



**METRO**

DATE: September 8, 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**

5:00 TIME  
 CERTAIN  
 (30 min.)

**3. EXECUTIVE OFFICER COMMUNICATIONS**

3.1 Update on Oregon Territory Project at the Metro Washington Park Zoo

4:30 TIME  
 CERTAIN  
 (20 min.)

**4. OTHER BUSINESS**

4.1 Metro Committee for Citizen Involvement (MCCI) Update Presentation to Metro Council

4:05  
 (5 min.)

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

5.1 Minutes of August 11, 1994

4:10  
 (5 min.)

**6. ORDINANCES, FIRST READINGS**

6.1 Ordinance No. 94-567, For the Purpose of Granting a Franchise to Willamette Resources Inc. For the Purpose of Operating a Solid Waste Processing Facility (Action Requested: Refer to the Solid Waste Committee)

6.2 Ordinance No. 94-568, For the Purpose of Approving the Revision of Metro Code Section 4.01.050 Revising Admission Fees and Policies at Metro Washington Park Zoo (Action Requested: Refer to the Regional Facilities Committee)

6.3 Ordinance No. 94-569, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule by Transferring \$5,000 from the General Fund Contingency to the Office of the Auditor Materials & Services Misc. Professional Services For the Purpose of Transition Services for the New Office of the Auditor; and Declaring an Emergency (Action Requested: Refer to the Finance Committee)

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.

**6. ORDINANCES, FIRST READINGS (Continued)**

- 6.4 Ordinance No. 94-570, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule to Implement the Construction Excise Tax, Adding 1.0 FTE in the Financial Planning Division and Funding Local Government One-Time Start Up Costs; and Declaring an Emergency (Action Requested: Refer to the Finance Committee)**

**7. ORDINANCES, SECOND READINGS**

PLACED ON THE COUNCIL AGENDA AT THE DIRECTION OF THE FINANCE COMMITTEE (REMOVED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE)

- 4:15 (15 min.) **7.1 Ordinance No. 94-559, An Ordinance Relating to Public Meetings Allowing Council Members to be Present at Meetings Through the Use of Electronic Means and Declaring an Emergency PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)** McLain

REFERRED FROM THE FINANCE COMMITTEE

- 4:50 (10 min.) **7.2 Ordinance No. 94-562A, For the Purpose of Amending the Metro Code Section 2.04.045 Relating to Approval of Contract Amendments PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)** McLain
- 5:30 (10 min.) **7.3 Ordinance No. 94-564, An Ordinance Amending the FY 1994-95 Budget by Transferring \$10,500 from the Support Services Fund Contingency to Materials & Services, Temporary Help Services, in the General Services Department for the Purpose of Providing Clerical Relief for the General Metro Switchboard Receptionist; and Declaring an Emergency PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)** Kvistad
- 5:40 (10 min.) **7.4 Ordinance No. 94-565A, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule by Transferring \$68,262 from the Solid Waste Revenue Fund Contingency to the Administration Division Materials & Services, Legal Fees Line Item For the Purpose of Providing Legal Services Regarding Metro Executive Officer Contracting Authority; and Declaring an Emergency PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)** Van Bergen

**8. RESOLUTIONS**

FROM THE FINANCE COMMITTEE

- 5:50 (10 min.) **8.1 Resolution No. 94-2014, For the Purpose of Amending a Contract with Jacob Tanzer for Legal Services Regarding Metro Executive Officer Authority (Action Requested: Motion to Adopt the Resolution)** Van Bergen

METRO COUNCIL AGENDA

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**8. RESOLUTIONS (Continued)**

REFERRED FROM THE PLANNING COMMITTEE

6:00  
(10 min.)

**8.2 Resolution No. 94-2016, Waiving the Filing Deadline for a Proposed Urban Growth Boundary Locational Adjustment (Action Requested: Motion to Adopt the Resolution)**

Devlin

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

6:10  
(10 min.)

**8.3 Resolution No. 94-2028, Authorizing a Temporary Lease of Property for a Cellular Telephone Antenna Site (Action Requested: Motion to Adopt the Resolution)**

6:20  
(10 min.)

**9. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS**

6:30

**ADJOURN**

Meeting Date: September 8, 1994  
Agenda Item No. 5.1

MINUTES



**METRO**

**DATE:** September 2, 1994

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

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

**RE:** AGENDA ITEM NO. 4.1; MINUTES OF AUGUST 11, 1994

The minutes will be provided to Councilors on or before Wednesday, September 7 and will be available at the Council meeting September 8, 1994.

Meeting Date: September 8, 1994  
Agenda Item No. 6.1

**ORDINANCE NO. 94-567**

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 94-567 FOR THE PURPOSE OF  
GRANTING A FRANCHISE TO WILLAMETTE RESOURCES, INC. FOR THE  
PURPOSE OF OPERATING A SOLID WASTE PROCESSING FACILITY

Date: August 12, 1994

Presented by: Bob Martin  
Roosevelt Carter

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to introduce and provide analysis regarding the application filed by Willamette Resources, Inc. (WRI), a wholly owned subsidiary of Waste Control Systems, Inc.. The applicant has applied to Metro for a franchise to operate a solid waste processing facility at Wilsonville, Oregon. The site location near the intersection of Ridder Road and Garden Acres Road will be assigned a street address when a building permit is issued. The application was accepted as complete on July 11, 1994. Metro, pursuant to Code Section 5.01.020 has the authority to grant franchises for private facilities accepting mixed solid waste. The facility is to recover and market recoverable materials from commercial, industrial, construction and demolition debris, and dry non-putrescible and non-hazardous mixed wastes.

This facility will also process source-separated materials obtained from residential and commercial recycling programs. The source-separated portion of the operation does not require a Metro franchise, but will require monitoring since it will utilize the same area of the building and processing equipment as the mixed waste processing.

The facility will accept loads of material primarily from United Disposal Service Inc. and Keller Dropbox. United Disposal Service Inc. is wholly owned by Waste Control Systems. Waste control Systems, Inc. is a major stockholder of Keller Dropbox. The franchisee will provide services to outside commercial refuse haulers and contractors, but this is expected to be only a minor element of the franchisee's business. Historically, Metro has exempted processing facilities from rate setting due to the need to be able to respond to markets. It is proposed that this facility be exempt from Metro rate setting by variance under Section 5.01.110 of the Metro Code. The facility may only dispose of residue from its operations at Metro-approved disposal facilities. Following is a summary description of the facility, the material processing and other pertinent details relative to the facility.

LOCATION OF PROPOSED FACILITY

Near the intersection of Ridder Road and Garden Acres Road in the City of Wilsonville, Oregon.

SITE DESCRIPTION

The site is approximately nine acres in size and is located 1/2 mile west of the Stafford Road exit - Interstate 5 Freeway Interchange, Wilsonville, Oregon. The site is currently zoned for industrial uses and has been approved by the Wilsonville Planning Commission for a Stage II, Phase I Development Plan for use as a solid waste transfer and recycling facility. The site is the same one originally proposed as the Washington County transfer station site. Metro, in early 1994, determined to terminate negotiations for a Washington County transfer station at this site. The site presently is vacant.

MATERIALS TO BE PROCESSED

Materials to be processed are limited to commercial, industrial, construction and demolition debris, and dry, non-putrescible and non hazardous mixed wastes. Recovered materials will be sorted, inventoried, baled and/or prepared for shipment to commodities markets with which WRI has a working relationship. To assure that sufficient recovery and marketing of recoverable materials is performed at this facility, it is recommended that the following requirements be placed on its operations (these limitations are exclusive of operations involving source-separated recyclables):

1. A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, etc.) The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period. See EXHIBIT 2 of the franchise.
2. A ninety (90) day (three month) grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate and imposition of phased in penalties for failure to achieve designated recovery rates. The full 45 percent recovery rate must be attained in the eighth month following commencement of operations. Months four and five will be phased-in recovery rates of 35 percent and 40 percent with both months a stand alone average. By illustration, the franchise obligations for material recovery are as follows:

Commencement of Operations	Recovery Rate Required
Month 1	-0-
Month 2	-0-
Month 3	-0-
Month 4	35% (stand alone)
Month 5	40% (stand alone)
Month 6	40% (3-mth average)
Month 7	43.3% (3-mth average)
Month 8	45% (3-mth average)



"Commencement of Operations" is defined as the first day that mixed dry waste is delivered to the facility."

3. WRI will pay to Metro a penalty in a per ton amount equal to the current Metro Regional User Fee plus \$2.00 per ton for each percentage point below the specified recovery rate of 45 percent (or 35 percent and 40 percent for months four and five): **(Example: If 1,000 tons were processed in a month with a three month average recovery rate of 42.3%, the penalty would equal: (1,000 tons) (0.450 - 0.423) ((\$17.50 + (45.0 - 42.3) (\$2.00)) = \$618.30. Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the per ton penalty will be adjusted to the then current Regional User Fee (or equivalent), and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 17.5:2.**
4. There is a 35,000 ton limit upon the tons of processable materials that may be received at the WRI facility. That limit can be increased upon approval by Metro.
5. The tonnage of source-separated materials received at the facility are to be excluded from any calculations done to establish the recovery rate because their inclusion would inflate the recovered tonnage for mixed waste. The activities from the source-separated operation will be included in the reporting requirements to ensure Metro's ability to track recoverable waste materials handled in the facility.
6. Inert materials will consist of all materials disposed of at a clean fill site (*i.e.*, not a solid waste landfill). The quantity of inert material disposed of at a clean fill site will be subtracted from the incoming waste tonnage and will not be included in the facility's recovery rate. See EXHIBIT 2 of the franchise for the methodology for calculating the recovery rate.

#### EQUIPMENT

The applicant states that processing will be accomplished by use of:

- a front end loader with a specially equipped bucket for initial floor sorting,
- conveyors with a vibratory screen,
- picking line adjacent to the belt conveyers,
- sorting platform,
- storage bunkers, and
- a baler.

Large and heavy materials will be removed before the picking line. The remaining large material will pass over a vibratory screen and fall off the end onto a sorting conveyor. Residuals will be removed from the sort conveyor and pushed by the front end loader to be top loaded into a transfer trailer.

### RESIDUE DISPOSAL

Residue will be transported for disposal by truck to a Metro-approved disposal facility.

### PERMITS REQUIRED

The applicant requires:

1. City of Wilsonville land use approval(zoning is industrial)
2. Oregon Department of Environmental Quality Class III Low risk Facility Permit
3. Metro Franchise

### Status:

- City of Wilsonville land use approval has been granted
- Department of Environmental Quality Solid Waste Permit pending.
- Metro franchise pending.

### MISCELLANEOUS OPERATING DATA

The applicant proposes that the facility will be open to the applicant's own vehicles as well as other commercial haulers and contractors. Operational receiving hours will be from 8:00 a.m. to 5:00 p.m., five days per week (Monday through Friday). Estimated vehicles per day is 18 (exclusive of vehicles entering the adjacent United Disposal Service operations center to be relocated to the site).

### ISSUANCE OF A FRANCHISE

Staff has prepared a proposed franchise agreement to be issued to the applicant following Council approval of the franchise application. Metro Code Section 5.01.070 states in part "The Executive Officer shall formulate recommendations regarding whether the applicant is qualified; whether the proposed franchise complies with the district's solid waste management plan; whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities, and resource recovery facilities and their remaining capacities and whether or not the applicant has complied or can comply with all other applicable regulatory requirements."

Metro Code Section 5.02.070 (e) (2) provides that a corporate surety bond is required for this type of franchise. This however, is guided by Metro Resolution No. 86-672. The pertinent portions of the Resolution, Section 1 b. and c. read as follows:

"b. If continued operation of the processing or transfer facility is not considered necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and

site maintenance costs\* for the facility are estimated to be less than or equal to \$10,000, then the amount of the required surety bond is \$0."

\*[Footnote 4 from the resolution stated: Clean-up and Site Maintenance Cost is dependent on the size and design of the facility.]

"c. If continued operation of the processing or transfer facility is not necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance cost for the facility are estimated to be greater than \$10,000, then the amount of the required surety bond is to be equal to the amount of the estimated clean-up and site maintenance costs for the facility. If these conditions exist and the franchisee owns the site on which the facility operates, and the value of the site exceeds the amount required for the bond, the franchisee may elect to issue a conditional lien on the property to Metro guaranteeing performance by the operator in cleaning up the site in lieu of the required bond. The lien shall be in a form satisfactory to Metro."

Using the criteria outlined in Metro Resolution No. 86-672 for determining the amount of a surety bond that may be required pursuant to a facility franchise, it is recommended that the franchisee be required to provide a surety bond in the amount of \$100,000, or in the alternative provide a conditional lien if preferred by the franchisee. This recommendation is based on the availability of disposal or recycling facilities (Metro transfer stations, Hillsboro Landfill, Lakeside Reclamation Landfill, East County Recycling and WASTECH) that would not make it necessary to continue operation of the facility. Clean up and site maintenance costs are estimated to be approximately \$100,000. This estimate assumes the following:

1. 26,745 square feet of floor space available for storage of materials.
2. Waste stacked to a depth of six feet over the available floor space.
3. Waste density of 400 pounds per cubic yard.
4. Load and haul costs are estimated to be \$8.50 per ton for 1189 tons or \$10,100
5. Disposal costs are estimated at \$75.00 per ton, for a cost of \$89,175
6. The solid waste is consistent with the authorized materials for the facility; dry non-hazardous and non-putrescible mixed waste and construction and demolition debris.

**NOTE: It should be emphasized that the forgoing is an order of magnitude estimate only of a "worst case scenario" where the franchisee would continue deliveries of waste to the facility until filled to capacity and then abandon the facility.**

The following staff analysis is submitted to the Council for its review as required.

REQUEST FOR RATE SETTING VARIANCE

The applicant has requested a variance from Metro rate setting. This request is based on the nature of the facility, the need to respond rapidly to marketplace requirements and the contributions being made to Metro's objective of enhancing the amount of materials recovered from the regional wastestream.

The Council may grant a variance in the interest of protecting the public health and welfare if the purpose and intent of the requirement (*e.g.*, setting rates) can be achieved without strict compliance and that strict compliance:

- "(1) Is inappropriate because of conditions beyond the control of the persons(s) requesting the variance; or
- (2) Will be extremely burdensome or highly impractical due to special physical conditions or causes; or
- (3) Would result in substantial curtailment or closing down of a business plant, or operation which furthers the objectives of the District."

Staff opinion is that the applicant's variance request is consistent with the spirit, intent and variance criteria (1), (2) and (3) requirements. Staff recommendation is that the following findings be incorporated into the franchise if approved by the Council:

- A. Strict compliance with Metro Code provisions regarding rate-setting (Section 5.01.180) is not necessary to protect the public interest, health or welfare with respect to processors of dry, non-putrescible, non-hazardous mixed waste.
- B. That the applicant (franchisee) will be performing a processing and recycling function by recovering materials from the wastestream for reuse or recycling.
- C. Solid waste materials processors operate in a highly competitive marketplace which will require the need for rapid response to market demands.
- D. Metro's policy has been to promote recovery of material from the wastestream by not imposing user fees on incoming waste, but only on disposed residue from processing.
- E. Metro has not to date regulated the rates for any processor of mixed dry waste.
- E. That the objectives of Metro to encourage recovery of material from the wastestream can be met without regulating the rates for this facility.
- F. That regulation of rates at the applicant's facility can result in curtailment or closing down of the franchised facility to the detriment of the region's objectives to recover increasing amounts of materials from the mixed wastestream.

The interest and number of processors and competing landfills assure a competitive marketplace, and adequate processing and/or disposal capacity to meet District needs. Furthermore, the substantial capital investment and required permits to commence materials processing provides assurance of the commitment of processors to remain in the marketplace.

#### UNIFORMITY OF RATES

Even though staff recommends that the facility be exempt from rate setting, this needs to be distinguished from "uniformity of rates". Since the franchisee will be serving vehicles from both affiliated hauling companies as well as companies that are not affiliated with WRI, it is necessary to assure that non-affiliated companies that deliver waste to the facility are not discriminated against. The franchise provides that WRI shall establish criteria for equal application of rates, subject to Metro approval, and that approval shall not be unreasonably withheld.

#### REQUEST FOR VARIANCE TO ALLOW THE USE OF THE FACILITY BY HAULERS NOT OWNED BY THE FRANCHISEE.

The three criteria for allowing a variance from Metro Code conditions are noted above. The applicant desires to provide access to the processing facility by commercial haulers and contractors not owned by the franchisee. The applicant has indicated that it expects only a small amount of material to be delivered by contractors not owned by the franchisee. Section 5.01.120(I) states that a franchisee:

"(I) Shall not, either in whole or in part, own, operate, maintain, have a propriety interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection."

The applicant would be exempt from this provision if it denied access to the facility by non-affiliated companies. Since the applicant has requested the authority to accept material from non-affiliated companies, to do so requires a variance from the terms of Code Section 5.01.120(I). In reviewing the exemption criteria, Section 5.01.110(a)(3) appears to apply in this case.

"The Council may grant a variance in the interest of protecting the public health and welfare if the purpose and intent of the requirement can be achieved without strict compliance and that strict compliance:

- 1) or, *(not applicable)*
- 2) or, *(not applicable)*

"3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the district."

With respect to the purpose and intent of the code provision, the constraint on non-affiliated haulers access to franchises has largely been based on concerns over the issue of 'vertical integration'. This could manifest itself in unfair and unequal treatment by the franchisee of non-affiliated companies. This could come in several forms, but the most prominent form would be in administration of gate rates. The staff report in the analysis of the rate variance issue makes note of the concern over fair administration of rates. The draft franchise contains conditions requiring equal administration of rates. Also, facility rates may not be changed during the course of a calendar day. These requirements coupled with the fact that alternative facilities would be available to non-affiliated haulers mitigates against the risk of unfair treatment by the franchisee of non-affiliated haulers.

The applicant has indicated that a "minor amount of material" may be received from other commercial haulers. The question then is; if only a minor amount of material is to be received from other haulers, would denial of authority to accept this material amount to a "substantial curtailment . . . of . . . (an) operation which further the objectives of the district"?

It is clear that the ability to receive waste and process it to recover material is furthering an objective of the district. The issue then is whether denial of facility access for the incremental amount of waste to be received from other commercial haulers is considered to be "substantial" in the context the applicant's request. On balance, staff opinion is that there would be "substantial curtailment" within the meaning of this Code provision.

Assuming a natural increase in tonnage growth from its own hauling companies (*no acquisitions etc.*), a significant element of the applicant's anticipated growth would likely come from other haulers using the facility. While tonnage estimates for non-affiliated company haulers are small at first, denial of facility access to them would be a deterrent to planning for growth and for attracting other recoverable material to the facility. This would conflict with the district's interest in facilitating greater material recovery in the region. Given the balancing of the concepts of "curtailment" and "objectives", it is reasonable to favor the "objectives" while not interpreting "substantial" so narrowly that facility growth is inhibited and district objectives are diminished.

For the forgoing reasons, it is recommended that the applicant be granted a variance to Metro Code Section 5.01.120(l).

#### QUALIFICATIONS OF THE APPLICANT

WRI was originally created for the purpose of submitting a proposal to Metro for a Washington County transfer station. Principals of WRI and its affiliate companies have been active in the solid waste industry in the Metro region for over 35 years. Merle Irvine, Vice-President of WRI has served as Solid Waste Director for Metro (at that time Metropolitan Service District) and as one of the owner/operators of WASTECH (formerly O.P.R.C.) His former company also had the

contract to operator the Metro South Station from 1983 to 1990. United Disposal Services, Inc. has been involved in all aspects of commercial and residential solid waste collection since 1955.

The applicant and its staff have an established record of having operated similar facilities to the one presently being proposed. This coupled with the affiliate companies experience in solid waste hauling and disposal provide a reasonable level of assurance that the proposed facility will be operated and managed competently and efficiently.

#### COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

Given the conditions imposed by this franchise, this facility would fully comply with the goals, objectives and policies of the Regional Solid Waste Management Plan including the Waste Reduction Chapter adopted by the Metro Council in 1988. The Regional Solid Waste Management Plan (RSWMP) states in part "Purpose: To recover recyclable materials and reusable items from the waste stream through facilities that process waste that contains a high percentage of economically recoverable material." The applicant's proposed facility will accomplish waste reduction by recovering materials that might otherwise go unprocessed or might ultimately be shipped for disposal at a regional landfill. The proposed facility will be privately owned and operated and will require no public investment in plant or equipment.

