.

Councilor Chris Boitano, City of Gresham, 1333 NW Eastman Parkway, Gresham, said he understood Metro's need to find funding for planning functions, but said Metro had not fully explored all other options. He said it was not fair to utilize solid waste funds simply because they were easy to access. He said the Cities of East Multnomah County were strongly opposed to that. He said East Multnomah County had worked very hard to implement Metro's solid waste planning and functions.

Councilor Boitano and the Council discussed the issues further. To Councilor Moore's question, Councilor Boitano said his constituents felt the split rate excise tax would set precedent. Councilor Gates asked Councilor Boitano if his constituents had identified alternative financing sources for Metro. Councilor Boitano said they had not. Councilor Gates said that his support for a split rate excise tax rate stemmed from his knowledge that other Metro departments and facilities had severe financial needs.

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Estle Harlan, Tri-County Council, 2202 Lake Road, Milwaukie, distributed her written testimony and said the Tri-County Council supported the uniform excise tax rate because it was the lesser of two evils. She said the Tri-County Council felt a split rate excise tax with a higher excise tax imposed on solid waste was inequitable and would set a precedent even if it was only for a short term. She said per Section 13 of the 1992 Metro Charter, the Council had to seek the advice of a Tax Study Committee before imposing a new tax. She said Metro had a Tax Study Committee in place, but said it did not review a split rate excise tax option. She said the small amount gained would not compensate for the unfairness of such a tax. She said Section 15 of the Charter stated: "Charges for the provision of goods or services by Metro may not exceed the costs of providing the goods or services." She said if the solid waste excise tax was raised, and the cost per ton dropped to \$74 or \$73 per ton, the necessary funds for planning could only be achieved from the solid waste reserves and said that was also troublesome to haulers. She said the Solid Waste Policy Advisory Committee (SWPAC) unanimously voted against the split rate tax. She said if the Solid Waste Department had achieved savings, those savings should not be used to pay for non-solid waste uses/users. She said she understood the need to balance the budget, but said Metro had to do further work to do so.

Councilor Monroe said, with regard to Ms. Harlan's testimony on the Metro Charter, that the excise tax was not a new tax, but an existing one that the Council was trying to raise. He said, with regard to fees exceeding the cost of goods and services, that Metro had the authority to do so from the original legislation which granted Metro the power to enact an excise tax.

Councilor Devlin asked Ms. Harlan if she was aware of an ordinance currently in the Finance Committee which dealt with adjustment of the solid waste rates. Ms. Harlan said she was aware of that ordinance.

Lynne Storz, acting program manager, Washington County Solid Waste and Recycling, 155 N. First Avenue, Hillsboro, concurred with those who had already testified. She said the proposed split rate excise tax created an unfair burden for the rate payer. She said it would be more equitable to charge all users the same excise tax rate.

Mike Hutchens, chair, Bureau Advisory Committee, City of Portland Environmental Services, 501 N. Dixon, Portland, said the City's solid waste rate payers already paid for general service funds. He said that cost was understandable, but said rate payers should not subsidize the cost of planning functions also.

Also, Howard Werth, president, Oregon Metals Industry Council, submitted written testimony (filed with the record of this meeting). The letter stated that Ordinance No. 94-549A would set a precedent by taxing solid waste services at a higher rate than other Metro taxed services. The letter stated solid waste services were a necessity and that taxing necessities at a higher rate than leisure services was not a defensible means of funding government.

Presiding Officer Wyers asked if any other persons wished to testify. No other persons appeared to testify and the public hearing was closed.

The Council discussed the two ordinances before them for consideration.

Councilor McFarland spoke in favor of Ordinance No. 94-549B. She expressed concern about the precedent Ordinance No. 94-549A would set and said she had been pleased to hear Councilor Monroe state that there were potential savings in solid waste and said those savings realized should be used to reduce the tipping fee. She said additional funds should not be used for non-solid waste functions. She concurred with the testimony given by Ms. Harlan and Councilor Boitano. She said the entire solid waste industry had worked very hard to coordinate and to save funds. She said if the Solid Waste Department had achieved savings, it had not

happened by accident. She said many different parties and entities had adhered to Metro's solid waste plan. She said the savings should be used to reduce the tipping fee.

