

Council meeting agenda

Thursday, October 19, 2023

10:30 AM

Metro Regional Center, Council chamber,
[https://www.youtube.com/watch?](https://www.youtube.com/watch?v=_kw5u2z_O9o)
[v=_kw5u2z_O9o,](https://www.youtube.com/watch?v=_kw5u2z_O9o)
[https://zoom.us/j/615079992,](https://zoom.us/j/615079992) or
877-853-5257 (toll free) (Webinar ID:
615079992)

This meeting will be held electronically and in person at the Metro Regional Center Council Chamber.

You can join the meeting on your computer or other device by using this link:

<https://zoom.us/j/615079992>, or 877-853-5257 (toll free) (Webinar ID: 615079992).

https://www.youtube.com/watch?v=_kw5u2z_O9o

1. Call to Order and Roll Call

2. Public Communication

Public comment may be submitted in writing. It will also be heard in person and by electronic communication (video conference or telephone). Written comments should be submitted electronically by emailing legislativecoordinator@oregonmetro.gov. Written comments received by 4:00 p.m. the day before the meeting will be provided to the council prior to the meeting.

Those wishing to testify orally are encouraged to sign up in advance by either: (a) contacting the legislative coordinator by phone at 503-813-7591 and providing your name and the agenda item on which you wish to testify; or (b) registering by email by sending your name and the agenda item on which you wish to testify to legislativecoordinator@oregonmetro.gov. Those wishing to testify in person should fill out a blue card found in the back of the Council Chamber.

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3. Presentations

3.1. Transfer Station Operating Controls Audit Presentation

[23-5944](#)

Presenter(s): Brian Evans (he/him), Metro Auditor

Attachments: [Staff Report](#)
[Attachment 1](#)

4. Ordinances (Second Reading)

- 4.1. Ordinance No. 23-1498, For the Purpose of Amending Certain Metro Code Chapters in Title V (Solid Waste) for Housekeeping updates and to Incorporate Plain Language Best Practices [ORD 23-1498](#)
- Presenter(s): Shane Abma (he/him), Senior Attorney, Metro
- Attachments: [Ordinance No. 23-1498](#)
[Exhibit A](#)
[Exhibit B](#)
[Staff Report](#)
[Attachment 1](#)
- 4.2. Ordinance No. 23-1499, For the Purpose of Repealing Metro Code Chapter 2.05 (Procedure for Contested Cases) and Replacing it with a New, Updated Metro Code Chapter 2.05 (Contested Cases Procedures) [ORD 23-1499](#)
- Presenter(s): Shane Abma (he/him), Senior Attorney, Metro
- Attachments: [Ordinance No. 23-1499](#)
[Exhibit A](#)
[Staff Report](#)
[Attachment 1](#)
- 4.3. Ordinance No. 23-1500, For the Purpose of Repealing Metro Code Chapter 2.03 (Civil Penalties) and Replacing it with a new Metro Code Chapter 2.03 (Civil Penalties), and Amending Certain Metro Code Chapters to Align with the new Chapter 2.03 [ORD 23-1500](#)
- Presenter(s): Shane Abma (he/him), Senior Attorney, Metro
- Attachments: [Ordinance No. 23-1500](#)
[Exhibit A](#)
[Exhibit B](#)
[Exhibit C](#)
[Staff Report](#)
[Attachment 1](#)
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- 4.4. Ordinance No. 23-1501, For the Purpose of Amending [ORD 23-1501](#)
Metro Code Chapter 5.09 (Illegal Disposal) to Align it with
the new Metro Code Chapter 2.05 (Contested Cases) and
Incorporate Plain Language Best Practices

Presenter(s): Shane Abma (he/him), Senior Attorney, Metro

Attachments: [Ordinance No. 23-1501](#)
[Exhibit A](#)
[Exhibit B](#)
[Staff Report](#)
[Attachment 1](#)

5. Other Business

- 5.1 Strategic Targets Discussion **23-5945**

Presenter(s): Marissa Madrigal (she/her/ella), Chief Operating Officer,
Metro
Andrea Celentano (she/her), Policy Advisor, Metro
Val Galstad (they/them), Program Director, Metro
Ina Zucker (she/her), Program Director, Metro

Attachments: Draft Res. No. 23-5362
Exhibit A
Staff Report

6. Chief Operating Officer Communication

7. Councilor Communication

8. Adjourn

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Ogeysiiska takooris la'aanta ee Metro