NEED AND COMPATIBILITY

The following lists annual tonnage into facilities which are expected to be affected by the proposed franchise:



TABLE 1

	Total 1993 Tonnage Received Mixed Dry Waste	Total Tonnage of Mixed Dry Waste Processed	Total 1993 Tonnage Recycled From Mixed Dry Waste	Percent Recycled of Processed Mixed Dry Waste	Proposed Tons Diverted to WRI	Normal Recovery of Diverted Tons (Status Quo)	45 Percent Recovery By WRI of Diverted Tons	Diverted Minus Status Quo
Lakeside <sup>1</sup>	66,267	33,135	10,118	31%	4,000	1,240	1,800	560
Metro South	126,000	-0-	-0-	0%	16,000	-0-	7,200	7,200
Metro Central <sup>2</sup>	133,000	77,000	24,528	32%	The granting of a franchise to WRI is not anticipated to affect current tonnage flows to Metro Central, WASTECH, ERI, ECR, or TVWR.			
WASTECH <sup>3</sup>	13,257	13,257	9,545	72%				
ERI <sup>4</sup>	47,900	47,900	22,318	47%				
ECK	39,681	39,681	17,009	43%				
TVWR <sup>5</sup>	See Footnote Number 5							
<b>Totals Re: Processed Waste</b>	<b>426,105</b>	<b>210,923</b>	<b>83,518</b>	<b>40%<sup>6</sup></b>	<b>20,000<sup>7</sup></b>	<b>1,240</b>	<b>9,000</b>	<b>7,760</b>

<sup>1</sup>Recovery from mixed loads is highly variable. Owner estimates that 10% by weight of all incoming mixed waste is recycled. Materials are recycled from about half of the incoming loads.

<sup>2</sup>The tonnage received of mixed dry waste includes 100% loose drop boxes 50% compacted drop boxes and 59% of the front loaders. This is considered to be the entire dry processable wastestream at the transfer station from which materials are recovered. Of this tonnage received, approximately 80% of the drop box loads are processed and 20% of compacted drop boxes and front loaders are processed which results in an effective recovery rate of 32%. The data shown represents Metro Central recovery prior to operation of the Energy Reclamation Inc. (ERI) franchise. ERI began operations in June 1994 and data for calendar year 1994 will reflect the effect of the ERI operations.

<sup>3</sup>During 1993 WASTECH reported 4,717 tons of residue resulting from the processing of 18,837 tons of incoming source separated waste and 13,257 tons of mixed dry waste. By assuming that 5% (942 tons) of the incoming source-separated waste resulted in residue it is concluded that 3,775 tons (4,717 minus 942) of residue resulted from processing the mixed dry waste. Dividing 3,775 by 13,257 results in an imputed residue rate of 28% (recovery rate of 72%).

<sup>4</sup>Energy Reclamation Inc. (ERI) began operations in June 1994. In order to address all existing franchised processing facilities on this table, annual projections from the October 18, 1993 Metro Staff Report on ERI are shown as if they pertained to 1993.

<sup>5</sup>Tualatin Valley Waste Recovery (TVWR) is owned by Sanifill and co-located with Hillsboro Landfill. The owner responded that 99.4% of the 17,496 tons of source separated waste coming into TVWR during 1993 were recovered. Because the owner declares all TVWR incoming waste is source-separated, no tonnage is shown in this table relating to mixed waste. The purposes for incoming TVWR in this table are to highlight its high rate of recovering source-separated material and to document that WRI does not foresee affecting TVWR's supply of waste.

<sup>6</sup>Excludes Metro South's mixed dry waste and the portion of Metro Central's mixed dry waste which is not processed.

<sup>7</sup>WRI's recovery rate is derived by dividing WRI's 9,000 tons recovered by 20,000.

The following questions and answers have been prepared by the Solid Waste Staff:

**1. Will this facility increase the recovery level in the region?**

Yes. The recovery rate for processed mixed waste is 40%. (See Table 1). As can be seen from Table 1, the rate of recovery varies by facility. The addition of WRI to the facilities shown in Table 1 is projected to result in a net increase of recovered materials of 7,760 tons per year.

WRI's facility recovery rate is projected to be at least 45%. This is consistent with the actual performance of other mixed processors in the region. The proposed franchise for WRI sets a minimum recovery rate of 45%, but this is considered a conservative number, based on staff analysis.

Metro expects WRI to be able to improve its recovery over 45 percent since it has substantial control over the materials entering the facility in the same manner as the Energy Reclamation Inc. franchise previously approved by Metro. While WRI will allow other commercial haulers and contractors to use the facility, WRI has projected these to be in small numbers. Further, WRI load acceptance criteria will allow the facility to prohibit loads that do not contain a satisfactory amount of recoverable material.

*Justification for Recovery Levels.*

A minimum percent of recovery will be required for facilities that receive mixed waste. This is based on the experience of WASTECH and East County Recycling both of whom have high recovery rates. East County accepts all loads and is able to recover 43 percent. WASTECH has implemented a tipping fee structure which encourages delivery of cleaner loads. During 1992 WASTECH recovered 50 percent of its mixed loads and in 1993 recovered 72% of its mixed loads. Furthermore, early data from the Energy Reclamation Inc. (ERI) facility indicates that it will be able to achieve its required 45% recovery rate. However, this data is from less than two months of facility operation.

**2. Will existing processors or haulers lose competitiveness and viability?**

The effect on competitors should not be sufficient to cause them to significantly lose viability. The Lakeside Reclamation Landfill will lose some potentially processable material but, will in fact receive increased tonnage because it will receive residue generated from processing at WRI.

**3. Will an integrated hauling and processing operation discourage source-separation by construction demolition businesses?** Metro's Construction Waste Reduction Steering Committee is made up of representatives from building industry associations, haulers, and processors. They reviewed the proposed operations of the previously approved ERI facility. They felt that the facility would provide more recovery options to contractors. They felt that it could enhance recovery from projects where site limitations make source-separation impractical. The committee also believed that ERI's operations would not detract from

source-separation on construction sites. Also, they felt that the level of recovery of dry, non-putrescible, non-hazardous wastes that may be processed at the facility is likely to be tied to the pricing structure to the generators for incoming waste. Because of the similarity of the ERI and WRI facility operations, these comments are still considered valid for the WRI proposal.

**4. How will Metro be assured that cost savings will be passed on to generators?**

The price structure for incoming waste materials is not established in the franchise agreement. It is estimated that WRI may pass along some cost savings to the generators, particularly if WRI seeks to enhance the richness of the loads, but there is no guarantee that it will do so. It is reasonable to expect that there will be sufficient waste left for competitors to enter the field and thus keep rates to customers low.

REGULATORY COMPLIANCE

As noted in this report, the applicant has obtained land use approval from the City of Wilsonville and has made application to the Department of Environmental Quality for a solid waste permit. Present information indicates that the Department of Environmental Quality application process is progressing on schedule. Nonetheless, any issuance of a Metro franchise would require the satisfactory issuance all required Department of Environmental Quality permits before actual operation of the facility could commence.

BUDGET IMPACT.

As shown in Attachment A, which is based on the pro-forma tonnage data provided by WRI of 20,000 tons per year, staff projects that Metro may forego about \$275,000 per year in revenues. With system disposal at approximately one million tons per year, staff projects the effect of an WRI franchise on the system rate to be about \$.25 per ton. WRI anticipates opening the facility in July 1995 therefore the budget impacts will not occur until FY 95/96. A separate analysis was conducted to evaluate the high side risk to Metro by assuming an additional 15,000 tons were processed from Metro South for a total of 35,000 tons per year. Staff projects that, Metro may forego about \$520,000 per year in revenues compared to the \$275,000 loss at 20,000 tons.

## SUMMARY

It is the conclusion of staff that:

- The applicant possesses sufficient qualifications to establish, operate and maintain the proposed facility in a manner consistent with the provisions of the Metro Code.
- That the facility complies with Metro's Regional Solid Waste Management Plan and should increase recovery within the district.
- The requirements of the City of Wilsonville and the Oregon Department of Environmental Quality have been or will be complied with prior to operation of the proposed facility.
- Per the analysis shown in Attachment A, Metro may forego up to \$275,000 per year in revenues at the proposed tonnage levels if the franchise is granted.

## STAFF RECOMMENDATIONS

Based on the foregoing analysis it is the opinion of staff that Willamette Resources, Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise shown as Exhibit A of Ordinance No. 94-567.

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-567.

## Attachment A

### Effect On Metro's Revenues Of Granting A Franchise To WRI Assuming That WRI Recovers 45% Of Incoming Waste And WRI Remits Metro User Fee On The Remaining 55% Of Incoming Waste

Facility	Tons Diverted To WRI	Difference In Metro Revenue Tons	Loss Per Ton	Annual Revenue Effects		Total Lost Revenues	Note
				User Fees	Excise Tax (7.5%)		
Lakeside	4,000	560	\$17.50	(9,116)	(684)	(\$9,800)	A,B
Metro South	16,000	See Note B	See Note C	(258,604)	(19,396)	(\$278,000)	C
Subtotal Lost Revenues				(267,720)	(20,080)	(\$287,800)	
Increased Excise Tax			See Note D		\$13,000		D
Total Lost Revenues				(267,720)	(7,080)	(\$274,800)	

**Notes:**

A = A higher area recovery rate at WRI will result in less disposal and thus less revenue to Metro. Under the current situation ("status quo") Metro estimates that Lakeside recovers 1,240 of the 4,000 tons which WRI assumes it will divert from Lakeside to its facility. At a 45% recovery rate, WRI would recover 1,800 of the 4,000 tons. So, if the franchise recovers 560 more tons (1,800 minus 1,240) then Metro will lose \$9,800 (560 tons times \$17.50 per ton) compared to the current situation.

B = While the applicant has stated that 4,000 tons of waste will be diverted to WRI, the applicant has stated that it expects to send approximately 11,000 tons of residue to Lake.

C = Of the \$75 per ton it currently receives for waste received at its transfer stations, Metro pays \$48 for station operations, transportation, and disposal, and DEQ fees. This leaves \$27 per ton to pay for items such as debt service on bonds; items which are not "tonnage sensitive". Therefore, if NONE of the 16,000 tons resulted in revenues to Metro then Metro's net loss would be 16,000 tons times \$27/ton, or \$432,000.

However, it is assumed Metro will receive \$17.50 per ton on each of the 8,800 tons WRI landfills of residue resulting from processing waste diverted from Metro South. Assuming a 45% WRI recovery rate, WRI will thus landfill 55% of the 16,000 tons (8,800 tons) and landfills will pay Metro \$154,000 (8,800 tons times \$17.50 per ton). So, the financial effect of diverting 16,000 tons from Metro South to WRI will be \$278,000, which is the difference between \$432,000 and \$154,000.

D = The 7,000 ton net increase at Lakeside will result in increased gross revenues subject to the excise tax. This will increase Excise Taxes by \$13,000, however, the net loss in Excise Tax is \$7,080.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING	)	ORDINANCE NO. 94-567
A FRANCHISE TO WILLAMETTE	)	
RESOURCES INC. FOR THE PURPOSE	)	INTRODUCED BY
OF OPERATING A SOLID WASTE	)	RENA CUSMA,
PROCESSING FACILITY	)	EXECUTIVE OFFICER

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own or operate a facility for the processing of solid waste; and,

WHEREAS, Willamette Resources, Inc. (WRI) has applied for a non-exclusive franchise to operate a facility for processing of non-putrescible mixed solid waste and commercial, industrial, construction and demolition debris at Wilsonville, Oregon; and

WHEREAS, WRI has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans; and

WHEREAS, The WRI facility will provide disposal services to affiliate company haulers and to other commercial haulers and contractors; and,

WHEREAS, Metro Code Section 5.01.110 of the Metro Code provides for the ability of the Metro Council to grant variances pursuant to the criteria contained therein; and

WHEREAS, WRI has requested a variance from Metro rate setting requirements as detailed in the staff report to this ordinance, and,

WHEREAS, WRI has requested a variance from the restriction on service to non-affiliated company haulers as detailed in the Staff Report in this Ordinance, and,

WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$100,000, and,

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the Metro Council authorizes the Metro Executive Officer to enter into the attached Franchise Agreement (Exhibit A) with WRI within ten (10) days of the adoption of this Ordinance.
2. That WRI shall be granted a variance from Metro rate setting as permitted under Section 5.01.110 of the Metro Code.
3. That WRI shall be granted a variance from the restriction on service to non-affiliated company haulers in Metro Code Section 501.120(l).

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

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

EXHIBIT A  
TO ORDINANCE NO. 94-567

**SOLID WASTE FRANCHISE**  
issued by  
**METRO**  
600 NE Grand Avenue  
Portland, Oregon 97232-2736  
(503) 797-1700

FRANCHISE NUMBER: 16

DATE ISSUED: Actual Issue Date

AMENDMENT DATE: N/A

EXPIRATION DATE: \_\_\_\_\_

ISSUED TO: WILLAMETTE RESOURCES, INC. (WRI)

NAME OF FACILITY: WILLAMETTE RESOURCES, INC. (WRI)

ADDRESS: 2215 North Front Street, WOODBURN, OR 97071

LEGAL DESCRIPTION: SEE ATTACHED

\_\_\_\_\_

CITY, STATE, ZIP: Wilsonville, Oregon 97071

NAME OF OPERATOR: WILLAMETTE RESOURCES, INC.

PERSON IN CHARGE: MERLE IRVINE

ADDRESS: 2215 NORTH FRONT STREET

CITY, STATE, ZIP: Woodburn, OR 97071

TELEPHONE NUMBER: (503) 222-6565



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## **FRANCHISE AGREEMENT**

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," to Willamette Resources, Inc. (WRI), referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

### **1. DEFINITIONS**

As used in this Franchise:

- 1.1 "Code" means the Code of Metro.
- 1.2 "DEQ" means the Department of Environmental Quality of the State of Oregon.
- 1.3 "Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.
- 1.4 "Facility" means the facility described in section 3 of this Franchise.
- 1.5 "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

### **2. TERM OF FRANCHISE**

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

### **3. LOCATION OF FACILITY**

- 3.1 The franchised Facility is located near intersection of Ridder Road and Garden Acres Road, Wilsonville, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the facility property.

#### **4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY**

- 4.1 The owner of the Facility is WILLAMETTE RESOURCES, INC. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.
- 4.2 The owner of the property underlying the Facility is Peltier Real Estate Company. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.
- 4.3 The operator of the Facility is Willamette Resources, Inc. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer, which approval shall not be unreasonably withheld. Franchisee shall retain primary responsibility for compliance with this Franchise.

#### **5. AUTHORIZED AND PROHIBITED SOLID WASTES**

- 5.1 Franchisee is authorized to accept all such materials authorized by its DEQ Solid Waste Disposal Permit. The authorized materials include commercial, industrial, construction and demolition materials such as wood, corrugated cardboard, metals, sheetrock, plastics, rock and concrete, but specifically excluding any putrescible solid waste. After discharge to the tipping floor, a loader with a specially equipped bucket will spread the load for visual inspection and floor sorting. The remaining material will be pushed onto a feed conveyor that will move the materials to the conveyor processing system.
- 5.2 All vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.
- 5.3 This Franchise limits the amount of solid waste that may be processed each year at the Facility to 35,000 tons. Any increases in the yearly tonnage limitations shall be approved by Metro. Franchisee may process the amount of solid waste that the Facility is capable of processing consistent with applicable law, the terms of this Franchise and its permits and licenses.
- 5.4 Consistent with DEQ directives, Franchisee shall establish and follow procedures for determining what materials will be accepted at the Facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the Facility. These procedures shall be described in writing and submitted to Metro prior to any waste being accepted.

- 5.5 Franchisee may accept loads from its own affiliated hauling companies and other non-affiliated commercial haulers and contractors per the variance from the Metro Code granted in Ordinance No. 94-567.

## 6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information:
1. Franchisee Record Number (should be the same as the ticket number on the weight slips).
  2. Incoming Hauler Account Number (on a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address).
  3. Name, Address and Phone Number (or a unique number which is cross referenced to applicable names, addresses and phone numbers) of firms receiving recyclables, inerts, and residue from the facility.
  4. Code Designating whether the load is:

incoming source-separated waste	(Code 1)
mixed waste	(Code 2)
outgoing recyclables	(Code 3)
outgoing inerts	(Code 4)
outgoing residue	(Code 5)
outgoing beneficial use	(Code 6)
outgoing landfill cover	(Code 7)
  5. Date the Load was Received at or transmitted from your facility.
  6. Time the load was received at or transmitted from your facility.
  7. Material Type. Either spell out the type of material in the load or provide a code and a cross-reference listing of codes to material types.
  8. Accept or Reject (indicate whether you accepted or rejected the load).

9. Inside or Outside Metro (indicate whether the load originated from inside or outside the Metro boundary) using the following origin codes:

Multnomah County - In Metro  
Multnomah County - Out Metro  
Clackamas County - In Metro  
Oregon - Outside tri-county region  
Outside the state of Oregon

Washington County - In Metro  
Washington County - Out Metro  
Clackamas County - Out Metro

10. Net Weight of the Load.

11. Fee (the fee charged the hauler for the load).

- 6.2 Records required under section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and signed by an authorized representative of franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records directly related to the Facility of rates charged for mixed material received, incoming and outgoing tonnages, source separated and mixed incoming materials, markets receiving recovered materials and disposal facilities receiving residue from the Facility. These records shall be made available to Metro on request. In the event of any conflict between the provisions of 6.3 and 6.1, the provisions of 6.1 shall prevail.
- 6.4 The Franchisee shall file an Annual Operating Report on or before each anniversary date of the Franchise, detailing the previous year operation of the Facility as outlined in this Franchise.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any regulatory matters pertaining to the Facility, within 30 days of filing with regulatory agency.
- 6.6 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, all books, records, maps, plans, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.
- 6.7 Fees and charges shall be charged on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.

- 6.8 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained.

## 7. OPERATIONAL REQUIREMENTS

- 7.1 A copy of this Franchise shall be displayed where it can be readily referred to by operating personnel.
- 7.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
  - (b) Take immediate action to correct the unauthorized condition or operation.
  - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten (10) days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.3 If the Processing Facility is to be closed at least 120 days or permanently, Franchisee shall provide Metro with written notice, at least ninety (90) days prior to closure, of the proposed time schedule and closure procedures.
- 7.4 Franchisee shall provide a staff that is qualified to operate the Facility in compliance with this Franchise and to carry out the reporting functions required by this Franchise.
- 7.5 Recovery Requirements:
- (a) A minimum recovery rate of 45 percent must be maintained at the facility. The recovery rate will be calculated by use of a three month rolling average. (Example: March's recovery rate will be the average of months January, February and March; April's recovery rate will be the average of February, March and April, *etc.*). The ratio of tons recovered from tons received will constitute the recovery rate for the relevant time period. A more specific explanation of the calculations is shown in EXHIBIT 2.
  - (b) A ninety (90) day (three month) grace period for shakedown and operational testing will precede the commencement of official measurement of the recovery rate and imposition of phased in penalties for failure to achieve designated recovery rates. The full 45 percent recovery rate must be attained in the eighth

month following commencement of operations. Months four and five will be phased-in recovery rates of 35 percent and 40 percent with both months a stand alone average. By illustration, the franchise obligations for material recovery are as follows:

Commencement of Operations	Recovery Rate Required
Month 1	-0-
Month 2	-0-
Month 3	-0-
Month 4	35% (stand alone)
Month 5	40% (stand alone)
Month 6	40% (3-mth average)
Month 7	43.3% (3-mth average)
Month 8	45% (3-mth average)

- (c) For each percentage point below the specified recovery rate of 45 percent (or 35 percent and 40 percent for months four and five) WRI will pay to Metro a penalty in an amount equal to the current Metro Regional User Fee plus \$2.00 per ton for all tons representing the recovery tonnage shortfall for each percentage point below the specified recovery rate of 45 percent. (Example: If 1,000 tons were processed in a month with a three month average recovery rate of 42.3%, the penalty would equal: (1,000 tons) (0.450 - 0.423) ((\$17.50 + (45.0 - 42.3) (\$2.00)) = \$618.30. Annually, as of July 1 (or the effective date of any new Metro User Fee rate) the penalty will be adjusted to the then current Regional User Fee, and the \$2.00 per ton incremental penalty rate will be indexed to reflect the current ratio of 17.5:2.

## 8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter.

## 9. INSURANCE

9.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:

- (a) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

(b) Automobile bodily injury and property damage liability insurance.

- 9.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSUREDS**. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 Franchisee, its contractors, if any, and all employers working under this Franchise are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

## **10. INDEMNIFICATION**

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors.

### **10.1 SURETY BOND OR CONDITIONAL LIEN**

Franchisee shall provide a surety bond in the amount of One Hundred Thousand Dollars (\$100,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro.

## **11. COMPLIANCE WITH LAW**

Franchisee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Franchise by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Franchise, as well as any existing at the time of issuance of this Franchise and not attached, and permits or conditions issued or modified during the term of this Franchise.