Councilor McLain said she favored Ordinance No. 94-549B also. She said the term "excessive revenues" was inappropriate. She said additional revenues were used for bond debt and stabilization and future recycling activities. She said solid waste funds should be used for those and other efforts including updated modelling. She said household hazardous waste (HHW) needs should be addressed in east Multnomah County and other parts of the region.

Councilor Hansen said revenues were placed in solid waste funds for known future needs as noted by Councilor McLain. She said Metro still had to close the St. Johns Landfill and said there were other goals to be achieved in solid waste. She said what Metro should do was to continue to allow the Solid Waste Department to work well fiscally and to solve the problems of other departments separately. She said if solid waste funds were used for planning functions, it would set a bad precedent for the agency.

Councilor Monroe said the solid waste reserves of over \$9 million were in excess of \$1.5 million in a rate stabilization fund and \$3 million in additional reserves deemed necessary by Metro's auditors. He said a reduction in the tipping fee was in order, and that one would be proposed in several months, but did not know if it would be a reduction by \$1.00 or \$2.00. He said that would be determined after public testimony, and committee and Council consideration. He said the additional funds via Ordinance No. 94-549A would come from solid waste reserves already in hand and not from the rate payer. He said there would be no split rate excise tax after September 1, 1995. He said such a split rate would cost less than a penny a month per customer. He said the Zoo's revenues were down before construction of light rail and the new entry way and said an excise tax rate of 6 percent would make it easier for the Zoo.

Councilor Gates asked Councilor Devlin to clarify what Ordinance No. 94-549B would do.

Councilor Devlin said no other action was anticipated other than a flat rate for all Metro goods and services which would be limited in the Metro Code to 7.5 percent.

General Counsel Dan Cooper explained that the current 7 percent excise tax rate would expire September 1, 1994, and then revert to 6 percent. He said the ordinance before the Council showed current Metro Code language, not language as it would read September 1, 1994.

The Council as a whole discussed the two ordinances further.

Executive Officer Cusma urged the Council to adopt Ordinance No. 94-549B. She said Metro's finances were complicated and it was important to find long-term permanent funding to implement the Charter's mandate.

Vote on Motion to Substitute: Councilors Devlin, Hansen, McFarland, McLain, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Gates and Monroe voted nay. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 8/2 in favor and the motion to substitute Ordinance No. 94-549B for Ordinance No. 94-549A passed.

Vote on Main Motion as Amended: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen and Washington voted aye. Councilor Wyers voted nay. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 9/1 in favor and Ordinance No. 94-549B was adopted.

7. RESOLUTIONS

7.1 Resolution No. 94-1960, For the Purpose of Authorizing the Executive Officer to Execute Fourteen (14) Multi-Year Intergovernmental Agreements for South/North AA/DEIS Projects

Motion: Councilor Monroe moved, seconded by Councilor Washington, for adoption of Resolution No. 94-1960.

Councilor Monroe gave the Planning Committee's report and recommendations. He explained the resolution would authorize 14 multi-year intergovernmental agreements between Metro and several local jurisdictions for the South/North AA/DEIS Projects. He explained Metro would act as the lead agency for the South/North Transit Corridor Study and as project manager.

Vote: Councilors Devlin, Gates, Hansen, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner, Kvistad and McFarland were absent. The vote was 9/0 in favor and Resolution No. 94-1960 was adopted.

7.2 Resolution No. 94-1962A, For the Purpose of Coordinating Technical Assistance Between Metro and the Regional Water Supply Planning Study

Motion: Councilor McLain moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1962A.

Councilor McLain gave the Planning Committee's report and recommendations. She explained the resolution would coordinate technical assistance between Metro and the Regional Water Supply Planning Study and ensure that the water supply element of Metro's Regional Framework Plan was consistent with the work contained in the Regional Water Supply Study.