## **12. METRO ENFORCEMENT AUTHORITY**

- 12.1 The Executive Officer may, upon sixty (60) days prior written notice, direct solid waste away from the Franchisee or limit the type of solid waste that the Franchisee may receive. Such action, or other necessary steps, may be taken to abate a nuisance arising from operation of the Facility or to carry out other public policy objectives. Upon receiving such notice, the Franchisee shall have the right to a contested case hearing pursuant to Code Chapter 2.05. A request for a hearing shall not stay action by the Executive Officer. Prior notice shall not be required if the Executive Officer finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.
- 12.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:
- (a) During all working hours;
  - (b) At other reasonable times with notice; and
  - (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.
- 12.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

## **13. DISPOSAL RATES AND FEES**

- 13.1 In accordance with the Metro Code, this Facility shall be exempt from Metro rate setting.
- 13.2 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement. Franchisee is fully responsible for paying all costs associated with disposal (including Metro User Fees and Excise Taxes) of residual material generated at the Facility. If Franchisee obtains authorization to dispose of residual material at a facility that has not been "Designated" by Metro, Franchisee shall remit to Metro the Tier 1 (one) User Fee on all waste disposed of at the non-designated facility as well as applicable Excise Taxes.
- 13.3 Disposal of residue shall be at a designated facility under the Metro Code or under authority of a non-system license issued by Metro.

- 13.4 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. To minimize potential customer conflicts regarding the recoverability of loads, the Franchisee shall minimize the number of rate categories and shall not change the rates during an operating day. Franchisee shall establish objective criteria and standards for acceptance of loads. The Franchisee shall submit these standards, criteria and an appeals procedure to Metro for Metro approval prior to operation of the Facility. Metro approval shall not be unreasonably withheld.

#### **14. REVOCATION**

- 14.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.
- 14.2 This Franchise Agreement is subject to suspension, modification, revocation, or nonrenewable upon finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation; or
  - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro; or
  - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
  - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

#### **15. GENERAL CONDITIONS**

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste during the term of the Franchise.
- 15.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.

- 15.4 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 15.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 15.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

## 16. NOTICES

- 16.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

Merle Irvine, Vice President  
Willamette Resources, Inc.  
2215 North Front Street  
Woodburn, OR 97071

- 16.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Solid Waste Director  
Solid Waste Department  
Metro  
600 NE Grand Avenue  
Portland, OR 97232-2736

- 16.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

\_\_\_\_\_  
Facility Owner or  
Owner's Representative

\_\_\_\_\_  
Rena Cusma, Executive Officer  
Metro

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1**

**Legal Description  
United Disposal Service  
Parcel One**

**A tract of land located in the Southwest one-quarter of Section 2, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon, being more particularly described as follows:**

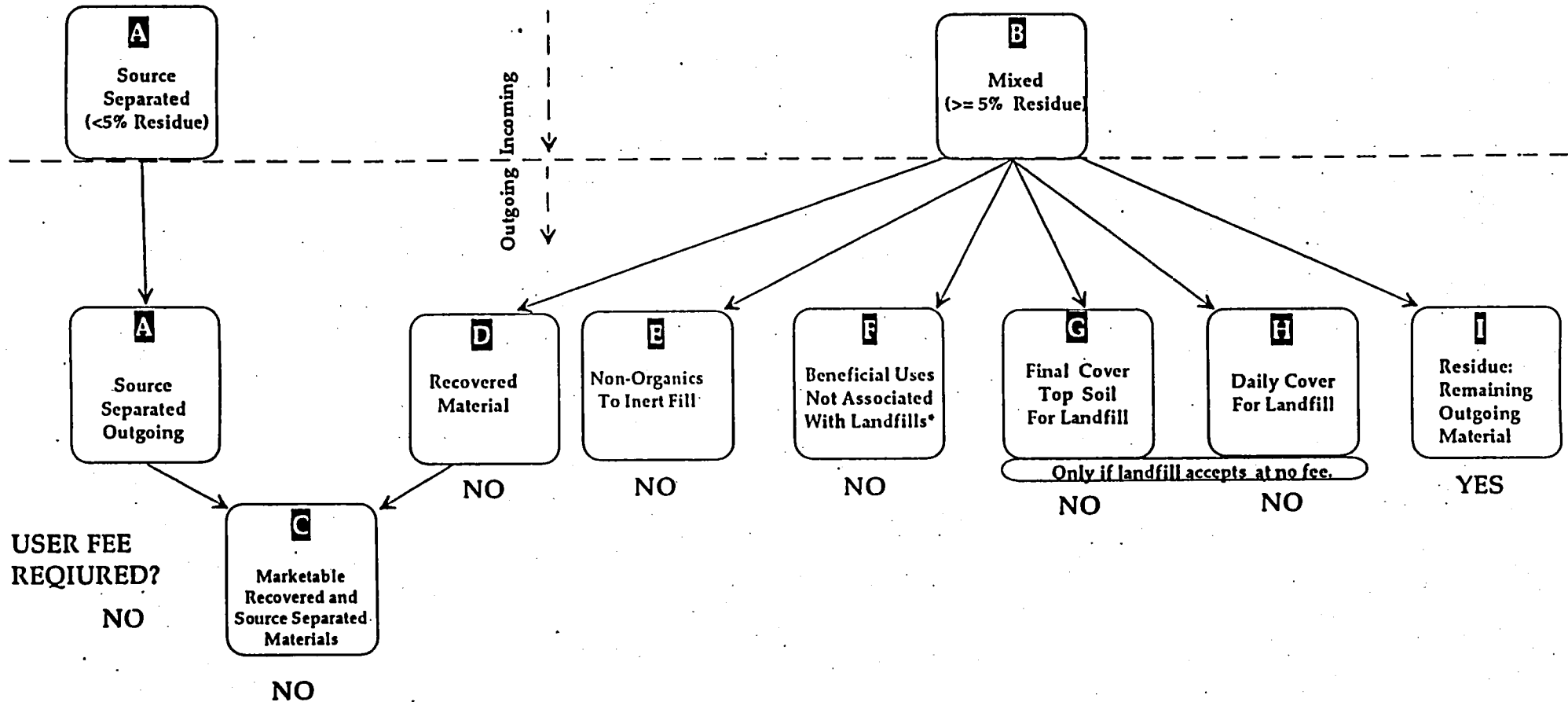
**Commencing at the Southwest corner of said Section 2; thence along the West line of said section North 0°18'35" West 661.21 feet; thence North 89°28'37" West 1119.74 feet to a 3-1/2" brass disk stamped "BONNEVILLE POWER ADMINISTRATION", said brass disk being the point of beginning; thence South 0°20'02" East 631.29 feet; thence South 89°28'53" West 420.49 feet; thence along the arc of a curve to the right 416.74 feet, whose radius equals 600.00 feet, whose central angle equals 39°47'44" and whose chord bears North 70°37'15" West 408.41 feet; thence North 0°20'02" West 162.25 feet; thence North 89°28'53" East 250.00 feet; thence North 0°29'02" West 330.00 feet; thence North 89°28;37" East 555.00 feet to the point of beginning.**

**Contains 9.38 acres, more or less.**

PN:clk  
NORT\FRANCHIS\WRI.FRN  
08/16/94 11:41:24 AM

# Exhibit 2

## Metro's Existing Policy For Assessing Fees And Computing Recovery Rates



Note that additional fees may be charged as penalties for not achieving 45% recovery percentage.

Equation For Calculating Recovery Rate = 
$$\frac{\text{Marketable Recovered and Source Separated Materials minus .95 Source Separated Materials}}{\text{Mixed Incoming minus ( Non-Organics To Inert Landfill + Beneficial Other Than At Landfills)*}}$$

$$= \frac{C - .95A}{B - (E+F*)}$$

Beneficial Uses Must Meet With Prior Metro Approval

\*If approved by Metro in advance.

Meeting Date: September 8, 1994  
Agenda Item No. 6.2

**ORDINANCE NO. 94-568**

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 94-568  
FOR THE PURPOSE OF AMENDING METRO CODE SECTION 4.01.060  
REVISING ADMISSION FEES  
AT METRO WASHINGTON PARK ZOO

Date: September 8, 1994

Presented by: Kathy Kiaunis

FACTUAL BACKGROUND AND ANALYSIS

Prior to 1991, the zoo's admission policy for groups requesting the education discount required one chaperon for every five students, registration at least two weeks in advance, and submission of a lesson plan (or purchase of curriculum materials.) Chaperons were charged the student admission rate. At times, groups arrived with insufficient numbers of chaperons to meet the minimum requirement to receive the education discount.

In 1991, in an attempt to encourage the attendance of supervising adults, the Zoo revised its admission policy to allow chaperons accompanying education groups to receive free admission. We now have over three years of experience with the new policy. In 1992-1993, the zoo had 1,411 school groups with an average of one chaperon per three students. In 1993-1994, 1,479 school groups visited, with a similar chaperon to student ratio. In fact, 20% of the groups had ratios of one chaperon for every two or fewer students.

Based on our experience, we recommend a refinement of the policy to require that chaperons be 18 years or older to qualify as a chaperon, and that chaperons in excess of the required one per every five students pay at the adult discount rate (\$4.40).

We believe that the revision will allow us to achieve the desired ratio of adult supervision while meeting our needs to generate revenue.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING THE )  
REVISION OF METRO CODE SECTION )  
4.01.050 REVISING ADMISSION FEES )  
AND POLICIES AT METRO WASHINGTON )  
PARK ZOO )  
ORDINANCE NO. 94-568  
Introduced by Executive  
Officer Rena Cusma

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amending the Metro Code. Section 4.01.050 Admission Fees and Policies is amended to read as follows:

4.01.050 Admission Fees:

(a) Regular Fees:

(1) Definitions:

- (A) An Education Discount is offered to groups of students in a state accredited elementary, middle, junior, or high school, or pre-school/daycare center. Qualifications for education discount include a minimum of one chaperon, 18 years of age or older, for every five (5) students of high school age or under; registration for a specific date at least two weeks in advance; and the purchase of curriculum materials offered by the Zoo, or submission of a copy of the lesson plan that will be used on the day of the visit.
- (B) The Group Discount is defined as any group of twenty-five (25) or more (including school groups that have not met the advance registration and curriculum requirements for the education discount; groups of students not accompanied by a minimum of one chaperon for every five (5) students shall not qualify for the group discount).

(2) Fee Schedule:

Adult (12 years and over)	\$5.50
Youth (3 years through 11 years)	\$3.50
Child (2 years and younger)	free
Senior Citizen (65 years and over)	\$4.00
Education Groups (per student)	\$2.50
Chaperons accompanying 18 years or older admitted with education groups (maximum of one per five students)	free



Additional chaperons 18 years or older in excess of one per five students will receive the group discount adult rate (20% discount) \$4.40

Groups other than education groups 25 or more per group 20% discount from appropriate fee listed above

(b) Free and Reduced Admission Passes:

- (1) Free and reduced admission passes may be issued by the Director in accordance with this chapter.
- (2) A free admission pass will entitle the holder only to enter the Zoo without paying an admission fee.
- (3) A reduced admission pass will entitle the holder only to enter the Zoo by paying a reduced admission fee.
- (4) The reduction granted in admission, by use of a reduced admission pass (other than free admission passes), shall not exceed 20 percent.
- (5) Free or reduced admission passes may be issued to the following groups or individuals and shall be administered as follows:
  - (A) Metro employees shall be entitled to free admission upon presentation of a current Metro employee identification card.
  - (B) Metro Councilors and the Metro executive Officer shall be entitled to free admission.
  - (C) Free admission passes in the form of volunteer identification cards may, at the Director's discretion, be issued to persons who perform volunteer work at the Zoo. Cards shall bear the name of the volunteer, shall be signed by the Director, shall be non-transferrable, and shall terminate at the end of each calendar year or upon termination of volunteer duty, whichever date occurs first. new identification cards may be issued at the beginning of each new calendar year for active Zoo volunteers.
  - (D) Reduced admission passes may be issued to members of any organization approved by the Council, the main purpose of which is to support the Metro Washington Park Zoo. Such passes shall bear the name of the passholder, shall be signed by an authorized representative of the organization,

shall be non-transferrable, and shall terminate not more than one year from the date of issuance.

- (E) Other free or reduced admission passes may, with the approval of the Director, be issued to other individuals who are working on educational projects or projects valuable to the Zoo. Such passes shall bear an expiration date not to exceed three months from the date of issuance, shall bear the name of the passholder, shall be signed by the Director, and shall be non-transferrable.

(c) Special Admission Days:

- (1) Special admission days are days when the rates established by this Code are reduced or eliminated for a designated group or groups. Six special admission days may be allowed, at the discretion of the Director, during each calendar year.
- (2) Three additional special admission days may be allowed each year by the Director for designated groups. Any additional special admission days designated under this subsection must be approved by the Executive Officer.

(d) Special Free Hours: Admission to the Zoo shall be free for all persons from 3:00 p.m. until closing on the second Tuesday of each month.

(e) Commercial Ventures: Proposed commercial or fund-raising ventures with private profit or nonprofit entitles involving admission to the Zoo must be authorized in advance by the Executive Officer. The Executive Officer may approve variances to the admission fees to facilitate such ventures.

(f) Special Events: The Zoo, or portions thereof, may be utilized for special events designed to enhance Zoo revenues during hours that the Zoo is not normally open to the public. The number, nature of, and admission fees for such events shall be subject to the approval of the Executive Officer.

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

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

ATTEST:

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

Meeting Date: September 8, 1994  
Agenda Item No. 6.3

**ORDINANCE NO. 94-569**

## STAFF REPORT

### IN CONSIDERATION OF:

ORDINANCE NO. 94-569 AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$5,000 FROM THE GENERAL FUND CONTINGENCY TO THE OFFICE OF THE AUDITOR MATERIALS & SERVICES, MISC. PROFESSIONAL SERVICES FOR THE PURPOSE OF TRANSITION SERVICES FOR THE NEW OFFICE OF THE AUDITOR; AND DECLARING AN EMERGENCY.

---

Date: August 30, 1994

Presented by: Alexis Dow

### FACTUAL BACKGROUND AND ANALYSIS

The voters of the district on November 3, 1992, approved the 1992 Metro Charter. The charter created the Office of Metro Auditor and specified that the term of the first auditor begins on January 3, 1995.

Since this is a new Office, there is no historical data on which to prepare the budget nor staff, office furniture, equipment or supplies. This is a request for \$5,000 in transition funds for a Professional Services contract. The contractor will expedite development of timely input to the FY 1995-96 budget, staff recruitment, office set-up, and other actions which will contribute to the efficient start-up of the Office of the Auditor as of January 3, 1995.

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-569 and declaring an emergency.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95 )	ORDINANCE NO. 94-569
BUDGET AND APPROPRIATIONS )	
SCHEDULE BY TRANSFERRING \$5,000 )	Introduced by Rena Cusma,
FROM THE GENERAL FUND CONTINGENCY )	Executive Officer on behalf of
TO THE OFFICE OF THE AUDITOR )	Alexis Dow, Auditor-Elect
MATERIALS & SERVICES, MISC. )	
PROFESSIONAL SERVICES FOR THE )	
PURPOSE OF TRANSITION SERVICES FOR )	
THE NEW OFFICE OF THE AUDITOR; AND )	
DECLARING AN EMERGENCY )	

WHEREAS, The 1992 Metro Charter created the Office of Metro Auditor with the term of the first auditor beginning on January 3, 1995; and

WHEREAS, There is a necessity for immediate operation of the Office of the Auditor beginning on January 3, 1995; and

WHEREAS, Transition funding could expedite staff recruitment and other matters, and thereby, contribute to the efficient start-up of the Office of the Auditor; and

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

**THE METRO COUNCIL ORDAINS AS FOLLOWS;**

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$5,000 from the General Fund Contingency to the Office of the Auditor Materials & Services Misc. Professional Services account to transition services for the Office of the Auditor.

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.

ATTEST:

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

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

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**Exhibit A**  
**Ordinance No. 94-569**  
**General Fund**

FISCAL YEAR 1994-95		ADOPTED		REVISION		ORD. NO. 94-569	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>Executive Management</b>							
	TOTAL EXPENDITURES	4.00	356,258			4.00	356,258
<b>Office of Government Relations</b>							
	TOTAL EXPENDITURES	0.00	0			0.00	0
<b>Regional Facilities Planning</b>							
	TOTAL EXPENDITURES	0.00	0			0.00	0
<b>Council</b>							
	TOTAL EXPENDITURES	8.50	1,004,934			8.50	1,004,934
<b>Office of the Auditor</b>							
	Total Personal Services	1.00	58,433			1.00	58,433
	<u>Materials &amp; Services</u>						
521100	Office Supplies		2,000				2,000
521110	Computer Software		2,000				2,000
521310	Subscriptions		300				300
521320	Dues		300				300
524110	Accounting & Auditing Services		0				0
524190	Misc. Professional Services		0		5,000		5,000
525640	Maintenance & Repairs Services-Equipment		0				0
525710	Equipment Rental		0				0
525740	Lease Payments		0				0
526200	Ads & Legal Notices		0				0
526310	Printing Services		0				0
526320	Typesetting & Reprographics Services		0				0
526410	Telephone		800				800
526420	Postage		0				0
526440	Delivery Services		0				0
526500	Travel		1,000				1,000
526510	Mileage Reimbursement		0				0
526700	Temporary Help Services		0				0
526800	Training, Tuition, Conferences		1,000				1,000
528100	License, Permits, Payments to Other Agencies		0				0
528200	Election Expense		0				0
529110	Council Per Diem		0				0
529120	Councilor Expenses		0				0
529500	Meetings		0				0
529800	Miscellaneous		1,600				1,600
	Total Materials & Services		9,000		5,000		14,000
	Total Capital Outlay		12,319				12,319
	TOTAL EXPENDITURES	1.00	79,752		5,000	1.00	84,752

Exhibit A  
Ordinance No. 94-569  
**General Fund**

FISCAL YEAR 1994-95		ADOPTED		REVISION		ORD. NO. 94-569	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>Special Appropriations</b>							
	TOTAL EXPENDITURES	0.00	265,000			0.00	265,000
<b>General Expenses</b>							
	Total Interfund Transfers		4,189,599				4,189,599
	<u>Contingency and Unappropriated Balance</u>						
599999	Contingency		568,475		(5,000)		563,475
599990	Unappropriated Fund Balance		200,000				200,000
	Total Contingency and Unappropriated Balance		768,475		(5,000)		763,475
	<b>TOTAL EXPENDITURES</b>	<b>13.50</b>	<b>6,664,018</b>	<b>0</b>	<b>13.50</b>	<b>0</b>	<b>6,664,018</b>



**Exhibit B  
Ordinance No. 94-569**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

	<b>Current</b>		<b>ORD. NO. 94-569</b>
	<b>Appropriation</b>	<b>Revision</b>	<b>Proposed Appropriation</b>
<b>GENERAL FUND</b>			
<b>Council</b>			
Personal Services	888,891		888,891
Materials & Services	102,243		102,243
Capital Outlay	13,800		13,800
<b>Subtotal</b>	<b>1,004,934</b>		<b>1,004,934</b>
<b>Executive Management</b>			
Personal Services	314,656		314,656
Materials & Services	40,002		40,002
Capital Outlay	1,600		1,600
<b>Subtotal</b>	<b>356,258</b>		<b>356,258</b>
<b>Office of the Auditor</b>			
Personal Services	58,433		58,433
Materials & Services	9,000	5,000	14,000
Capital Outlay	12,319		12,319
<b>Subtotal</b>	<b>79,752</b>	<b>5,000</b>	<b>84,752</b>
<b>Special Appropriations</b>			
Materials & Services	265,000		265,000
<b>Subtotal</b>	<b>265,000</b>		<b>265,000</b>
<b>General Expenses</b>			
Interfund Transfers	4,189,599		4,189,599
Contingency	568,475	(5,000)	563,475
<b>Subtotal</b>	<b>4,758,074</b>	<b>(5,000)</b>	<b>4,753,074</b>
Unappropriated Balance	200,000		200,000
<b>Total Fund Requirements</b>	<b>6,664,018</b>	<b>0</b>	<b>6,664,018</b>
<b>TOTAL APPROPRIATIONS</b>	<b>203,772,351</b>	<b>203,772,351</b>	<b>203,772,351</b>

**All Other Appropriation Levels Remain as Previously Adopted**

Meeting Date: September 8, 1994  
Agenda Item No. 6.4

**ORDINANCE NO. 94-570**

## STAFF REPORT

ORDINANCE NO. 94-570 AMENDING THE FY 1994-95 BUDGET TO IMPLEMENT THE NEW CONSTRUCTION EXCISE TAX BY TRANSFERRING \$56,030 FROM THE SUPPORT SERVICES FUND CONTINGENCY TO THE DEPARTMENT OF FINANCE AND MANAGEMENT INFORMATION, FINANCIAL PLANNING DIVISION, AND CREATING ONE NEW POSITION, AND TRANSFERRING \$100,000 FROM THE GENERAL FUND CONTINGENCY TO THE SUPPORT SERVICES FUND, SPECIAL APPROPRIATIONS, TO PAY START-UP COSTS.

---

Date: August 29, 1994

Presented by: Craig Prosser

### FACTUAL BACKGROUND AND ANALYSIS

The Council adopted Ordinance 94-556C on August 25, 1994, implementing a new Construction Excise Tax. This tax will be collected by local jurisdictions or (in cases in which local jurisdictions decide not to collect the tax) by Metro. The tax goes into effect November 23, 1994. All Intergovernmental Agreements with local jurisdictions collecting the tax will need to be developed, negotiated, and approved by the Metro Council and the local jurisdiction before that date. These include policies and procedures for the collection of the tax, turn-over of funds collected from local jurisdictions, procedures for rebates and exemptions, development of any Metro collections processes (should that be necessary), identification and development of start-up efforts (computer enhancements, forms printing, training, etc.), development of an information campaign to inform the construction industry of the tax requirement and uses, establishment of a hotline to answer any questions raised by local governments or building permit applicants. This work must be completed prior to the effective date of Ordinance No. 94-556C and cannot be absorbed by existing staff.

A new Senior Administrative Services Analyst position will be created to handle these duties and to ensure that the tax is implemented in the most efficient manner possible. This position will continue to monitor the process after implementation to make sure that no problems arise and to fine tune policies and procedures as necessary. As the fine tuning process concludes, this position will take on budget responsibilities and will help to relieve the work overload in that area. Due to the nature of the work performed relating to the budget and responding to collective bargaining proposals as they relate to assigned budgetary responsibilities, this position will be excluded from collective bargaining.

This ordinance also provides appropriation to pay for one-time, start-up costs incurred by local governments as provided for in Ordinance No. 94-556C by transferring \$100,000 from the General Fund to the Support Services Fund and creating a Special Appropriation to cover these costs.

Both appropriations adjustments made by this ordinance will be reimbursed from the Construction Excise Tax proceeds after November.

**EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends adoption of Ordinance No. 94-570.

CP:rs

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95 )	ORDINANCE NO. 94-570
BUDGET AND APPROPRIATIONS )	
SCHEDULE TO IMPLEMENT THE )	Introduced by Rena Cusma,
CONSTRUCTION EXCISE TAX, ADDING 1.0 )	Executive Officer
FTE IN THE FINANCIAL PLANNING DIVISION )	
AND FUNDING LOCAL GOVERNMENT ONE- )	
TIME START UP COSTS; AND DECLARING )	
AN EMERGENCY )	

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$100,000 from the General Fund to the Support Services Fund, Special Appropriation to fund the one-time start up costs of the local governments to implement the Construction Excise Tax, and transferring \$56,030 from the Support Services Fund Contingency to the Financial Planning Division to fund 1.0 FTE Senior Administrative Services Analyst and related costs.

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.

ATTEST:

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

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

**Exhibit A  
Ordinance No. 94-570**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>GENERAL FUND:Resources</b>							
<u>Resources</u>							
305000	Fund Balance		531,000		0		531,000
312000	Excise Tax		5,968,760		0		5,968,760
361100	Interest on Investments		40,000		0		40,000
379000	Other Miscellaneous Revenue		0		0		0
391531	Trans. Resources from Solid Waste Revenue Fund		124,258		0		124,258
391558	Trans. Resources from Conv. Ctr. Mgmt. Fund		0		0		0
<b>Total Resources</b>			<b>6,664,018</b>		<b>0</b>		<b>6,664,018</b>
<b>GENERAL FUND:General Expenses</b>							
<u>Interfund Transfers</u>							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		303,807		0		303,807
581610	Trans. Indirect Costs to Support Svcs. Fund		519,495		0		519,495
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		3,244		0		3,244
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		6,008		0		6,008
583610	Trans. Direct Costs to Support Svcs. Fund		28,130		0		28,130
583615	Trans. Direct Costs to Risk Management Fund		15,758		0		15,758
<u>Excise Tax Transfers</u>							
582140	Trans. Resources to Planning Fund		2,676,264		0		2,676,264
582513	Trans. Resources to Building Mgmt. Fund		55,984		0		55,984
582610	Trans. Resources to Support Svcs. Fund		0		100,000		100,000
582160	Trans. Resources to Reg. Parks/Expo Fund		496,435		0		496,435
582160	Trans. Resources to Reg. Parks/Expo Fund (contingency)		84,474		0		84,474
<b>Total Interfund Transfers</b>			<b>4,189,599</b>		<b>100,000</b>		<b>4,289,599</b>
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency		563,475		(100,000)		463,475
599990	Unappropriated Fund Balance		200,000		0		200,000
<b>Total Contingency and Unappropriated Balance</b>			<b>763,475</b>		<b>(100,000)</b>		<b>663,475</b>
<b>TOTAL EXPENDITURES</b>		<b>13.50</b>	<b>6,664,018</b>	<b>0.00</b>	<b>0</b>	<b>13.50</b>	<b>6,664,018</b>

**Note: This action assumes adoption of Ordinance No. 94-569, related to the Auditor's Office, to be presented to the Council September, 8, 1994.**

**Exhibit A  
Ordinance No. 94-570**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICES FUND:Resources</b>							
<u>Resources</u>							
305000	Fund Balance		398,016		0		398,016
321100	Contractors' License Fee		275,000		0		275,000
339200	Contract and Professional Services Services		98,182		0		98,182
391010	Trans. of Resources from General Fund-Excise Tax		0		100,000		100,000
392010	Trans. Indirect Costs from General Fund		519,495		0		519,495
392120	Trans. Indirect Costs from Zoo Oper. Fund		1,178,797		0		1,178,797
392140	Trans. Indirect Costs from Planning Fund		1,548,361		0		1,548,361
392142	Trans. Indirect Costs from Plan. & Dev. Fund		0		0		0
392531	Trans. Indirect Costs from S.W. Revenue Fund		2,311,955		0		2,311,955
392550	Trans. Indirect Costs from OCC Operating Fund		419,607		0		419,607
392559	Trans. Indirect Costs from Conv. Ctr. Cap. Fund		53,053		0		53,053
392553	Trans. Indirect Costs from Spec. Fac. Fund		271,903		0		271,903
392160	Trans. Indirect Costs from Reg. Parks/Expo Fund		405,977		0		405,977
393010	Trans. Direct Costs from General Fund		28,130		0		28,130
393550	Trans. Direct Costs from OCC Operating Fund		98,838		0		98,838
393553	Trans. Direct Costs from Spec. Fac. Fund		61,390		0		61,390
<b>TOTAL RESOURCES</b>			<b>7,668,704</b>		<b>100,000</b>		<b>7,768,704</b>

**CURRENT BUDGET ASSUMES PASSAGE OF ORD. NO. 94-560 AND ORD. NO 94-564**

**Exhibit A  
Ordinance No. 94-570**

FISCAL YEAR 1993-94	ACCT #	DESCRIPTION	CURRENT BUDGET		REVISION		PROPOSED BUDGET	
			FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICES FUND: Finance &amp; Management Information Department</b>								
<u>Personal Services</u>								
511121	SALARIES-REGULAR EMPLOYEES (full time)							
		Senior Director	0.90	67,614		0	0.90	67,614
		Senior Manager	2.00	130,316		0	2.00	130,316
		Managers	1.00	54,600		0	1.00	54,600
		Senior Program Supervisor	3.00	154,554		0	3.00	154,554
		Program Supervisor	1.00	45,953		0	1.00	45,953
		Principal Administrative Services Analyst	1.00	53,605		0	1.00	53,605
		Senior Administrative Services Analyst		0	0.75	33,750	0.75	33,750
		Associate Administrative Services Analyst	1.00	39,244		0	1.00	39,244
		Sr. Management Analyst	1.00	50,592		0	1.00	50,592
		Assoc. Management Analyst	1.00	45,886		0	1.00	45,886
		Asst. Management Analyst	2.00	71,026		0	2.00	71,026
		D.P. Systems Analyst	4.00	174,750		0	4.00	174,750
		D.P. Operations Analyst	1.00	40,675		0	1.00	40,675
		D.P. Programmer/Analyst	1.00	43,855		0	1.00	43,855
		Senior Accountant	3.00	137,619		0	3.00	137,619
511221	WAGES-REGULAR EMPLOYEES (full time)							
		Administrative Secretary	3.00	80,161		0	3.00	80,161
		Lead Accounting Clerk	4.00	117,062		0	4.00	117,062
		Accounting Clerk 2	7.00	180,854		0	7.00	180,854
		Program Assistant 1	1.00	22,835		0	1.00	22,835
		D.P. Operator	1.00	33,800		0	1.00	33,800
		D.P. Technical Specialist	2.00	66,450		0	2.00	66,450
511235	WAGES-TEMPORARY EMPLOYEES (part time)							
		Temporary Professional Support	0.00	3,085		0	0.00	3,085
		Temporary Administrative Support	1.10	22,998		0	1.10	22,998
511400	OVERTIME			7,886		0		7,886
512000	FRINGE			660,101		13,668		673,769
<b>Total Personal Services</b>			<b>42.00</b>	<b>2,305,521</b>	<b>0.75</b>	<b>47,418</b>	<b>42.75</b>	<b>2,352,939</b>

Materials & Services

521100	Office Supplies	13,421		1,050		14,471
521110	Computer Software	32,580		882		33,462
521111	Computer Supplies	22,710		0		22,710
521240	Graphics/Reprographic Supplies	500		100		600
521260	Printing Supplies	0		200		200
521291	Packing Materials	400		0		400
521292	Small Tools	700		0		700
521310	Subscriptions	5,001		100		5,101
521320	Dues	9,140		50		9,190
521540	Maintenance & Repairs Supplies-Equipment	7,000		0		7,000
524110	Accounting & Auditing Services	65,000		0		65,000
524190	Misc. Professional Services	29,500		0		29,500
524210	Data Processing Services	20,960		0		20,960
524310	Management Consulting Services	27,500		0		27,500
525640	Maintenance & Repairs Services-Equipment	120,315		0		120,315
526200	Ads & Legal Notices	900		150		1,050
526310	Printing Services	16,470		400		16,870
526320	Typesetting & Reprographics Services	500		150		650
526410	Telephone	1,800		300		2,100
526440	Delivery Services	950		300		1,250
526500	Travel	20,589		0		20,589
526700	Temporary Help Services	10,931		0		10,931
526800	Training, Tuition, Conferences	22,740		300		23,040



Exhibit A  
Ordinance No. 94-570

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICES FUND: Finance &amp; Management Information Department</b>							
526900	Misc Other Purchased Services		27,700		0		27,700
529500	Meetings		1,092		200		1,292
529800	Miscellaneous		1,400		0		1,400
525740	Capital Lease Payments-Furniture & Equipment		18,469		0		18,469
<b>Total Materials &amp; Services</b>			<b>478,268</b>		<b>4,182</b>		<b>482,450</b>
<u>Capital Outlay</u>							
571500	Purchases-Office Furniture & Equipment		16,700		4,430		21,130
<b>Total Capital Outlay</b>			<b>16,700</b>		<b>4,430</b>		<b>21,130</b>
<b>TOTAL EXPENDITURES</b>		<b>42.00</b>	<b>2,800,489</b>	<b>0.75</b>	<b>56,030</b>	<b>42.75</b>	<b>2,856,519</b>

**Exhibit A  
Ordinance No. 94-570**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>*** For Information Only ***</b>							
<b>Finance &amp; Management Information (Financial Planning)</b>							
<u>Personal Services</u>							
511121	SALARIES-REGULAR EMPLOYEES (full time)						
	Senior Director	0.30	22,538		0	0.30	22,538
	Senior Manager	1.00	65,158		0	1.00	65,158
	Principal Administrative Services Analyst	1.00	53,605		0	1.00	53,605
	Senior Administrative Services Analyst		0	0.75	33,750	0.75	33,750
	Associate Administrative Services Analyst	1.00	39,244		0	1.00	39,244
	Sr. Management Analyst	1.00	50,592		0	1.00	50,592
	Assoc. Management Analyst	1.00	45,886		0	1.00	45,886
511221	WAGES-REGULAR EMPLOYEES (full time)						
	Administrative Secretary	1.00	26,309		0	1.00	26,309
511235	WAGES-TEMPORARY EMPLOYEES (part time)						
	Temporary Administrative Support	0.60	12,492		0	0.60	12,492
511400	OVERTIME		516		0		516
512000	FRINGE		124,433		13,668		138,101
<b>Total Personal Services</b>		<b>6.90</b>	<b>440,773</b>	<b>0.75</b>	<b>47,418</b>	<b>7.65</b>	<b>488,191</b>
<u>Materials &amp; Services</u>							
521100	Office Supplies		4,850		1,050		5,900
521110	Computer Software		1,380		882		2,262
521240	Graphics/Reprographic Supplies		500		100		600
521260	Printing Supplies		0		200		200
521310	Subscriptions		970		100		1,070
521320	Dues		5,875		50		5,925
524190	Misc. Professional Services		29,500		0		29,500
526200	Ads & Legal Notices		600		150		750
526310	Printing Services		2,000		400		2,400
526320	Typesetting & Reprographics Services		500		150		650
526410	Telephone		0		300		300
526440	Delivery Services		550		300		850
526500	Travel		3,890		0		3,890
526700	Temporary Help Services		1,351		0		1,351
526800	Training, Tuition, Conferences		4,000		300		4,300
529500	Meetings		300		200		500
<b>Total Materials &amp; Services</b>			<b>56,266</b>		<b>4,182</b>		<b>60,448</b>
<u>Capital Outlay</u>							
571500	Purchases-Office Furniture & Equipment		3,800		4,430		8,230
<b>Total Capital Outlay</b>			<b>3,800</b>		<b>4,430</b>		<b>8,230</b>
<b>TOTAL EXPENDITURES</b>		<b>6.90</b>	<b>500,839</b>	<b>0.75</b>	<b>56,030</b>	<b>7.65</b>	<b>556,869</b>

**Exhibit A  
Ordinance No. 94-570**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICES FUND:Special Appropriation</b>							
<u>Materials &amp; Services</u>							
528200	Election Expense		125,000		0		125,000
529800	Miscellaneous		0		100,000		100,000
<b>TOTAL EXPENDITURES</b>		<b>0.00</b>	<b>125,000</b>	<b>0.00</b>	<b>100,000</b>	<b>0.00</b>	<b>225,000</b>
<b>SUPPORT SERVICES FUND:General Expenses</b>							
<u>Interfund Transfers</u>							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		755,309		0		755,309
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		27,810		0		27,810
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		23,050		0		23,050
<b>Total Interfund Transfers</b>			<b>806,169</b>		<b>0</b>		<b>806,169</b>
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency						
	* General		159,500		(56,030)		103,470
	* Builders License		62,987		0		62,987
	* Construction Services (Tri-Met Contract)		2,539		0		2,539
599990	Unappropriated Fund Balance-Contractors License						
	*Builders License		207,625		0		207,625
	*Capital Replacement Reserve		200,000		0		200,000
<b>Total Contingency and Unappropriated Balance</b>			<b>632,651</b>		<b>(56,030)</b>		<b>576,621</b>
<b>TOTAL EXPENDITURES</b>		<b>81.25</b>	<b>7,668,704</b>	<b>0.75</b>	<b>100,000</b>	<b>82.00</b>	<b>7,768,704</b>

Meeting Date: September 8, 1994  
Agenda Item No. 7.1

**ORDINANCE NO. 94-559**



## METRO

DATE: August 31, 1994  
TO: Metro Councilors  
FROM: Casey Short, <sup>CS</sup> Council Analyst  
RE: Ordinance No. 94-559

At the August 25 Council meeting the Council voted 9-1 to remove Ordinance No. 94-559 from the Governmental Affairs Committee and bring it to the full Council for consideration at the September 8 Council meeting. The purpose of this memo is to provide some background on the subject addressed in the ordinance and discuss pending amendments.

Ordinance No. 94-559 would allow Councilors to participate in Council meetings by electronic means. The ordinance as originally filed would add language to Section 2.01 of the Metro Code to permit Council meetings to be conducted "through the use of telephone conference calls or other electronic communications." The ordinance was first read at the special Council meeting of June 29, 1994 and referred to the Governmental Affairs Committee. The committee considered it at its July 13 meeting and Chair Gates asked Councilor McLain to work with legal counsel and Council staff to amend the ordinance to reduce the potential for abuse, which some committee members cited as a concern.

An amended version of the ordinance is attached as Ordinance No. 94-559A. The Governmental Affairs Committee has not reviewed the amended ordinance, but Councilor McLain is expected to move the amendments at the September 8 meeting. The amended version of the ordinance replaces the original ordinance (which added two sentences to an existing Code section) with a new Code section governing the "participation of Council members by electronic means." The new version is much tighter than the original, requiring a Councilor who wishes to participate in a meeting from a remote location to make a written request of the Presiding Officer stating what extraordinary circumstances exist that preclude the Councilor's physical attendance at the meeting. The Councilor may only participate in the meeting from the remote location if the Presiding Officer approves the request and files a written report with the Clerk of the Council explaining the extraordinary circumstances and making a determination that the Councilor's physical absence is unavoidable and excusable. The amended version of the ordinance further requires that a

Metro Council - Ordinance 94-559  
August 31, 1994  
Page 2

Councilor participating in a meeting by electronic means be able to communicate with all other meeting participants, and provides that "a majority of the Council must be physically present at any special or regular meeting for a quorum to exist."

Council Administrator Don Carlson advises me that there have been four instances in which Metro funds paid for Councilors to return from out of town to attend meetings they would otherwise have missed. On two of these occasions, Councilors were away on business; once a Councilor was attending a conference related to Metro business; and once a Councilor was attending a long-scheduled family reunion. In these instances, participation by telephone would have saved the expense of transporting Councilors to attend the meetings in question.

Also attached is a copy of the Oregon Public Meetings Law (ORS 192.610 - 690). This includes some brief discussion of "meetings by means of telephonic or electronic communication" at Section 192.670.

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO PUBLIC ) ORDINANCE NO. 94-559A  
MEETINGS ALLOWING COUNCIL )  
MEMBERS TO BE PRESENT AT ) Introduced by Presiding  
MEETINGS THROUGH THE USE OF ) Officer Judy Wyers  
ELECTRONIC MEANS AND DECLARING )  
AN EMERGENCY )

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. A new Section 2.01.055 "Participation of Council Members by

Electronic Means reads as follows:

2.01.055 PARTICIPATION OF COUNCIL MEMBERS BY ELECTRONIC MEANS:

(a) For any regular meeting or special meeting of the Council, Council members may participate in the meeting by the use of a voice or data communication device that allows communication with all other meeting participants provided the following conditions are fulfilled:

- (1) The Councilor who wishes to participate by electronic means must file a written request with the Presiding Officer stating the reasons why the Councilor cannot be physically present at the meeting, and why extraordinary circumstances exist that require that the Councilor should participate by electronic means.
- (2) The Presiding Officer files with the Council Clerk a written report explaining the circumstances and containing the Presiding Officer's determination that the physical absence of the Councilor is both

~~unavoidable and excusable and that the physically absent Councilor should participate in the meeting.~~

~~(3) A majority of the Council must be physically present at any special or regular meeting for a quorum to exist.~~

~~(b) Any emergency meeting may be conducted by electronic means consistent with the Oregon Public Meeting Law.~~

~~(c) Participation at any Council meeting by electronic means shall not constitute attendance at a meeting of the Council for the purpose of Section 23(1)(e) of the 1992 Metro Charter.~~

~~Section 1. Metro Code Section 2.01.090 is amended to read as follows:~~

~~2.01.090 CONDUCT OF MEETINGS~~

~~(a) A quorum of the Council is seven (7) members. If a quorum is present, the Council may proceed with the transaction of its business. Consistent with the Oregon Public Meetings Law, Council meetings may be conducted through the use of telephone conference calls or other electronic communications. Members of the Council shall be considered present at a Council meeting if they are connected to a voice or data communication device that allows two-way communication with all other meeting participants.~~

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

~~(1) All members of the Council present;~~

~~(2) All motions, proposals, resolutions, orders, ordinances and rules proposed and their dispositions;~~



~~(3) — The results of all votes, and the vote of each Councilor by name; and~~

~~(4) — The substance of any discussion on any matter.~~

~~(e) — Minutes of Executive Sessions may be limited consistent with ORS 192.660.~~

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

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

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

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

~~(h) — In the event a matter is the subject of a voice vote or a roll call vote, after the vote is taken the Presiding Officer shall announce the result of the votes. Prior to proceeding to the next item on the agenda, or if the item voted upon is the last item on the agenda before adjournment, any member may request that the Clerk of the Council change~~

~~their vote in which case the change in vote shall be announced by the Presiding Officer and the result of the votes as modified shall also be announced. Upon commencement of the next agenda or adjournment, as the case may be, all votes shall become final and may not be further changed without the unanimous consent of the Council.~~

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

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

Section 2. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that it is necessary to allow for the conduct of Council meetings by voice or other electronic communications in order to avoid unnecessary public expense in the conduct of meetings, an emergency is declared to exist and the Ordinance takes effect upon passage.