Councilor Washington thanked Andy Cotugno, Director of Planning, and Rosemary Furfey, Senior Regional Planner, for their work on the issues.

Vote: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Devlin were absent. The vote was 10/0 in favor and Resolution No. 94-1962A was adopted.

Presiding Officer Wyers recessed the Metro Council and convened the Metro Contract Review Board to consider Agenda Item No. 7.3.

7.3 Resolution No. 94-1936, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.041(c) Competitive Bidding Procedures and Authorizing a Sole Source Contract with the 40-Mile Loop Land Trust

Motion: Councilor Gates moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1936.



Councilor Gates gave the Regional Facilities Committee's report and recommendations. He explained the resolution would authorize a feasibility study with the 40-Mile Loop Land Trust to plan the proposed Peninsula Crossing Trail in North Portland and said Metro's financial commitment would not exceed \$5,000.

Councilor Hansen said the project was one of high merit.

Councilor Van Bergen asked if a hazardous waste study would be done on the proposed trail. Mr. Cooper said that a hazardous waste study would be done if Metro acquired title to any of the property in question.

Vote: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and Resolution No. 94-1936 was adopted.

Presiding Officer Wyers adjourned the Contract Review Board and reconvened the Metro Council.

7.4 Resolution No. 94-1961A, For the Purpose of Preparing a Measure to Refer a General Obligation Bond to the Voters No Later than the First Available Election Date in 1995 For the Amount of Approximately \$140 Million to Finance Acquisition and Development of Greenspaces and Trails

Main Motion: Councilor Moore moved, seconded by Councilor Hansen, for adoption of Resolution No. 94-1961A.

Councilor Hansen gave the Regional Facilities Committee's report and recommendations. She distributed her memorandum dated May 26, 1994, with amendments for Resolution No. 94-1961A and explained same.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Moore, to amend Resolution No. 94-1961A as follows: 1) In the title language to delete and add language "For the Purpose of Preparing a Measure to Refer a General Obligation Bond to the Voters No Later Than ~~[the First Available Election Date in]~~ Spring, 1995 For the Amount of Approximately \$140 Million to Finance Acquisition and Development of Greenspaces and Trails; to add a new eighth Whereas Section; 2) "On May 18, 1994 the Metropolitan Greenspaces Policy Advisory Committee reconsidered its earlier recommendation of a September 1994 date and recommended a Spring 1995 election; and 3) To delete and add language in Be It Resolved Section No. 1 as follows: "That the Metro Council hereby determines that a General Obligation bond of approximately \$140 million shall be referred to the voters no later than ~~[the first available election date in]~~ Spring, 1995."

Councilor Hansen also distributed and discussed a letter from Presiding Officer Wyers on behalf of the Metro Council to Fred Miller, vice president of public affairs for Portland General Electric, thanking him and the Blue Ribbon Committee for their work and counsel on the Greenspaces bond measure.

Councilor Moore reviewed the chronology of events to-date and the requirements of the Greenspaces Master Plan.

The Council discussed the resolution. Councilor Monroe preferred to ask for a more modest amount and see it pass rather than ask for a higher amount and see the ballot measure fail. He said he preferred to ask for \$90 million. Councilor Hansen said the Blue Ribbon Committee discussed that issue, but said the group became convinced that the higher amount was best. Councilor Van Bergen asked where funds for operations would

come from if the ballot measure passed. Councilor Gates said he liked the new election date better, but expressed concern also about the higher amount asked for. He said those who had the opportunity to review materials in depth were quickly convinced, but said it would be difficult to convince voters of need.

Councilor McLain said the issues raised at this meeting were important ones, but said they and other issues had been fully explored by the Blue Ribbon Committee and the Greenspaces Policy Advisory Committee.