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

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

ATTEST:

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

gl  
1169A

tomers' account, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed. [1977 c.517 §8 (2), (3)]

**192.587 Charges for participation in attorney trust account overdraft notification program.** Financial institutions that participate in an attorney trust account overdraft notification program established under ORS 9.132 may charge attorneys or law firms who have trust accounts with the financial institution for the reasonable costs incurred by the financial institution by reason of that participation. [1993 c.131 §6]

**192.590 Civil liability for violation of ORS 192.550 to 192.595; status of evidence obtained in violation.** (1) Any customer who suffers any ascertainable loss as a result of a willful violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages or \$1,000, whichever is greater.

(2) Any customer who suffers any ascertainable loss as a result of a negligent violation of ORS 192.550 to 192.595 by any person, may bring an individual action in an appropriate court to recover actual damages.

(3) In any successful action to enforce civil liability for violation of the provisions of ORS 192.550 to 192.595, the customer may recover the cost of the action, together with reasonable attorney fees at trial and on appeal as determined by the court.

(4) An action to enforce any provision of ORS 192.550 to 192.595 must be commenced within two years after the date on which the violation occurred.

(5) Evidence obtained in violation of ORS 192.550 to 192.595 is inadmissible in any proceeding. [1977 c.517 §9; 1981 c.897 §41]

**192.595 Severability.** If any provision of ORS 192.550 to 192.595 or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 192.550 to 192.595 which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 192.550 to 192.595 are severable. [1977 c.517 §10]

## PUBLIC MEETINGS

**192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any onsite inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

**192.620 Policy.** The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

**192.630 Meetings of governing body to be open to public; location of meetings; disabled access; interpreters.** (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at th

other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographic boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action. This subsection does not apply to the Oregon State Bar until December 31, 1980.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Disabilities Commission or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1]

**192.640 Public notice required; special notice for executive sessions, special or emergency meetings.** (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability

of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

**192.650 Written minutes required; content; content of minutes for executive sessions.** (1) The governing body of a public body shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law, but the written minutes must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting but such reference shall not affect the status of the document under ORS 192.410 to 192.505.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound tape recording which need not be transcribed unless otherwise provided by law. Material the disclosure of which is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to

be held may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4]

**192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.**

(1) Nothing contained in ORS 192.610 to 192.690 shall be construed to prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting; after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for the holding of such executive session. Executive session may be held:

(a) To consider the employment of a public officer, employee, staff member or individual agent. The exception contained in this paragraph does not apply to:

(A) The filling of a vacancy in an elective office.

(B) The filling of a vacancy on any public committee, commission or other advisory group.

(C) The consideration of general employment policies.

(D) The employment of the chief executive officer, other public officers, employees and staff members of any public body unless the vacancy in that office has been advertised, regularized procedures for hiring have been adopted by the public body and there has been opportunity for public input into the employment of such an officer. However, the standards, criteria and policy directives to be used in hiring chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, unless such public officer, employee, staff member or individual agent requests an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers shall be adopted by the governing body in meetings open to the public in which there has been opportunity for public comment. An executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member shall not include a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(2) Labor negotiations may be conducted in executive session if either side of the negotiators requests closed meetings. Notwithstanding ORS 192.640, subsequent sessions of the negotiations may continue without further public notice.

(3) Representatives of the news media shall be allowed to attend executive sessions other than those held under paragraph (d) of subsection (1) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(4) No executive session may be held for the purpose of taking any final action or making any final decision. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2]

**192.670 Meetings by means of telephonic or electronic communication.** (1) Any meeting, including an executive session, of a governing body of a public body which

is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

**192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members.** (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

**192.685 Additional enforcement of alleged violations of ORS 192.660.** (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

**192.690 Exceptions to ORS 192.610 to 192.690.** (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055 and mediation conducted under sections 2 to 10,

chapter 967, Oregon Laws 1989, or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §12; 1991 c.451 §3; 1993 c.318 §3]

Note: The amendments to 192.690 by section 14, chapter 967, Oregon Laws 1989, and by section 33, chapter 18, and section 4, chapter 318, Oregon Laws 1993, take effect June 30, 1995. See section 17, chapter 967, Oregon Laws 1989. The text that is effective on and after June 30, 1995, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, and the peer review committees in accordance with the provisions of ORS 441.055 or to any judicial proceeding.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

**192.695 Prima facie evidence of violation required of plaintiff.** In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS 192.610 to 192.990 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**192.710 Smoking in public meetings prohibited.** (1) No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting

notice indicates the meeting is to commence regardless of the time it actually commences.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

## FINANCIAL INSTITUTION RECORD DISCLOSURES

**192.800 Definitions.** (1) "Customer" means any person who or which is transacting or has transacted business with a financial institution, or who or which is using or has used the services of such an institution, or for whom or which a financial institution has acted or is acting as a fiduciary.

(2) "Financial institution" means any state or national bank, state or federal savings and loan association, federal savings bank, state or federal credit union, trust company or mutual savings bank.

(3) "Financial records" means any original written document, any copy thereof, or any information contained therein, held by or in the custody of a financial institution, when the document, copy or information is identifiable as pertaining to one or more customers of the financial institution.

(4) "Subpoena" means a judicial subpoena or subpoena duces tecum. [1985 c.797 §1]

**192.805 Reimbursement required prior to disclosure; charges.** Before producing any documents or making any disclosures, a financial institution may require the requesting person who caused the subpoena to be issued to reimburse the financial institution for the reasonable costs incurred by the financial institution in the course of compliance. These costs shall include but are not limited to personnel costs, reproduction costs and travel expenses. The following charges shall be deemed reasonable costs:

(1) Personnel costs, \$10 per hour per person, computed on the basis of \$2.50 per quarter hour or fraction thereof, for time expended by personnel of the financial institution in searching, locating, retrieving, copying and transporting or conveying the

Meeting Date: September 8, 1994  
Agenda Item No. 7.2

ORDINANCE NO. 94-562A



## FINANCE COMMITTEE REPORT

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### ORDINANCE NO. 94-562A, AMENDING THE METRO CODE SECTION 2.04.045 RELATING TO APPROVAL OF CONTRACT AMENDMENTS

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Date: September 1, 1994

Presented by: Councilor McLain

**COMMITTEE RECOMMENDATION:** At its August 24, 1994 meeting the Finance Committee voted 4-0 to recommend Council adoption of Ordinance No. 94-562A. Councilors Monroe, Kvistad, McLain, and Washington voted in favor. Councilors Buchanan, Devlin, Gardner, and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** Councilor McLain discussed the ordinance. She said Ordinance No. 94-562 was drafted to clarify Council's authority regarding review and approval of contract amendments. She said the ordinance had been discussed at the August 10 committee meeting, which resulted in amendments being drafted which accomplished four things as outlined in Dan Cooper's August 17 memo to her. Councilor McLain discussed those changes.

General Counsel Dan Cooper noted there is a fifth item added, which requires the Executive to report to the Council whenever she exercises the authority granted under the provisions of this ordinance.

Councilor Kvistad asked what the effect would be of reducing, from \$25,000 to \$10,000, the limitation on the Executive's authority to approve amendments. Mr. Cooper said he could not estimate the effect of such a change; he said the \$25,000 figure was included to be consistent with the minimum amount of contracts that require a formal RFP process as stipulated in Ordinance No. 94-554. Committee members and staff discussed the relationship between the figure for formal bids and the figure for contract amendments, and discussed the merits of the \$25,000 level for RFP's. (The latter issue had not yet been approved by Council, but was subsequently approved at the August 25 meeting; Councilor Kvistad did not want the \$25,000 figure for amendment authority to be included in this ordinance since it hadn't been adopted by Council for formal bids.)

Following some discussion of tying the amount for Executive approval of amendments to the amount required for formal bids, Councilor McLain accepted as a friendly amendment Councilor Kvistad's proposal to reduce the \$25,000 limitation to \$15,000.

Chair Monroe opened a public hearing and no one testified.

There was no further committee discussion.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING ) ORDINANCE NO. 94-562A  
THE METRO CODE SECTION 2.04.045 )  
RELATING TO APPROVAL OF CONTRACT ) Introduced by  
AMENDMENTS, AND DECLARING AN ) Councilor Susan McLain  
EMERGENCY )

THE METRO COUNCIL HEREBY ORDAINS:

Section 1: Metro Code Section 2.04.045 is amended to read as follows:

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

(a) The Executive Officer may execute amendments to contracts, other than Personal Services contracts, which were not subject to Council approval pursuant to Section 2.04.033, or which were exempted from the requirement of Council approval by action of the Council, provided that any one of the following conditions are met:

- (1) The original contract was let by competitive bidding, the amendment is for the purpose of authorizing additional work for which unit prices or bid alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original Scope of Work included in the original contract; or

(3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or the Contract Review Board has approved the contract amendment.

(b) No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution or ordinance, except as follows:

(1) The Executive Officer may approve any amendment that is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement if the amendment does not materially add to or delete from the original Scope of Work included in the original contract. Provided, however, the Executive Officer must obtain Council approval for any such change order that results in a total aggregate increase of more than 5 percent of the original contract amount. If the Council approves a change order pursuant to this subsection it may also in the same action authorize additional change orders to resolve future disputes in an amount not to exceed that established by the Council.

(2) The Executive Officer may approve any contract amendment to a contract for a public improvement that does not increase the contract amount more than \$15,000 if the amount of the aggregate cost resulting from all amendments authorized pursuant to this subsection does not exceed 5 percent of the initial contract. In computing the dollar amount of any amendment for the purpose of this subsection, only the amount of additional work or extra cost shall be considered and may not be offset by the amount of any deletions.

(c) Personal Services contracts may be amended only as provided for in Metro Code Section 2.04.054.

(d) Prior to executing any amendment to a contract authorized pursuant to subsection 2.04.045(b), the Executive Officer shall file a written report explaining the purpose of the amendment and the authority for its execution with the Clerk of the Council. All reports shall be referred to the appropriate Council Committee for discussion and considerations.

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

~~(1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or~~

~~(2) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the~~

~~face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) are not included in computing the aggregate amount under this section; or~~

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

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

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

~~(c) Approval Process:~~

- ~~(1) In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.~~

- (2) ~~Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:~~
- (A) ~~A standard contract form is used;~~
  - (B) ~~Any deviations to the contract form are approved by the General Counsel;~~
  - (C) ~~The expenditure is authorized in the budget;~~
  - (D) ~~The contract does not further obligate the District beyond \$2,500;~~
  - (E) ~~The appropriate Scope of Work is attached to the contract; and~~
  - (F) ~~No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.~~
- (3) ~~\$2,500 or More: All contract amendments and extensions which are for \$2,500 or more or which result in a total contract price of more than \$2,500 if the original contract was for less than \$2,500 may be approved by either the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of Regional Facilities may sign contract amendments and extensions. No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.~~

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

**Section 2: Emergency Clause. This ordinance being necessary for the health, safety or welfare of the Metro area, for the reason that the Council wants to ensure appropriate policy level control of contract amendments to ensure fiscal protection of agency resources, an emergency is declared to exist and this ordinance shall be effective upon adoption by the Council.**

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

Ed Washington, Deputy Presiding Officer

ATTEST:

Clerk of the Council

gl  
1159A



**METRO**

Date: August 17, 1994

To: Councilor Susan McLain

From: Daniel B. Cooper, General Counsel *[Signature]*

Regarding: ORDINANCE 94-562A  
Our file:

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I am enclosing at your request a proposed amended version of Ordinance 94-562. If approved by the Finance Committee, Ordinance 94-562A would change Ordinance 94-562 as follows:

- (1) Clarify the intent of the limited authorization for change orders based on unit prices or bid alternates;
- (2) Authorize the Executive Officer to have limited authority to resolve disputes on multi-year construction contracts provided that the aggregate cost impact may not exceed 5 percent of the contract without Council approval;
- (3) Authorize change orders for deletions or additional work for construction contracts provided no one addition may exceed \$25,000; the dollar value of deletions may not be used as an offset in determining the amount of an addition and the aggregate increase may not exceed 5 percent of the contract; and
- (4) Adds an emergency clause so the limitations on the Executive Officer's authority contained in the ordinance would go into effect immediately rather than in 90 days.





METRO

Date: August 3, 1994

To: Finance Committee

From: Donald E. Carlson, Council Administrator

Re: Explanation of Ordinance No. 94-562 Relating to Approval of Contract Amendments

Ordinance No. 94-562, introduced by Councilor McLain, is on the August 10, 1994 Finance Committee agenda for committee consideration. The ordinance amends the section of the Metro Contract Code (Chapter 2.04) which deals with amendments to "Public Contracts". As defined in the Code a Public Contract. . .

"means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by Purchase Order, other than agreements which are for personal services. . ."

These amendment procedures relate to all Metro contracts except "Personal Service" contracts.

The Ordinance replaces the existing amendment language with new wording which retains the current procedures, for the most part, with one major exception. In the proposed new language in Section 2.04.045 (3)(b) the following requirement is added:

"No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution."

Section 2.04.033 states the following contracts shall be approved by the Council prior to execution:

1. Any contract which commits the District to the expenditure of revenues or appropriations not otherwise provided for in the current fiscal year (multi-year contracts) except those designated as "B" contracts in the Budget Ordinance.
2. Any intergovernmental agreement by which the District acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit.
3. Any contract for the sale, lease or transfer of real property owned by the District.

If the language highlighted above had been in the Code, there would have been no question that any amendment to the contract with Oregon Waste Systems, Inc. such as Amendment No. 4 would have had to be approved by the Council prior to execution by the Executive Officer.

The new language highlighted above will change the requirements for approval of change orders to construction projects. Prior to action on the ordinance I recommend that General Counsel review the language with the Committee so that members are aware of the potential impact on large construction projects. Dan Cooper will be at the Finance Committee meeting to discuss this with the Committee.

cc: Councilor McLain  
Dick Engstrom  
Dan Cooper  
Casey Short

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING )      ORDINANCE NO. 94-562  
THE METRO CODE SECTION 2.04.045 )  
RELATING TO APPROVAL OF CONTRACT )      Introduced by  
AMENDMENTS )      Councilor Susan McLain

THE METRO COUNCIL HEREBY ORDAINS:

Metro Code Section 2.04.045 is amended to read as follows:

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

(a) The Executive Officer may execute amendments to contracts, other than Personal Services contracts, which were not subject to Council approval pursuant to Section 2.04.033, or which were exempted from the requirement of Council approval by action of the Council, provided that any one of the following conditions are met:

- (1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and the original contract governs the terms and conditions of the additional work; or
- (2) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original Scope of Work included in the original contract; or

(3) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) or (2) are not included in computing the aggregate amount under this subsection; or the Contract Review Board has approved the contract amendment.

(b) No contract which was originally subject to Council approval pursuant to Metro Code Section 2.04.033 may be amended without the express approval of the Council evidenced by a duly adopted resolution.

(c) Personal Services contracts may be amended only as provided for in Metro Code Section 2.04.054.

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

- ~~(1) — The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work and a binding obligation exists on the parties covering the terms and conditions of the additional work. However, in the event that the increase in price results solely from extension of the termination date of the contract, the extension shall not be greater than three months; or~~
- ~~(2) — The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (1) are not included in computing the aggregate amount under this section; or~~
- ~~(3) — The increase in price is due to unexpected conditions which arise during performance of a construction, maintenance or repair contract~~

~~and the Executive Officer determines that extension of the scope of work on the current contract is the most economical method of dealing with the unexpected conditions; or~~

- ~~(4) The total cost of the contract, including amendments, does not exceed \$5,000 but if the amendment is for more than \$500, three (3) competitive quotes shall be obtained as described in Sections 2.04.042(a)(2) and 2.04.043(a).~~
- ~~(5) In addition to the requirements of this subsection, any contract amendment or extension exceeding the amounts as provided in subsection (2) shall not be approved unless the Contract Review Board shall have specifically exempted the contract amendment or extension from the public bidding procedure except as provided in subsection (6) below.~~
- ~~(6) In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they do not materially add to or delete from the original scope of work included in the original contract.~~

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

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

~~(c) Approval Process:~~

- ~~(1) In applying the following rules for approval of contract amendments, when an amendment falls under two different rules, the amendment shall be approved under the rule for the higher dollar amount; e.g., an amendment of under \$2,500 (rule 2) which results in a contract price of \$2,500 or more (rule 3) shall be approved under the rule for contract prices of \$2,500 or more.~~
- ~~(2) Under \$2,500: All contract amendments and extensions which are less than \$2,500 if the contract was originally for \$2,500 or more or which result in a total contract price of less than \$2,500 may be approved by the Director of the initiating department or by a designee of the Director approved by the Executive Officer if the following conditions are met:~~

~~(A) A standard contract form is used;~~

~~(B) Any deviations to the contract form are approved by the General Counsel;~~

~~(C) The expenditure is authorized in the budget;~~

~~(D) The contract does not further obligate the District beyond \$2,500;~~

~~(E) The appropriate Scope of Work is attached to the contract; and~~

~~(F) No contract amendment or extension may be approved in an amount in excess of the amount authorized in the budget.~~

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

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

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

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

ATTEST:

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

gl  
1159

Meeting Date: September 8, 1994  
Agenda Item No. 7.3

ORDINANCE NO. 94-564

## FINANCE COMMITTEE REPORT

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ORDINANCE NO. 94-564, AMENDING THE FY 1994-95 BUDGET BY TRANSFERRING \$10,500 FROM THE SUPPORT SERVICES FUND CONTINGENCY TO MATERIALS & SERVICES, TEMPORARY HELP SERVICES, IN THE GENERAL SERVICES DEPARTMENT FOR THE PURPOSE OF PROVIDING CLERICAL RELIEF FOR THE GENERAL METRO SWITCHBOARD RECEPTIONIST, AND DECLARING AN EMERGENCY

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Date: September 1, 1994

Presented by: Councilor Kvistad

**COMMITTEE RECOMMENDATION:** At its August 24, 1994 meeting the Finance Committee voted 7-0 to recommend Council adoption of Ordinance No. 94-564. Voting in favor were Councilors Monroe, Devlin, Gardner, Kvistad, McLain, Van Bergen, and Washington. Councilor Buchanan was absent.

**COMMITTEE DISCUSSION/ISSUES:** Office Services Manager Pam Juett presented the staff report. In addition to the information in the written staff report, she said the issue of having departments provide switchboard relief was raised with Department Heads. They agreed they would prefer to pay for the relief through the Cost Allocation Plan rather than have to dedicate staff for this purpose.

Councilor Van Bergen asked why this ordinance includes an emergency clause. Ms. Juett said Personnel and Solid Waste have been providing switchboard relief, but they have asked that their staffs no longer have this responsibility by themselves; the emergency clause is included to make the change in switchboard relief effective as soon as possible.

Council Administrator Don Carlson noted that the receptionist position was transferred from Personnel to General Services in the 1994-95 budget, and he asked why the issue of relief was not raised during the budget process. General Services Director Doug Butler said this could have been anticipated in the budget but was not. He said there were numerous changes in the department accomplished during the budget process, including transfer of certain programs and reduction of two clerical positions in the office. He said department heads raised issues of coordinating schedules among clerical personnel if all departments provided staff as backup. They suggested contracting for the service, which would also provide assistance in performing clerical work in the General Services Department. Mr. Butler said he might have proposed this method of providing relief in the budget process if he'd had more experience with the department.

Chair Monroe opened a public hearing and no one testified.

Councilor Van Bergen said the issue of providing proper receptionist service has been with the agency for many years, and this issue could have been anticipated.



BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY )  
1994-95 BUDGET BY TRANSFERRING )  
\$10,500 FROM THE SUPPORT )  
SERVICES FUND CONTINGENCY TO )  
MATERIALS & SERVICES, TEMPORARY )  
HELP SERVICES, IN THE GENERAL )  
SERVICES DEPARTMENT FOR THE )  
PURPOSE OF PROVIDING CLERICAL )  
RELIEF FOR THE GENERAL METRO )  
SWITCHBOARD RECEPTIONIST; AND )  
DECLARING AN EMERGENCY. )

ORDINANCE NO. 94-564

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$10,500 from the Support Service Fund Contingency to Personal Services in the General Service Department to fund clerical relief for the general Metro switchboard receptionist.

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.

ATTEST:

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

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

**Exhibit A  
Ordinance No. 94-564**

# Support Services Fund

FISCAL YEAR 1994-95		CURRENT BUDGET		REVISION		ORD. NO.94-564	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>General Services (Office Services)</b>							
	Total Personal Services	4.20	169,949			4.20	169,949
	<u>Materials &amp; Services</u>						
521100	Office Supplies		11,500				11,500
521110	Computer Software		900				900
521260	Printing Supplies		73,755				73,755
521290	Other Supplies		400				400
521310	Subscriptions		235				235
521320	Dues		360				360
524190	Misc. Professional Services		12,700				12,700
525640	Maintenance & Repairs Services-Equipment		62,598				62,598
525710	Equipment Rental		18,710				18,710
526310	Printing Services		6,800				6,800
526420	Postage		107,640				107,640
526440	Delivery Services		350				350
526500	Travel		50				50
526700	Temporary Help Services		4,080		10,500		14,580
526800	Training, Tuition, Conferences		800				800
526900	Misc Other Purchased Services						
528100	License, Permits, Payments to Other Agencies		200				200
525740	Capital Lease Payments-Furniture & Equipment		20,005				20,005
	Total Materials & Services		321,083		10,500		331,583
	<u>Capital Outlay</u>						
571500	Purchases-Office Furniture & Equipment		8,100				8,100
	Total Capital Outlay		8,100				8,100
	<b>TOTAL EXPENDITURES</b>	4.20	499,132		10,500	4.20	509,632
<b>General Services Department</b>							
	<b>TOTAL EXPENDITURES</b>	16.45	1,689,066		10,500	16.45	1,699,566
<b>General Expenses</b>							
	Total Interfund Transfers		806,169				806,169
	<u>Contingency and Unappropriated Balance</u>						
599999	Contingency						
	* General		170,000		(10,500)		159,500
	* Builders License		62,987				62,987
	* Construction Services (Tri-Met Contract)		2,539				2,539
599990	Unappropriated Fund Balance-Contractors License						
	* Builders License		207,625				207,625
	* Capital Replacement Reserve		200,000				200,000
	Total Contingency and Unappropriated Balance		643,151		(10,500)		632,651
	<b>TOTAL EXPENDITURES</b>	81.25	7,668,704			81.25	7,668,704

**\*\* CURRENT BUDGET ASSUMES PASSAGE OF ORD. NO. 94-560**

**Exhibit B  
Ordinance No. 94-564**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

	<b>Current</b>		
	<b>Appropriation</b>	<b>Revision</b>	<b>ORD. No. 94-564</b>
<b>SUPPORT SERVICES FUND</b>			
General Services			
Personal Services	947,694		947,694
Materials & Services	730,412	10,500	740,912
Capital Outlay	10,960		10,960
<b>Subtotal</b>	<b>1,689,066</b>	<b>10,500</b>	<b>1,699,566</b>
General Expenses			
Interfund Transfers	806,169		806,169
Contingency	235,526	(10,500)	225,026
<b>Subtotal</b>	<b>1,041,695</b>	<b>(10,500)</b>	<b>1,031,195</b>
Unappropriated Balance	407,625		407,625
<b>Total Fund Requirements</b>	<b>7,668,704</b>	<b>0</b>	<b>7,668,704</b>

\*\* CURRENT APPROPRIATIONS ASSUMES PASSAGE OF ORD. NO. 94-560  
 \*\* ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO.94 564 FOR THE PURPOSE OF AMENDING THE FY 1994-95 BUDGET BY TRANSFERRING \$10,500 FROM THE SUPPORT SERVICES FUND CONTINGENCY TO MATERIALS & SERVICES, TEMPORARY HELP SERVICES, IN THE GENERAL SERVICES DEPARTMENT FOR THE PURPOSE OF PROVIDING CLERICAL RELIEF FOR THE GENERAL METRO SWITCHBOARD RECEPTIONIST; AND DECLARING AN EMERGENCY.

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Date: July 28, 1994

Presented by Pam Juett

### BACKGROUND AND ANALYSIS

This ordinance amends the Office Services Division budget in the General Services Department of the Support Services Fund to increase the temporary clerical assistance budget by \$10,500.

The purpose of the budget amendment is to provide for clerical relief for the general Metro switchboard receptionist. The general Metro switchboard must remain staffed during the hours that Metro is in operation, 8:00 to 5:00 p.m. five days a week, including the breaks and lunch hour for the regular staff person occupying this position. Although the break and lunch period total only one and one-half hours per day, clerical relief is needed for at least five hours, which covers the range of hours from the beginning of the first break, through lunch, to the end of the second break.

Switchboard relief through a temporary help agency such as a qualified rehabilitation agency can be obtained for \$10.00 per hour between the hours of 10:00 a.m. to 3:30 p.m. daily. The time not spent in switchboard relief will be spent in additional duties for General Services, as well as any other clerical tasks including labeling, sorting, collating, envelope stuffing, etc., that other departments have as overflow work, and which can be done at the work station. Duties for General Services include data entry, invoice preparation, receiving and checking office supply orders for Metro Regional Center, filing, typing, etc. Ample overflow work exists to keep the relief person busy.

For the past several years, the clerical relief support for breaks, lunches and sick leave has been provided by the Personnel and Solid Waste Departments. Both departments have requested that this duty be shared among all Metro Regional Center departments, as they can no longer provide the level of support that they had been providing in the past. Discussions held at the management level asking all Metro Departments to participate in providing relief among existing staff have been held. Departments are unable to provide this relief directly from their own staff and have requested that General Services provide this relief. General Services does not have sufficient resources in clerical staff to be able to do this without temporary clerical assistance.

Drawing switchboard relief personnel from among all the Metro Regional Center Departments presents its own problems in that it is disruptive and inefficient for employees to stop their regular duties to act as fill-in. If the fill-in person is out for vacation or ill, there is often no fall back relief available. Also, there is a certain generalized level of knowledge of Metro and its business, operations, and ongoing projects that is required of the receptionist in a telephone interaction with the public. This knowledge, and professionalism can best be maintained by having consistent clerical coverage. The Metro Regional Center department managers support the request for shared switchboard relief through the use of a temporary help service and are prepared to pay for it through the cost allocation system. (All Metro Regional Center Departments will be charged a portion of the clerical relief support as a proportionate share based on their FTE.)

#### **BUDGET IMPACT**

We expect to hire a relief operator beginning September 12, 1994, at \$10.00 per hour which equals \$10,500. These funds are proposed to be transferred from Support Services Fund Contingency, to the materials and services budget of the General Services Department, Office Services Division, in the Temporary Help Services category.

#### **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends adoption of Ordinance No. 94-564.

Meeting Date: September 8, 1994  
Agenda Item No. 7.4

ORDINANCE NO. 94-565A

## FINANCE COMMITTEE REPORT

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ORDINANCE NO. 94-565A, AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$68,262 FROM THE SOLID WASTE REVENUE FUND CONTINGENCY TO THE ADMINISTRATION DIVISION MATERIALS & SERVICES, LEGAL FEES LINE ITEM FOR THE PURPOSE OF PROVIDING LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY, AND DECLARING AN EMERGENCY

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Date: September 1, 1994

Presented by: Councilor Van Bergen

**COMMITTEE RECOMMENDATION:** At its August 24, 1994 meeting the Finance Committee voted 5-2 to recommend Council adoption of Ordinance No. 94-565. Voting in favor were Councilors Monroe, Kvistad, McLain, Van Bergen, and Washington. Councilors Devlin and Gardner voted in opposition. Councilor Buchanan was absent.

**COMMITTEE DISCUSSION/ISSUES:** Deputy Executive Officer Dick Engstrom presented the staff report. Councilor Van Bergen asked how much had been billed in this fiscal period. Mr. Engstrom said there have been no bills in FY 1994-95; bills from the previous fiscal year total some \$6,800.

Councilor Van Bergen said he supports the ordinance, but did not support placing the funds in Miscellaneous Professional Services. He said the funds for this lawsuit should be segregated from other "miscellaneous" funds. Council Administrator Don Carlson said the line item in question is also the source of funds for the Council's attorneys in this suit.

Councilor Gardner asked what would be the effect of this ordinance not being approved. Mr. Engstrom said the Executive would not have any money for legal representation in the suit. Councilor Gardner and Mr. Engstrom confirmed that there is an existing contract with Jacob Tanzer for legal services, which is limited to \$10,000; Mr. Engstrom noted that Resolution No. 94-2014 is a companion to this ordinance, which would increase the amount of that contract. Councilor Gardner asked if other funds could be made available for the Executive's legal expenses if the ordinance is not approved. Mr. Engstrom said he is aware of none.

Councilor Devlin said he opposes this ordinance and the resolution because he thinks there is a more cost-effective way to resolve the issues than by bringing this suit. He added that he will also vote against expenditures for Council's legal costs.

Councilor Gardner said he also opposes the lawsuit, and will vote against any expenditures that support it.

Councilor Van Bergen moved the ordinance, with an amendment stipulating that the \$68,262 it authorizes be placed in an account identified as "professional services account to fund legal services for the Executive Officer in determining contract authority."

Councilor Kvistad said he did not want to support the ordinance because he does not support the actions taken by the Executive Officer regarding the Oregon Waste Systems contract amendment, but he also understands that the Council has an obligation to fund the Executive's legal costs if it funds Council's legal costs.

Councilor Van Bergen said the Executive is entitled to the funds to pay her lawyer, just as the Council is entitled. He added that it is up to the court to decide the matter in question.

Councilor McLain said she supports the legislation before the committee because the issue needs resolution, and that requires the services of attorneys. She said resolution of the issue is needed to add credence to the Metro Code.

Councilor Monroe noted that although the Council disagreed with the Executive's actions, she took those actions consistent with legal advice she had received.

Councilor Washington said he supports the ordinance out of a sense of fairness, saying that the Executive deserves the opportunity for legal defense.

Chair Monroe opened a public hearing and no one testified.

Councilor Gardner said he agrees that a vote on this issue should not be interpreted as an expression of support or opposition to the Executive's actions. He said he would vote against the ordinance to express his opposition to the Council's action in initiating the litigation.

**NOTE:** The amendment approved by the Committee to segregate the money for legal fees into a separate account has been drafted to place the \$68,262 into line item 524120 - Legal Fees. Accounting Manager Don Cox has created a specific account number for the Executive Officer's legal fees, and another account for the Council's legal fees. The Council's account is tentatively established in the same Legal Fees line item, but will not become effective unless the Council acts to amend this ordinance to move its legal funds from Miscellaneous Professional Services to Legal Fees. Prior to this action, the Legal Fees line item had no appropriation, so any expenditures from it would be easily tracked against the appropriations for costs in this lawsuit.



BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95 )	ORDINANCE NO. 94-565A
BUDGET AND APPROPRIATIONS )	
SCHEDULE BY TRANSFERRING \$68,262 )	Introduced by Rena Cusma,
FROM THE SOLID WASTE REVENUE FUND )	Executive Officer
CONTINGENCY TO THE ADMINISTRATION )	
DIVISION MATERIALS & SERVICES, [ <del>MISC-</del> )	
<del>PROFESSIONAL SERVICES ACCOUNT</del> ] )	
<u>LEGAL FEES LINE ITEM</u> FOR THE PURPOSE )	
OF PROVIDING LEGAL SERVICES )	
REGARDING METRO EXECUTIVE OFFICER )	
CONTRACTING AUTHORITY; AND )	
DECLARING AN EMERGENCY . )	

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$68,262 from the Solid Waste Revenue Fund Contingency to the Administration Division Materials & Services, [~~Misc-Professional Services-account~~] Legal Fees line item to fund legal services for the Executive Officer in determining contract authority.

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.

ATTEST:

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

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

**Exhibit A**  
**Ordinance No. 94-565A**  
**Solid Waste Revenue Fund**

FISCAL YEAR 1994-95		ADOPTED BUDGET		REVISION		ORD. NO. 94-565	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>Operating Account (Administration)</b>							
	Total Personal Services	10.50	552,982			10.50	552,982
	<u>Materials &amp; Services</u>						
521100	Office Supplies		21,565				21,565
521260	Printing Supplies		5,974				5,974
521293	Promotion Supplies		650				650
521310	Subscriptions		8,193				8,193
521320	Dues		2,725				2,725
521540	Maintenance & Repairs Supplies-Equipment		490				490
524120	Legal Fees		0		68,262		68,262
524190	Misc. Professional Services		45,000				45,000
525640	Maintenance & Repairs Services-Equipment		1,414				1,414
525710	Equipment Rental		1,030				1,030
526200	Ads & Legal Notices		1,715				1,715
526310	Printing Services		9,075				9,075
526410	Telephone		8,034				8,034
526420	Postage		310				310
526440	Delivery Service		1,895				1,895
526500	Travel		6,222				6,222
526510	Mileage Reimbursement		672				672
526700	Temporary Help Services		12,855				12,855
526800	Training, Tuition, Conferences		6,570				6,570
529500	Meetings		1,600				1,600
529800	Miscellaneous		1,500				1,500
	Total Materials & Services		137,489		68,262		205,751
	<b>TOTAL EXPENDITURES</b>	10.50	690,471		68,262	10.50	758,733
<b>General Expenses</b>							
	Total Interfund Transfers		3,686,836				3,686,836
599999	Contingency		8,291,755		(68,262)		8,223,493
599990	Unappropriated Fund Balance		14,651,441				14,651,441
	Total Contingency and Unappropriated Balance		22,943,196		(68,262)		22,874,934
	<b>TOTAL REVENUE FUND EXPENDITURES</b>	102.95	90,550,007		0	102.95	90,550,007

**Exhibit B  
Ordinance No. 94-565A**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

	<b>Current</b>		<b>ORD. No. 94-565</b>
	<b>Appropriation</b>	<b>Revision</b>	<b>Proposed</b>
			<b>Appropriation</b>
<b>SOLID WASTE REVENUE FUND</b>			
Administration			
Personal Services	552,982		552,982
Materials & Services	137,489	68,262	205,751
Subtotal	690,471	68,262	758,733
Budget and Finance			
Personal Services	495,560		495,560
Materials & Services	1,072,255		1,072,255
Subtotal	1,567,815		1,567,815
Operations			
Personal Services	2,362,635		2,362,635
Materials & Services	43,060,626		43,060,626
Subtotal	45,423,261		45,423,261
Engineering & Analysis			
Personal Services	723,405		723,405
Materials & Services	224,751		224,751
Subtotal	948,156		948,156
Waste Reduction			
Personal Services	557,059		557,059
Materials & Services	1,178,421		1,178,421
Subtotal	1,735,480		1,735,480
Planning and Technical Services			
Personal Services	548,384		548,384
Materials & Services	377,033		377,033
Subtotal	925,417		925,417
Recycling Information and Education			
Personal Services	377,608		377,608
Materials & Services	217,518		217,518
Subtotal	595,126		595,126

<b>Debt Service Account</b>			
Debt Service	2,879,579		2,879,579
<b>Subtotal</b>	<b>2,879,579</b>		<b>2,879,579</b>
<b>Landfill Closure Account</b>			
Materials & Services	6,344,000		6,344,000
<b>Subtotal</b>	<b>6,344,000</b>		<b>6,344,000</b>
<b>Construction Account</b>			
Capital Outlay	1,650,000		1,650,000
<b>Subtotal</b>	<b>1,650,000</b>		<b>1,650,000</b>
<b>Renewal and Replacement Account</b>			
Capital Outlay	149,000		149,000
<b>Subtotal</b>	<b>149,000</b>		<b>149,000</b>
<b>General Account</b>			
Capital Outlay	661,670		661,670
<b>Subtotal</b>	<b>661,670</b>		<b>661,670</b>
<b>Master Project Account</b>			
Debt Service	350,000		350,000
<b>Subtotal</b>	<b>350,000</b>		<b>350,000</b>
<b>General Expenses</b>			
Interfund Transfers	3,686,836		3,686,836
Contingency	8,291,755	(68,262)	8,223,493
<b>Subtotal</b>	<b>11,978,591</b>	<b>(68,262)</b>	<b>11,910,329</b>
Unappropriated Balance	14,651,441		14,651,441
<b>Total Fund Requirements</b>	<b>90,550,007</b>	<b>0</b>	<b>90,550,007</b>

**All Other Appropriation Levels Remain as Previously Adopted**

## STAFF REPORT

### IN CONSIDERATION OF:

RESOLUTION NO. 94-2014 FOR THE PURPOSE OF AMENDING A CONTRACT WITH JACOB TANZER FOR LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY, AND;

ORDINANCE NO. 94-565 AMENDING THE FY 94-95 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$68,262 FROM THE SOLID WASTE REVENUE FUND CONTINGENCY TO THE ADMINISTRATION DIVISION MATERIALS & SERVICES, MISC. PROFESSIONAL SERVICES ACCOUNT FOR THE PURPOSE OF PROVIDING LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY; AND DECLARING AN EMERGENCY.

Date: August 28, 1994

Presented by: Dick Engstrom

### FACTUAL BACKGROUND AND ANALYSIS

The Metro Council approved Resolution No. 94-1973 on June 9, 1994, directing 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. The Metro Council approved Resolution No. 94-1994 increasing the maximum authorized payment on the contract with special legal counsel of Harrang Long Gary Rudnick, P.C., to \$75,000.

At the request of the Executive Officer, Metro General Counsel entered into a contract with Jacob Tanzer to provide legal services for the Executive Officer in defending her actions in executing Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc.

Resolution No. 94-2014 authorizes an increase in the maximum authorized payment on the contract with special legal counsel Tanzer to \$75,000; amends the Scope of Work of the contract; and exempts the contract amendment from the competitive procurement procedures of Section 2.04.053 of the Metro Code. The amendment to the scope of work provides, "The Contractor shall advise the Executive Officer regarding any proceedings for a judicial declaration as to the validity of Amendment No. 4 to the Contract between Metro and Oregon Waste Systems, Inc. executed by the Executive Officer on March 16, 1994; and the Contractor shall represent the Metro Executive Officer in such proceeding at the trial level."

Six thousand seven hundred and thirty eight dollars were spent on this contract in FY 1993-94. This ordinance amends the FY 1994-95 Solid Waste budget and appropriations schedule by transferring \$68,262 from the Solid Waste Revenue Fund contingency to the Administration Division Misc. Professional Services account from which this contract will be paid. Contract expenses are being incurred in both FY 1993-94 and FY 1994-95. The \$68,262 transfer will provide funds for payments made in FY 1994-95 and total maximum funding of \$75,000 for the contract.

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution 94-2014.

The Executive Officer recommends approval of Ordinance No. 94-565 and declaring an emergency.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 1994-95 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE BY TRANSFERRING \$68,262 )  
FROM THE SOLID WASTE REVENUE FUND )  
CONTINGENCY TO THE ADMINISTRATION )  
DIVISION MATERIALS & SERVICES, MISC. )  
PROFESSIONAL SERVICES ACCOUNT FOR )  
THE PURPOSE OF PROVIDING LEGAL )  
SERVICES REGARDING METRO EXECUTIVE )  
OFFICER CONTRACTING AUTHORITY; AND )  
DECLARING AN EMERGENCY )

ORDINANCE NO. 94-565  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$68,262 from the Solid Waste Revenue Fund Contingency to the Administration Division Materials & Services Misc. Professional Services account to fund legal services for the Executive Officer in determining contract authority.

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.