Councilor Devlin said the advisory groups were disappointed that the ballot measure date had been delayed again. He said preparation for this ballot measure had been much more successful because it had broadened the base of support from the business community and civic leaders. He said this resolution would create more items for Council consideration. He said if "Son of Measure No. 5" passed, the State Legislature would have to reconfigure election dates, but said that should not be problematic. He said the Council should fully support the bond when it was proposed by the Council in Summer 1994 for the ballot.

Vote on Motion to Amend: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and the motion to amend passed.

Vote on Main Motion: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and Resolution No. 94-1961B was adopted.

## 8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

### 8.1 Nominations for 1994 Metro Regional Hazard Mitigation Awards

Motion to Suspend the Rules: Councilor Gates moved, seconded by Councilor Moore, to suspend the Council's rules so that the Council as a whole could consider Agenda Item No. 8.1.

Vote on Motion to Suspend: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Devlin and Kvistad were absent. The vote was 10/0 in favor and the rules were suspended.

Motion to Approve: Councilor Gates moved, seconded by Councilor Devlin to approve recipients for the first "Metro Regional Hazard Mitigation Awards Program."

Councilor Gates explained the Governmental Affairs Committee would have approved the list of nominees at its May 24 meeting, but said that meeting was canceled and asked the Council as a whole to do so instead.

Vote on Motion to Approve: Councilors Devlin, Gates, Hansen, McFarland, McLain, Monroe, Moore, Van Bergen, Washington and Wyers voted aye. Councilors Buchanan, Gardner and Kvistad were absent. The vote was 10/0 in favor and the Metro Regional Hazard Mitigation Awards Recipients were approved.

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Councilor Devlin said the Council would review a nomination for the Greenspaces Policy Advisory Committee soon.

Councilor Van Bergen said one more or additional Councilors should volunteer for service on the Council Governmental Affairs Committee. Councilor Gates, chair of that committee, agreed. Presiding Officer Wyers said she would issue a memorandum asking for volunteers.

Presiding Officer Wyers announced a special Council meeting would be held Tuesday, May 31, 1994, at 5:30 p.m. so that the Council could hold an executive session.

All business having been attended to, Presiding Officer Wyers adjourned the regular meeting at 6:29 p.m.

Respectfully submitted,

Paulette Allen  
Clerk of the Council  
MCMIN94.146

Council  
6/9/94  
7.1

**PLANNING COMMITTEE REPORT**

**CONSIDERATION OF RESOLUTION NO. 94-1968 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY DESIGNATING METRO AS LEAD AGENCY IN COMPLETING THE TRANSPORTATION AND LAND USE ELEMENTS OF THE PORTLAND OZONE MAINTENANCE PLAN**

Date: June 6, 1994

Presented By: Councilor Gardner

**Committee Recommendation:** At the June 2 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 94-1968. Voting in favor: Councilors Kvistad, Gardner, Gates, Monroe, Moore, and Washington; absent: Devlin and McLain.

**Committee Issues/Discussion:** Mike Hoglund, Transportation Planning Manager, presented the staff report. He explained that this resolution relates to an intergovernmental agreement (IGA) to spend \$60,000 received from the Departmental Quality (DEQ), which they received from the federal Environmental Protection Agency (EPA).

The money will be used to provide assistance in funding the Transportation Demand Management (TDM) study work and development of the Ozone Maintenance Plan. Congestion pricing grant application and analysis work interrupted staff time until recently and delayed start up of this project. EPA has determined that because it is this years' money, this contract must be signed and work begun before the end of the fiscal year. It will then need to be carried over until next fiscal year.

There was no committee discussion.

Council  
6/9/94  
7.2

PLANNING COMMITTEE REPORT

**CONSIDERATION OF RESOLUTION NO. 94-1967 TO AUTHORIZE  
GENERAL COUNSEL APPEARANCE IN BEAVERTON/PORTLAND URBAN  
SERVICE BOUNDARY CASES**

Date: June 6, 1994

Presented By: Councilor Moore

**Committee Recommendation:** At the June 2 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 94-1967. Voting in favor: Councilors Kvistad, Gardner, Devlin, Gates, McLain, Monroe, Moore, and Washington.