ATTEST:

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

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

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**Exhibit A**  
**Ordinance No. 94-565**  
**Solid Waste Revenue Fund**

FISCAL YEAR 1994-95		ADOPTED BUDGET		REVISION		ORD. NO. 94-565	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>Operating Account (Administration)</b>							
	Total Personal Services	10.50	552,982			10.50	552,982
	<u>Materials &amp; Services</u>						
521100	Office Supplies		21,565				21,565
521260	Printing Supplies		5,974				5,974
521293	Promotion Supplies		650				650
521310	Subscriptions		8,193				8,193
521320	Dues		2,725				2,725
521540	Maintenance & Repairs Supplies-Equipment		490				490
524190	Misc. Professional Services		45,000		68,262		113,262
525640	Maintenance & Repairs Services-Equipment		1,414				1,414
525710	Equipment Rental		1,030				1,030
526200	Ads & Legal Notices		1,715				1,715
526310	Printing Services		9,075				9,075
526410	Telephone		8,034				8,034
526420	Postage		310				310
526440	Delivery Service		1,895				1,895
526500	Travel		6,222				6,222
526510	Mileage Reimbursement		672				672
526700	Temporary Help Services		12,855				12,855
526800	Training, Tuition, Conferences		6,570				6,570
529500	Meetings		1,600				1,600
529800	Miscellaneous		1,500				1,500
	Total Materials & Services		137,489		68,262		205,751
	<b>TOTAL EXPENDITURES</b>	10.50	690,471		68,262	10.50	758,733
<b>General Expenses</b>							
	Total Interfund Transfers		3,686,836				3,686,836
599999	Contingency		8,291,755		(68,262)		8,223,493
599990	Unappropriated Fund Balance		14,651,441				14,651,441
	Total Contingency and Unappropriated Balance		22,943,196		(68,262)		22,874,934
	<b>TOTAL REVENUE FUND EXPENDITURES</b>	102.95	90,550,007		0	102.95	90,550,007

**Exhibit B  
Ordinance No. 94-565**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

	<b>Current</b>		<b>ORD. No. 94-565</b>
	<b>Appropriation</b>	<b>Revision</b>	<b>Proposed Appropriation</b>
<b>SOLID WASTE REVENUE FUND</b>			
<b>Administration</b>			
Personal Services	552,982		552,982
Materials & Services	137,489	68,262	205,751
<b>Subtotal</b>	<b>690,471</b>	<b>68,262</b>	<b>758,733</b>
<b>Budget and Finance</b>			
Personal Services	495,560		495,560
Materials & Services	1,072,255		1,072,255
<b>Subtotal</b>	<b>1,567,815</b>		<b>1,567,815</b>
<b>Operations</b>			
Personal Services	2,362,635		2,362,635
Materials & Services	43,060,626		43,060,626
<b>Subtotal</b>	<b>45,423,261</b>		<b>45,423,261</b>
<b>Engineering &amp; Analysis</b>			
Personal Services	723,405		723,405
Materials & Services	224,751		224,751
<b>Subtotal</b>	<b>948,156</b>		<b>948,156</b>
<b>Waste Reduction</b>			
Personal Services	557,059		557,059
Materials & Services	1,178,421		1,178,421
<b>Subtotal</b>	<b>1,735,480</b>		<b>1,735,480</b>
<b>Planning and Technical Services</b>			
Personal Services	548,384		548,384
Materials & Services	377,033		377,033
<b>Subtotal</b>	<b>925,417</b>		<b>925,417</b>
<b>Recycling Information and Education</b>			
Personal Services	377,608		377,608
Materials & Services	217,518		217,518
<b>Subtotal</b>	<b>595,126</b>		<b>595,126</b>



Debt Service Account			
Debt Service	2,879,579		2,879,579
<b>Subtotal</b>	<b>2,879,579</b>		<b>2,879,579</b>
Landfill Closure Account			
Materials & Services	6,344,000		6,344,000
<b>Subtotal</b>	<b>6,344,000</b>		<b>6,344,000</b>
Construction Account			
Capital Outlay	1,650,000		1,650,000
<b>Subtotal</b>	<b>1,650,000</b>		<b>1,650,000</b>
Renewal and Replacement Account			
Capital Outlay	149,000		149,000
<b>Subtotal</b>	<b>149,000</b>		<b>149,000</b>
General Account			
Capital Outlay	661,670		661,670
<b>Subtotal</b>	<b>661,670</b>		<b>661,670</b>
Master Project Account			
Debt Service	350,000		350,000
<b>Subtotal</b>	<b>350,000</b>		<b>350,000</b>
General Expenses			
Interfund Transfers	3,686,836		3,686,836
Contingency	8,291,755	(68,262)	8,223,493
<b>Subtotal</b>	<b>11,978,591</b>	<b>(68,262)</b>	<b>11,910,329</b>
Unappropriated Balance	14,651,441		14,651,441
<b>Total Fund Requirements</b>	<b>90,550,007</b>	<b>0</b>	<b>90,550,007</b>

**All Other Appropriation Levels Remain as Previously Adopted**

Meeting Date: September 8, 1994  
Agenda Item No. 8.1

RESOLUTION NO. 94-2014

## STAFF REPORT

### IN CONSIDERATION OF:

RESOLUTION NO. 94-2014 FOR THE PURPOSE OF AMENDING A CONTRACT WITH JACOB TANZER FOR LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY, AND;

ORDINANCE NO. 94-565 AMENDING THE FY 94-95 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING \$68,262 FROM THE SOLID WASTE REVENUE FUND CONTINGENCY TO THE ADMINISTRATION DIVISION MATERIALS & SERVICES, MISC. PROFESSIONAL SERVICES ACCOUNT FOR THE PURPOSE OF PROVIDING LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY; AND DECLARING AN EMERGENCY.

Date: August 28, 1994

Presented by: Dick Engstrom

### FACTUAL BACKGROUND AND ANALYSIS

The Metro Council approved Resolution No. 94-1973 on June 9, 1994, directing 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. The Metro Council approved Resolution No. 94-1994 increasing the maximum authorized payment on the contract with special legal counsel of Harrang Long Gary Rudnick, P.C., to \$75,000.

"At the request of the Executive Officer, Metro General Counsel entered into a contract with Jacob Tanzer to provide legal services for the Executive Officer in defending her actions in executing Amendment No. 4 to the contract between Metro and Oregon Waste Systems, Inc.

Resolution No. 94-2014 authorizes an increase in the maximum authorized payment on the contract with special legal counsel Tanzer to \$75,000; amends the Scope of Work of the contract; and exempts the contract amendment from the competitive procurement procedures of Section 2.04.053 of the Metro Code. The amendment to the scope of work provides, "The Contractor shall advise the Executive Officer regarding any proceedings for a judicial declaration as to the validity of Amendment No. 4 to the Contract between Metro and Oregon Waste Systems, Inc. executed by the Executive Officer on March 16, 1994; and the Contractor shall represent the Metro Executive Officer in such proceeding at the trial level."

Six thousand seven hundred and thirty eight dollars were spent on this contract in FY 1993-94. This ordinance amends the FY 1994-95 Solid Waste budget and appropriations schedule by transferring \$68,262 from the Solid Waste Revenue Fund contingency to the Administration Division Misc. Professional Services account from which this contract will be paid. Contract expenses are being incurred in both FY 1993-94 and FY 1994-95. The \$68,262 transfer will provide funds for payments made in FY 1994-95 and total maximum funding of \$75,000 for the contract.

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution 94-2014.  
The Executive Officer recommends approval of Ordinance No. 94-565 and declaring an emergency.

## FINANCE COMMITTEE REPORT

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RESOLUTION NO. 94-2014, AMENDING A CONTRACT WITH JACOB TANZER FOR LEGAL SERVICES REGARDING METRO EXECUTIVE OFFICER CONTRACTING AUTHORITY

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Date: September 1, 1994

Presented by: Councilor Van Bergen

**COMMITTEE RECOMMENDATION:** At its August 24, 1994 meeting the Finance Committee voted 5-2 to recommend Council adoption of Resolution No. 94-2014. Voting in favor were Councilors Monroe, Kvistad, McLain, Van Bergen, and Washington. Voting in opposition were Councilors Devlin and Gardner. Councilor Buchanan was absent.

**COMMITTEE DISCUSSION/ISSUES:** The Finance Committee discussed this item in conjunction with its consideration of Ordinance No. 94-565, and raised no issues specific to this resolution. Please see the committee report for Ordinance 94-565A for the committee's discussion.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING	)	RESOLUTION NO. 94-2014
A CONTRACT WITH JACOB TANZER	)	
FOR LEGAL SERVICES REGARDING	)	Introduced by Rena Cusma,
METRO EXECUTIVE OFFICER CONTRACT-	)	Executive Officer
ING AUTHORITY	)	

WHEREAS, The Metro Council approved Resolution No. 94-1939 on March 24, 1994 authorizing Metro 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, Metro General Counsel entered into a contract with the firm of Harrang Long Gary Rudnick, P.C., on April 15, 1994, for a maximum amount of \$10,000 to obtain advice on the Metro Council's contracting authority; and

WHEREAS, The Metro Council approved Resolution No. 94-1973 on June 9, 1994 directing 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; and

WHEREAS, The Metro Council approved Resolution No. 94-1996 authorizing Amendment No. 1 to the contract with Harrang Long Gary Rudnick, P.C., increasing the maximum amount to \$75,000; and

WHEREAS, At the request of the Executive Officer, Metro General Counsel entered into a contract with Jacob Tanzer to provide legal services for the Executive Officer; and

WHEREAS, It is necessary and appropriate for the contract with Jacob Tanzer to be amended so that the Executive Officer has the ability to defend her actions; now, therefore,

BE IT RESOLVED,

1. That the Metro Council acting as the Contract Review Board exempts Contract Amendment No. 1 from the competitive procurement procedures of Section 2.04.053 of the Metro Code.

2. That the Metro Council approves Amendment No. 1 to the contract with Jacob Tanzer increasing the maximum amount to \$75,000; and amending the Scope of Work.

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

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

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AMENDMENT NO. 1

ADDITIONAL SCOPE OF WORK, TERM AND CONTRACT AMOUNT

That Contract between Metro and Jacob Tanzer, hereinafter referred to as "Contractor," dated April 26, 1994 for legal services is hereby amended to:

1. Add the Scope of Work as described in Exhibit "A" attached hereto;
2. Extend the length of the Contract to December 31, 1994; and
3. Increase the maximum amount that Metro shall pay to the Contractor for services provided to Seventy-Five Thousand and No/100ths (\$75,000) Dollars.

All other terms of the Contract remain in full force and effect.

DATED the \_\_\_\_ day of \_\_\_\_\_, 1994.

JACOB TANZER

METRO

\_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT "A"

SCOPE OF WORK

The Contractor shall advise the Executive Officer regarding any proceedings for a judicial declaration as to the validity of Amendment No. 4 to the Contract between Metro and Oregon Waste Systems, Inc. executed by the Executive Officer on March 16, 1994; and the Contractor shall represent the Metro Executive Officer in such proceeding at the trial level.

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Meeting Date: September 8, 1994  
Agenda Item No. 8.2

RESOLUTION NO. 94-2016

## PLANNING COMMITTEE REPORT

### **CONSIDERATION OF RESOLUTION NO. 94-2016 FOR THE PURPOSE OF WAIVING THE FILING DEADLINE FOR A PROPOSED URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT**

Date: August 5, 1994

Presented By: Councilor Devlin

**Committee Recommendation:** At the August 4 meeting, the Planning Committee voted 4-2 to recommend Council adoption of Resolution No. 94-2016. Voting in favor: Councilors Kvistad, Devlin, Moore, and Washington. Voting no: Councilors Gardner and McLain. Absent: Councilors Gates and Monroe.

**Committee Issues/Discussion:** Councilor Richard Devlin and Stuart Todd, Assistant Regional Planner, presented the staff report. Councilor Devlin explained that this resolution is in response to a request he received from Mr. Don Richards who is seeking a waiver from the March 15 filing deadline for a proposed urban growth boundary (UGB) locational adjustment. He clarified for the committee that this action is not a quasi-judicial action, as would be the actual approval or denial of the proposed adjustment. If this waiver is granted that action will take place at a later date, perhaps after the first of the year.

He said he had met with Mr. Richards and his co-applicant, Mr. Roger Starr, and believes that their request is warranted, that extenuating circumstances prevented presentation of the completed application in a timely manner. He asked, however, that Mr. Richards and Mr. Starr be allowed to speak for themselves to explain the circumstances.

Councilor Gardner asked staff to describe the chronology of events and rationale for returning the application. Mr. Todd explained that the application was found incomplete and returned in part because the City of Wilsonville needed 120 days to comments on provision of service. This time period ended after the filing deadline.

Councilor Moore asked about the original rationale for setting the March deadline. Councilor Devlin and Mr. Todd explained the history of the requirements that originated during a time when no deadlines were imposed, UGB activity was high, and the application process was continual. This created a hardship for staff. Originally a June deadline was considered but discarded because it was summer and therefore more difficult.

Councilor Moore then asked about whether consideration of this application will cause a hardship on staff; whether time was available for the case. Mr. Todd replied, yes.

Councilor Gardner expressed discomfort with the resolution. He said that the city's delay was one of many reasons why the application was returned. He thought it inappropriate to establish a precedent allowing deadlines to be taken casually.

Councilor McLain agreed that the deadline should be kept. She felt that allowing the waiver and setting the precedent would undermine the timing of local jurisdiction comment.

Public Testimony: The two applicants, Mr. Richards and Mr. Starr, testified that the deadline wasn't met because of several reasons. First, the property closure date occurred later than they had hoped and they didn't feel it appropriate to begin proceedings until final closure. Then the Wilsonville City Council and Planning Commission needed 120 days which ended after the filing deadline. Further complicating the matter, the Oregon Department of Transportation, who owned the sewer line, imposed a two year deadline on water and sewer in order to assure capacity. This latter deadline which is usually only offered for one year, runs out in June 1995.

Councilor Moore, in making the motion to recommend approval of the resolution, stated that there were two reasons why the Council should approve the request: 1) the fact that the City of Wilsonville needed 120 days, bringing the time line after the Metro deadline; 2) ODOT's facility capacity placement of a two year time frame; and 3) the ability of Metro staff to accommodate the request. She felt that the statement of these reasons will help clarify for future Council's why this case warranted a waiver without setting the "precedent" feared by Councilors Gardner and McLain.

Councilor Devlin reiterated that this action was not a burden on Metro; that we are no longer operating under the circumstances that were occurring when the deadline was approved by an earlier Council.

Councilor McLain countered that just because we were not burdened with UGB cases now didn't mean that we wouldn't be in the future.

Following the 4-2 vote, Councilor Moore disclosed for the record that she had discussed this waiver with Charlotte Lehan, Wilsonville City Councilor.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF WAIVING	)	RESOLUTION NO. 94-2016
THE FILING DEADLINE FOR A	)	
PROPOSED URBAN GROWTH	)	Introduced by
BOUNDARY LOCATIONAL	)	Councilor Richard Devlin
ADJUSTMENT	)	

WHEREAS, Metro has adopted and LCDC acknowledged procedures for making amendments to the Metro Urban Growth Boundary (UGB) in Metro Code Chapter 3.01; and

WHEREAS, One of the types of UGB amendment is a "locational adjustment," a limited change to the UGB which is either an addition or deletion of 20 net acres or less; and

WHEREAS, Metro Code Section 3.01.033 requires petitions for locational adjustments must be completed and filed by property owners prior to March 15 each year; and

WHEREAS, Metro staff are required by Metro Code Section 3.01.33(c) to return all petitions not made complete by the ordinance deadlines; and

WHEREAS, Mr. Richards' and Mr. Starr's petition for a 1.3 acre locational adjustment adjacent to I-5 near Charbonneau was submitted prior to March 15, but not made complete within the 14-day time limit after notice of the missing items, resulting in return of their petition; and

WHEREAS, Clackamas County has acted on its recommendation and the city of Wilsonville has acted to respond positively as provider of several urban services; and

WHEREAS, The petitioners have indicated that they will experience a hardship if action on the now complete petition cannot begin until March 15, 1995; and

WHEREAS, A waiver of the petition filing deadline may be requested by a Councilor

or the Executive Officer and approved by a two-thirds vote of the full Council under Metro Code Section 3.01.033(d); now, therefore,

**BE IT RESOLVED:**

1. That the March 15, 1994 deadline for filing Mr. Richards' and Mr. Starr's locational adjustment petition is hereby waived by this action of the Metro Council.
2. That the resubmitted petition must be complete under Metro Code Section 3.01.033 and received by Metro staff within 30 days of the adoption of this Resolution.

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

Ed Washington, Acting Presiding Officer

ATTEST:

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

KLA  
1172

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 94-2016 FOR THE PURPOSE OF WAIVING THE FILING DEADLINE FOR A PROPOSED URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT

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Date: July 28, 1994

Presented By: Councilor Richard Devlin  
and Stuart Todd

#### FACTUAL BACKGROUND AND ANALYSIS

The annual filing deadline for Urban Growth Boundary (UGB) amendments is the 15th of March of every year. An applicant must complete the petition application, including service provider comment forms, and receive the position of local government with land use jurisdiction of the proposed property by this date or within approximately two weeks of Metro's review of the application (a provision for allowing any deficiencies in the application to be remedied). The procedures require that service providers and local governments be given a minimum of 120 days to review and make their comment or position known. This is clearly stated in the UGB Amendment Procedures and is incumbent on the applicant. If the service providers and the governments have been given the allotted time and fail to comment an applicant may ask for a waiver of the comment from the executive officer and such waiver is granted if proof is shown of adequate notice.

Mr. Donald P. Richards and Mr. Roger A. Starr's petition was found incomplete earlier this year because they did not have a complete application. They did not have all the service provider comments nor the local government position. They also had not given the service providers nor the local governments the required 120 days notice and could not apply for a waiver of these elements from their application. (See letters attached, March 18 and April 7, 1994.)

#### *Current Status*

Mr. Richards and Mr. Starr are now asking for a waiver of the UGB amendment filing deadline, a course of action outlined in the procedures - Metro Code (3.01.33(d)). The Code allows the annual filing deadline to be waived by a two-thirds vote of the Metro Council. This process is initiated either by a Councilor (as in this case) or the Executive Officer.

Mr. Richards presented his revised application to staff on June 29, 1994. The application appeared complete, including both Clackamas County's neutral position on the application, and the City of Wilsonville's completed service provider comment form. (See attached letter dated July 14, 1994.)

Mr. Richards and Mr. Starr are seeking to petition Metro for a 1.3 acre amendment of the UGB in a location adjacent to Charbonneau at the I-5 exit. This is zoned RRRF-5, a rural residential zone. They own an adjacent parcel currently inside the UGB, and seek to develop both.

There is a quasi-judicial process for hearing UGB amendment petitions, which is a separate procedure from this request to waive the filing deadline.

### ***Considerations***

Staff knows of no prior waiver of the UGB amendment filing deadline by the Council. Mr. Richards had come into the office at a much earlier date to receive information on the UGB including the Procedures. Staff believes Mr. Richards had adequate information available to prepare his application in a timely manner. It appears Mr. Richards originally allowed approximately two months instead of the required four months for comment on the application he submitted in March of this year.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends adoption of Resolution No. 94-2016.

ST/srb  
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07/27/94

FILE

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 8738  
TEL 503 797 1700 | FAX 503 797 1797



METRO

March 18, 1994

RETURN RECEIPT REQUESTED

Mr. Donald P. Richards and  
Mr. Roger A. Starr  
P. O. Box 267  
Wilsonville, OR 97070

Dear Mr. Richards and Mr. Starr:

In response to your Urban Growth Boundary Petition to add land known as T.3S R. 1W Section 25 Tax Lot 16100 in Clackamas County, submitted on March 15, 1994, the following items were deficient in the petition application and need to be filed with this office by 5:00 p.m. on April 5, 1994, or the petition will not be considered and will be returned to you.

Under Metro Code 3.01.33, Applications for Major Amendments and Locational Adjustments, these primary items were deficient in the petition:

1. The list of names and addresses submitted for notification purposes needs to be certified in one of the ways directed (attested or affidavit) in Metro Code 3.01.33(g)(1-3).
2. The position of the City Council of Wilsonville on the petition (3.01.33 (h)(1)). And, the City will need to comment on the provision of urban services for which it is responsible, including water, sewer and transportation. The City may include this in its position statement or, if it wishes, submit individual service provider comment forms from individual departments.
3. The position of the Clackamas County Board of Commissioners on the petition (3.01.33(h)(1)).
4. The names, addresses of parties testifying at any hearing held by a city, county or special service district, and copies of any exhibits or written testimony submitted for the hearing (3.01.33(h)(3)(B)).



Mr. Donald P. Richards and  
Mr. Roger A. Starr  
March 18, 1994  
Page 2

5. A statement of your intent to file the Boundary Commission annexation petition within ninety (90) days of Metro actions, conditioned on approval (3.01.33(i)(1)(B)).

Also, the following items were not completed in the petition form itself or were not completed as instructed by Metro (see: Instructions for Filing A Petition for a Major Amendment or Locational Adjustment to the Metro Urban Growth Boundary; Items Needed to Complete a Petition; Calculation of UGB Amendment Deposit):

6. Calculation of UGB Amendment Deposit form, and deposit fee (\$2,300.00), (3.01.45).
7. Section Maps showing the property and all tax lots within 500 feet of the property addressed in the petition; specifically, maps for Section 26 T.3S. R.1W and any other maps needed to show the tax lots of all property owners within 500 feet. (Highlighting in Red the subject property boundary, and in Yellow a perimeter line 500 feet from the subject property.)
8. Item 24 in the petition form, signatures of all the petitioners are required. The petition was only signed by Mr. Richards.

It was also noted that the legal description, item 6(a), appears to be have a mistake, Section 25 instead of Section 26 is cited. Please confirm this.

Sincerely,



Stuart K. Todd  
Assistant Regional Planner  
Planning Department

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cc: Wayne Sorensen, City of Wilsonville  
Dick Van Ingen, Clackamas County  
Larry Shaw, Metro Office of General Counsel



**METRO**

April 7, 1994

Mr. Donald P. Richards and  
Mr. Roger A. Starr  
P. O. Box 267  
Wilsonville, OR 97070

Dear Mr. Richards and Mr. Starr:

Your Urban Growth Boundary Petition for an approximately one acre site along Interstate 5 at Charbonneau is being returned to you. The petition was not complete by the filing deadline, nor were you able to complete the petition in the ensuing time allowed. Under Metro Code Chapter 3.01.33(c), failing to make the petition complete in a timely manner results in the petition being returned to the petitioner and no further consideration given.

In speaking with Mr. Richards about the completeness of the application, it appears the only delay was in receiving timely comment from the City of Wilsonville, although other elements of the petition form were needed also (see Metro letter of response March 18, 1994). Since the petitioner did not give the City 120 days notice for its position, a waiver of this element cannot be considered and the petition must be considered incomplete.

Enclosed are the originals received: the petition, local position and service provider comments received (Clackamas County, Tualatin Fire, Clackamas County School District #86), petition for annexation to be filed with the Boundary Commission, and a list of property owners within 500 feet.

I understand you have a Planning Commission meeting scheduled with the City of Wilsonville in the next month, with City Council action to follow shortly thereafter, and that you intend to ask for a waiver of the UGB filing deadline once the local position is made.

Let me know if I can be of further service in answering questions related to this potential new UGB petition in the future.

Sincerely,

Stuart K. Todd  
Assistant Regional Planner  
Planning Department

SKT/arb  
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Enclosures

cc: Wayne Sorensen, Planning Director, City of Wilsonville  
Dick Van Ingen, Clackamas County  
Larry Shaw, Metro Office of General Counsel



**METRO**

July 14, 1994

Mr. Donald P. Richards  
Burda and Richards  
P. O. Box 427  
Wilsonville, OR 97070

Dear Mr. Richards:

As you know we have an annual filing deadline for Urban Growth Boundary (UGB) amendments, the next filing deadline is March 15, 1995. We cannot process a UGB amendment petition from you at this time. It does appear that your updated petition (submitted incomplete on March 15, 1994) for inclusion of a 1.3 acre parcel adjacent to Charbonneau and along I-5 is now complete based on our meeting June 29, 1994. This is subject to verification. The material you forwarded to me from the City of Wilsonville does indicate the City could provide urban services.

The Metro Code (3.01.33(h)(1)) requires the local government position, it specifies this to be from the government with land use jurisdiction. In this case, it would appear to apply only to Clackamas County, from whom you have secured comment. We do, however, believe it is important to understand the City of Wilsonville's position on the proposed UGB amendment, not just the provision of services. Presumably, this property would be annexed into the City of Wilsonville. In light of your interest in seeking a waiver of the UGB petition filing deadline, the Metro Council may want clarification on this issue.

Let me know if you do intend to pursue a waiver of the filing deadline. Either a Councilor or the Metro Executive Officer may submit your request to the Council. A two-thirds vote of the full Council is required to waive the filing deadline (3.01.33(d)).

Sincerely,

A handwritten signature in cursive script, appearing to read "Stuart K. Todd".

Stuart K. Todd  
Assistant Regional Planner  
Planning Department

SKT/erb  
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cc: Rena Cusma, Executive Officer  
John Fregonese, Manager, Growth Management  
John Kvistad, Chair, Planning Committee  
Gail Ryder, Council Analyst

Meeting Date: September 8, 1994  
Agenda Item No. 8.3

RESOLUTION NO. 94-2028



**METRO**

**DATE:** September 2, 1994

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

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

**RE:** AGENDA ITEM NO. 8.3; RESOLUTION NO. 94-2028

The Regional Facilities Committee will consider Resolution No. 94-2028 on September 7, 1994. Committee reports will be distributed to Councilors in advance and available at the Council meeting on September 8, 1994.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 94-2028  
A TEMPORARY LEASE OF PROPERTY )  
FOR A CELLULAR TELEPHONE ) Introduced by Rena Cusma  
ANTENNA SITE ) Executive Officer

WHEREAS, GTE Mobilnet representatives have approached the Regional Parks and Greenspaces Department to negotiate a long term ground lease for a small cellular telephone facility on the edge of Glendoveer Golf Course; and

WHEREAS, The purpose of the antenna site is to improve the quality of cellular service to the East Multnomah County area; and

WHEREAS, Metro desires to receive rent and GTE Mobilnet desires immediate service improvements during negotiations on a long term lease; and

WHEREAS, The City of Portland has six cellular telephone antenna sites under lease, including a water tower-related site leased to GTE Mobilnet that create a local "market" for these special leases; and

WHEREAS, GTE Mobilnet has agreed to pay Metro the same rate and abide by the same terms as its long term lease with the City of Portland; and

WHEREAS, The cellular antennas operate a very low power that is exempt from Portland's detailed land use requirements for high powered facilities; now, therefore,

BE IT RESOLVED,

1. That the Metro Council hereby authorizes the Executive Officer to execute a temporary ground lease with GTE Mobilnet for a temporary cellular telephone antenna site at Glendoveer Golf Course during negotiations on a long term lease.

2. That the Metro Council hereby authorizes the Executive Officer to exercise Metro rights under the temporary lease as necessary to assure no interference with Glendoveer Golf Course operations and to complete negotiations on a long term lease for Metro Council approval.

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

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

**ENTITY  
POSITION  
STATEMENT****HUMAN EXPOSURE TO RF EMISSIONS FROM  
CELLULAR RADIO BASE STATION ANTENNAS**

1828 I STREET, NW SUITE 1202, WASHINGTON, DC 20036-5104  
(202) 785-0017

We recognize public concern for safety of microwave exposure from cellular communications base stations. Guidelines for limiting exposure have been published by the American National Standards Institute, the Institute of Electrical and Electronics Engineers, and other national and international organizations. These guidelines were developed to protect workers and the general population from harmful exposure to radiofrequency electromagnetic fields. Based on present knowledge, prolonged exposure at or below the levels recommended in these guidelines is considered safe for human health. Measurements near typical cellular base stations have shown that exposure levels normally encountered by the public are well below limits recommended by all national and international safety standards. Furthermore, public exposure near cellular base stations is not significantly different from the usual "RF background" levels in urban areas, which are produced by radio and television broadcast stations present in every modern community. Therefore, one can conclude that exposure from properly operating cellular base stations is safe for the general population.

There may be circumstances where workers could be exposed to fields greater than the standards specify. In those cases, generally on rooftops, access can be and should be restricted.

This statement was developed by the Committee on Man and Radiation of the United States Activities Board of The Institute of Electrical and Electronics Engineers, Inc. (IEEE), and represents the considered judgment of a group of U.S. IEEE members with expertise in the subject field. The IEEE United States Activities Board promotes the career and technology policy interests of the 250,000 electrical, electronics, and computer engineers who are U.S. members of the IEEE.

EXHIBIT A  
PAGE 1 OF 5

## BACKGROUND

The acceptance and use of cellular radios and cellular telephones, which operate in continuous wave mode at carrier frequencies between 825 and 845 MHz (mobile transmitters) and between 870 and 890 MHz (base station transmitters), has increased dramatically during the past few years. To keep up with the demand for available radio channels and to ensure quality of service, there is a continual need for additional cells in many metropolitan areas and their suburbs. The installation of cell site or base station antennas frequently raises concerns about their environmental impact and safety. In addition to commonly asked questions about the aesthetic/visual impact of towers, many communities raise concerns about exposure of the public to radiofrequency energy transmitted by these sites, particularly people who live or work in the vicinity of the antennas.

The cell-site antennas are usually located on towers, either free-standing monopoles or lattice type, ranging in height from 30 to 75 meters. In many cases it is more convenient to locate antennas on the top or side of other existing structures, such as water tanks or buildings. The antenna height is critical; it must be high enough to provide coverage throughout the cell but low enough to preclude interfering with remote cells. Each cell site contains both transmitting and receiving antennas. The number of antennas depends on the service area, e.g., in an extremely high density service area six transmitting antennas, each with up to sixteen radio channels, could be used.

The maximum total effective radiated power (ERP) of a system would depend on the number of channels authorized at a site. Typically, there are 16 transmitting channels (discrete-frequencies) per cellular antenna. As many as six transmitting antennas (for a total of 96 discrete frequencies) could be used at a given site, but this number is unlikely. Furthermore, all channels would not be expected to be operating simultaneously, thus reducing overall emission levels.

The Federal Communications Commission (FCC) authorizes up to two cellular telephone companies in each service area. Although the FCC permits an ERP up to 500 watts per channel (depending on the geographical area and tower height), the majority of the cell-site in urban and suburban areas operate at ERPs of 100 watts or less per channel. In large cities the cells are small and the ERP is usually 10 watts per channel. The transmitters associated with "microcells," usually located within buildings, railroad stations, etc., operate at ERPs lower than 1 watt. The system is self-limiting in the sense that as the system expands and cells are subdivided, the transmitter power is reduced to prevent interference with remote cells. As with other antennas used for telecommunications the energy from a cell-site antenna is directed toward the horizon in a relatively narrow beam in the vertical plane. As one moves away from the antenna, the power density decreases as the inverse square of the distance, and consequently, the exposure at ground-level in the vicinity of an antenna tower is relatively low compared with the exposure very close to the antenna itself. Measurements made around typical cell-site antenna towers have shown that ground-level power densities are well below limits for the general population recommended by recognized organizations, such as the American National Standards Institute (ANSI-C95.1, 1982), the IEEE (IEEE-C95.1, 1991), the National Council on Radiation Protection and Measurements (NCRP, 1986) and the International Radiation Protection Association (IRPA, 1988), which range from 2.75-2.97

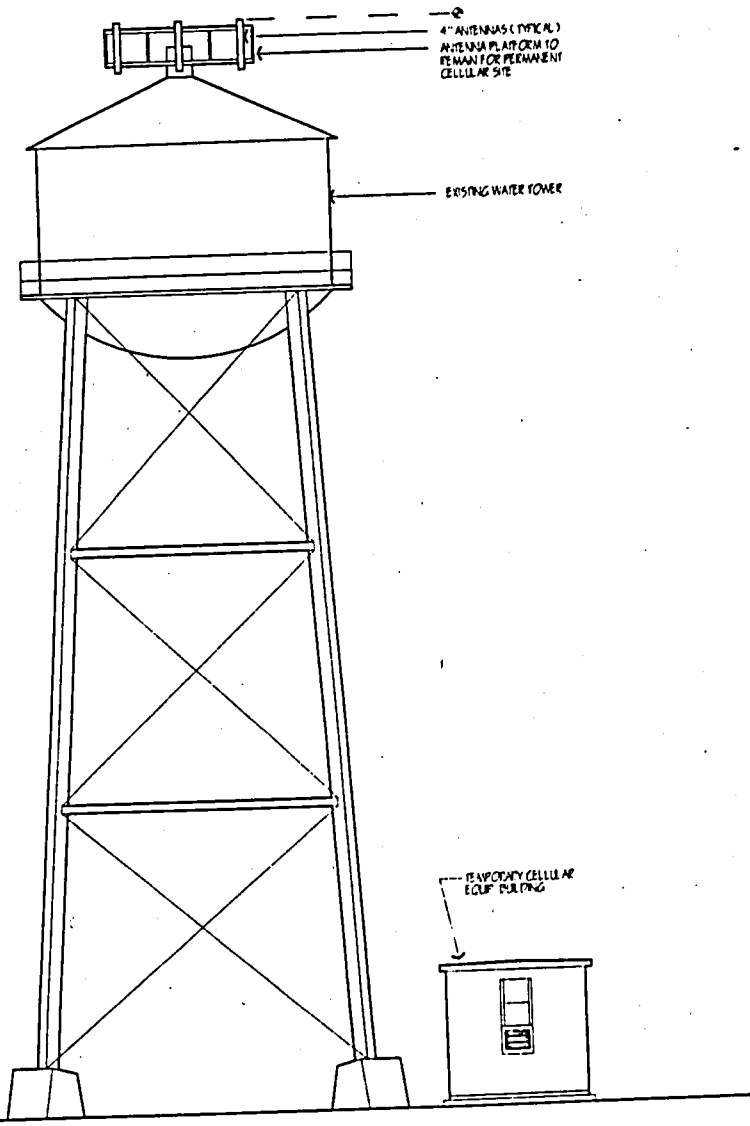


milliwatts per square centimeter ( $\text{mW}/\text{cm}^2$ ) for occupational exposure to 0.41-0.45  $\text{mW}/\text{cm}^2$  for general population exposure at cellular radio frequencies of 825-890 MHz.

The maximum exposure levels found near the base of typical cell-site antenna towers are, in fact, lower than all national and international recommended safety limits. These maximum exposure levels occur only at the limited distances close to the base of the tower. For example, data submitted to the FCC showed a maximum measured ground-level power density at the base of a 45 meter tower to be of the order of 0.00002  $\text{mW}/\text{cm}^2$  per radio channel, corresponding to 0.002  $\text{mW}/\text{cm}^2$  for a 96 channel, 100 watts ERP per channel, fully implemented system. The antennas were omni-directional colinear arrays. The maximum was found to occur typically at distances between 18 and 25 meters from the base of the tower. At other points within 90 meters the levels were considerably lower; on average less than 0.0001  $\text{mW}/\text{cm}^2$  for 96 channels. Similar measurements made in the vicinity of higher towers yielded correspondingly lower values. Measurements show that the power density at distances greater than 60 meters from all commonly used directional and omni-directional cell-site antennas is less than 0.010  $\text{mW}/\text{cm}^2$  including points in the main beam. RF radiation from nearby cellular base stations does not significantly increase the reported "RF background" levels in urban areas (Tell and Mantiply, 1980).

Because of building attenuation, the power density levels inside of nearby buildings at corresponding distances from a cell-site antenna would be from 10 to 100 times smaller than outside (depending on building construction). Thus the maximum levels inside of buildings located near the base of a typical 45 meter cell-site antenna tower will be between 0.0002 and 0.00002  $\text{mW}/\text{cm}^2$ . Measurements made directly in the beam of a roof-mounted omni-directional antenna with sixteen radio channels indicated that the power density was less than 1  $\text{mW}/\text{cm}^2$  at a distance of 3 meters from the antenna and less than 0.010  $\text{mW}/\text{cm}^2$  beyond 50 meters. Thus, in certain areas on the rooftop, depending on the proximity to the antenna, the exposure levels can be higher than those allowed by the safety standards. Access to these areas should be restricted. Measurements show that in rooms directly below roof-mounted installations, the power density levels are considerably lower than roof locations, depending on the construction. For typical construction (e.g., wood or cement block) the attenuation is about a factor of 10. The power density behind sector (directional) antennas is hundreds to thousands of times lower than in front, and hence, levels are negligible in rooms directly behind walls where sector antennas are mounted on the sides of buildings.

In conclusion, measurements and calculations have verified that the power densities associated with cellular radio cell-site antennas to which the public may be exposed are not significantly different from "RF background" levels in urban areas which are produced by radio and television broadcast stations present in every modern community, and are well below the limits recommended by national and international safety standards. Based on this comparison, cellular communications base station emissions are safe for the general population. There are circumstances where workers could be exposed to fields greater than the standards specify. In those cases, generally on rooftops, access should be restricted.



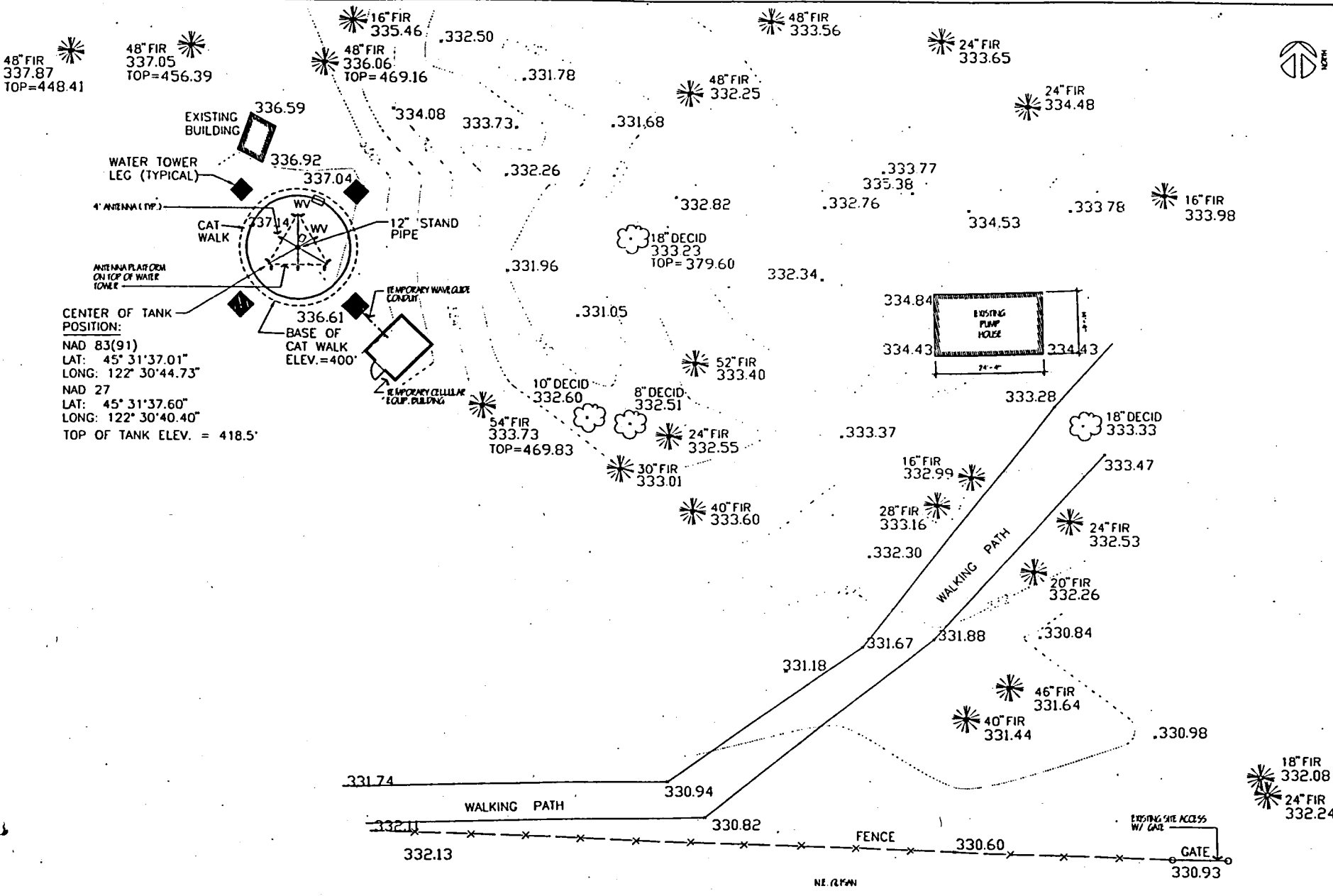
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**SOUTH ELEVATION - TEMPORARY CELLULAR SITE**

PRJ NO 94-07-20  
 FILE  
 DATE 08-22-94  
 DRAWN BY:  
 SCALE: NONE  
 REVISION:

SHEET NO

2 of 5 EXHIBIT A  
 PAGE 4 OF



PROJECT NO. 94-07-20 SHEET NO. 1 of 5  
 DATE: 08-27-94  
 DRAWN BY: [Blank]  
 SCALE: N/A  
 REVISION: [Blank]

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## GREENSPACES AND REGIONAL PARKS STAFF REPORT

### RESOLUTION NO. 94-2028 FOR THE PURPOSE OF AUTHORIZING A TEMPORARY LEASE OF PROPERTY FOR A CELLULAR TELEPHONE ANTENNA SITE

Date: August 30, 1994

Presented by:

Charlie Cieccko, Director of Parks  
and Greenspaces

#### FACTUAL BACKGROUND AND ANALYSIS

GTE Mobilnet has approached the Regional Parks and Greenspaces Department to negotiate a ground lease for a cellular phone facility to be attached to an existing water tank on the edge of the Glendoveer Golf Course near S.E. 148th Avenue and Glisan Street in Portland. This is an unused portion of the golf course near the property's fence line adjacent to S.E. 148th Avenue. This corner contains the water tank used to store pumped well water for use on the golf course facility. Coincidentally, the tank is in need of maintenance in the form of a very expensive long-term paint job.

Borrowing on the City of Portland's extensive experience with these cellular phone sites, we are in the process of negotiating a permanent agreement blending GTE's proposal with Portland's September 1992 lease of a similar water tank site to GTE. The Portland agreement calls for a 20 year lease with CPI cost of living adjustments to the price each year. GTE is seeking a similar five year lease with three five year renewals at their option.

As indicated by GTE's safety information attached, the cellular antennas operate at very low power and are not similar to high powered radio and television broadcast facilities. The Office of General Counsel has confirmed that Portland has detailed regulations of high powered radio and television facilities and has created a special zoning district around the Healy Heights to protect the public. However, under these detailed regulations, cellular telephone antennas are within the low power exemptions to those regulations.

GTE desires to immediately improve the service in the East County area. It has entered into temporary arrangements during the negotiation of long term ground leases with the City of Portland in the past. Borrowing from Portland's experience with six existing cellular telephone antennas, including a temporary license during the negotiation of a long term lease, this proposed temporary lease could begin upon full Metro Council approval. The temporary and permanent leases are being negotiated on the basis of full equity with the agreements made by GTE with the City of Portland. This means that the rent, at \$1,414 per month, is the same rate that GTE is paying Portland for the "Patton Tank" site. Also, paragraph six of this letter agreement for the temporary lease incorporates by reference the full 12 page agreement terms for that existing Portland agreement.

Staff Report  
August 30, 1994

As the attached vicinity map indicates, GTE's temporary facility can be moved through an existing gate in the cyclone fence to gain access to the water tank. Neither the access nor the temporary facility will interfere with GSR's use of the property, golf play or the existing jogging trail. However, GSR has indicated a desire to share in the rent revenues which the current GSR agreement does not require.

A GTE representative will be present at the Council committee meeting to answer questions about both the temporary and planned antenna sites.

Executive Officer's Recommendation:

The Executive Officer recommends adoption of Resolution 94-2028.

KLA  
R-O 1179