**Committee Issues/Discussion:** Larry Shaw, Senior Assistant Counsel, presented the staff report. This resolution allows Metro General Counsel to participate in specific cases before the Court of Appeals as a "friend of the court" through the filing of an amicus brief. The court cases related to three decisions remanded to the Land Use Board of Appeals (LUBA) contesting the Portland-Beaverton urban service boundaries within Washington County. This resolution allows Counsel to file the brief unless the case is resolved in such a way that the appeal is dismissed. The time period for stipulation is 120 days beginning immediately. So far it has been impossible to set a meeting time with all parties because of vacation schedules.

In response to a question from Councilor Moore regarding the lines in question, Mr. Shaw responded that LUBA remanded all three lines (Portland, Beaverton and Washington County) but adopted the Portland line as an interim but not permanent line. The lead party has not yet been identified, but Washington County would be logical. Councilor Moore advocated for strong citizen involvement throughout the process.

There was a brief discussion of whether discussion of this resolution should occur in executive session. Mr. Shaw explained that the decision to file an amicus brief did not necessitate an executive session. Later discussion regarding Metro's strategy, if they become a "friend of the court", will likely need an executive session. Councilor Gardner clarified that this resolution in no way indicates the nature of Metro's representation before the court if the amicus is approved. Mr. Shaw assured the committee that before representing a Metro point of view, there will need to be full discussion and agreement from the Council. This resolution only allows General Counsel to apply to the court for amicus status, it does not indicate the role Metro will take once the status is established.

Council  
6/9/94  
new/ added item

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPRESSING ) RESOLUTION NO. 94-1995  
APPRECIATION TO KAY RICH FOR SERVICES )  
RENDERED TO METRO AND CITIZENS OF ) Introduced by  
THE REGION ) Presiding Officer Judy Wyers

WHEREAS, A. McKay "Kay" Rich has provided more than 33 years of public service to appointed and elected officials and citizens throughout the Portland Metropolitan Region; and

WHEREAS, Kay served as Staff Director for the Metropolitan Study Commission from April 1964 to June 1971 and during this tenure he was instrumental in developing proposals which led to the creation of: 1) the Columbia-Willamette Air Pollution Authority (the forerunner to the Department of Environmental Quality Air Quality Program); 2) the Columbia Region Association of Governments (CRAG); 3) the Portland Metropolitan Area Boundary Commission; and 4) the Metropolitan Service District; and

WHEREAS, Kay served as Assistant Director of the Columbia Region Association of Governments from July 1971 to December 1974 and assisted in the development of regional land use and transportation plans and other regional intergovernmental cooperative programs; and

WHEREAS, Kay served as Staff Director of the Tri-County Local Government Commission from December 1975 to June 1977 and was instrumental in developing the proposal for the successful merger of the Columbia Region Association of Governments with and into the Metropolitan Service District thus creating the first directly elected regional government in the United States; and

WHEREAS, Kay served as Assistant Director of the Metro Washington Park Zoo from July 1977 to July 1994, serving three directors during this period (Warren Iliff, Gene Leo, and Sherry Sheng) and assisting in the revitalization of the Zoo including the construction of 21 animal exhibits and other capital projects, passing a Zoo operating tax base measure and boosting annual attendance from 562,645 in 1977-78 to 1,162,778 in 1991-92; and

WHEREAS, Kay has provided invaluable service to the citizens of the Portland Metropolitan region through his efforts to promote regional governance and improve the development and operation of the Metro Washington Park Zoo; and

WHEREAS, Kay has decided to retire from public employment to spend time and energy on less public pursuits; now, therefore,

BE IT RESOLVED,

1. That the Metro Council expresses its appreciation to Kay Rich for his excellent service, leadership and commitment to Metro and citizens of the region.
2. That the Metro Council wishes Kay good health, happiness and success in all future endeavors.

ADOPTED, by the Metro Council this ninth day of June, 1994.

\_\_\_\_\_  
Judy Wyers, Presiding Officer