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ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានកម្មវិធីរើសអើងសូមចូលទស្សនាគេហទំព័រ www.oregonmetro.gov/civilrights។
បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ មុនថ្ងៃប្រជុំដើម្បីអាចឱ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

إشعار بعدم التمييز من Metro

تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يُرجى زيارة الموقع الإلكتروني www.oregonmetro.gov/civilrights. إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

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Agenda Item No. 3

Transfer Station Operating Controls Audit Presentation
Presentation

Metro Council Meeting
Thursday, October 19, 2023



Transfer Station Operating Controls:

Strengthen management practices to reduce risks

September 2023

A Report by the Office of the Auditor

Brian Evans

Metro Auditor

Maggie Muldrew

Senior Management Auditor

Metro Accountability Hotline

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The Hotline is administered by the Metro Auditor's Office. All reports are taken seriously and responded to in a timely manner. The auditor contracts with a hotline vendor, EthicsPoint, to provide and maintain the reporting system. Your report will serve the public interest and assist Metro in meeting high standards of public accountability.

To make a report, choose either of the following methods:

Dial 888-299-5460 (toll free in the U.S. and Canada)
File an online report at www.metroaccountability.org



Brian Evans
Metro Auditor

600 NE Grand Ave
Portland, OR 97232-2736
TEL 503 797 1892, FAX 503 797 1831

MEMORANDUM

September 27, 2023

To: Lynn Peterson, Council President
Ashton Simpson, Councilor, District 1
Christine Lewis, Councilor, District 2
Gerritt Rosenthal, Councilor, District 3
Juan Carlos González, Councilor, District 4
Mary Nolan, Councilor, District 5
Duncan Hwang, Councilor, District 6

From: Brian Evans, Metro Auditor

Re: Audit of Transfer Station Operating Controls

This report covers the audit of transfer station operating controls. The purpose was to determine whether Metro had effective policies and procedures to manage operating risks. It assessed the health and safety program, contract management, point-of-sale system, and other aspects of the current operating environment that impact Metro's ability to provide solid waste services.

The audit found gaps in roles and responsibilities for transfer station operations that increased health and safety, and financial risks. Procedures to manage some risks were underdeveloped or not assigned. Ad hoc management practices reduced transparency and accountability for transfer station operations.

Garbage and recycling services do not draw a lot of attention when working well, but if they are unable to meet the public's needs it can have a profound effect on their trust in government. The weaknesses identified in this report indicate a lack of basic management practices and commitment to a long-term vision for Metro's part of the regional solid waste system. It will take sustained attention at the highest levels of the organization to overcome these challenges.

We have discussed our findings and recommendations with Marissa Madrigal, COO; Carrie McClaren, Metro Attorney; Holly Calhoun, Deputy COO; Andrew Scott, Deputy COO, Marta McGuire, WPES Director; Brian Kennedy, CFO; Rachel Tull, CIO; Cary Stacey, WPES Deputy Director; Tom Chaimov, Garbage & Recycling Program Director; Courtney Patterson, Asset and Environment Stewardship Program Director; Debbie Humphrey, Metro Central Superintendent; and Matt Tracy, Metro South Superintendent. I would like to acknowledge and thank all the employees who assisted us in completing this audit.

Summary

Metro's Waste Prevention and Environmental Services (WPES) department manages two publicly-owned solid waste transfer stations in the region; Metro South and Metro Central. Together these facilities process about 39% of the waste generated in the region.

Transfer station operations present significant safety, financial, and environmental risks. The purpose of this audit was to determine whether Metro had effective policies and procedures to manage these risks.

The audit found the effectiveness of the health and safety program was reduced by shared responsibilities among and within Metro departments and external contractors. Policies and procedures were not kept up to date, required training was not offered or completed, and oversight of program effectiveness was not done.

Transfer station operations depend on contractors to provide services. The audit found risk management tools were not used consistently. Insufficient risk assessment and contract administration planning increased the chance of WPES not getting what it paid for or paying more than it should have.

Significant compliance issues with WPES' contracts for diesel fuel and household hazardous waste were identified during the audit. This led to overpayments to the fuel contractor, and non-compliance with household hazardous waste reporting requirements.

The complexity of the South operating contract shows how critical it is to document roles and responsibilities for contract management. The contract is over 650 pages long and has a complex payment structure. We were told a new Central operating contract was likely to be structured like South's. If this is the case, WPES may need to allocate additional resources for contract management.

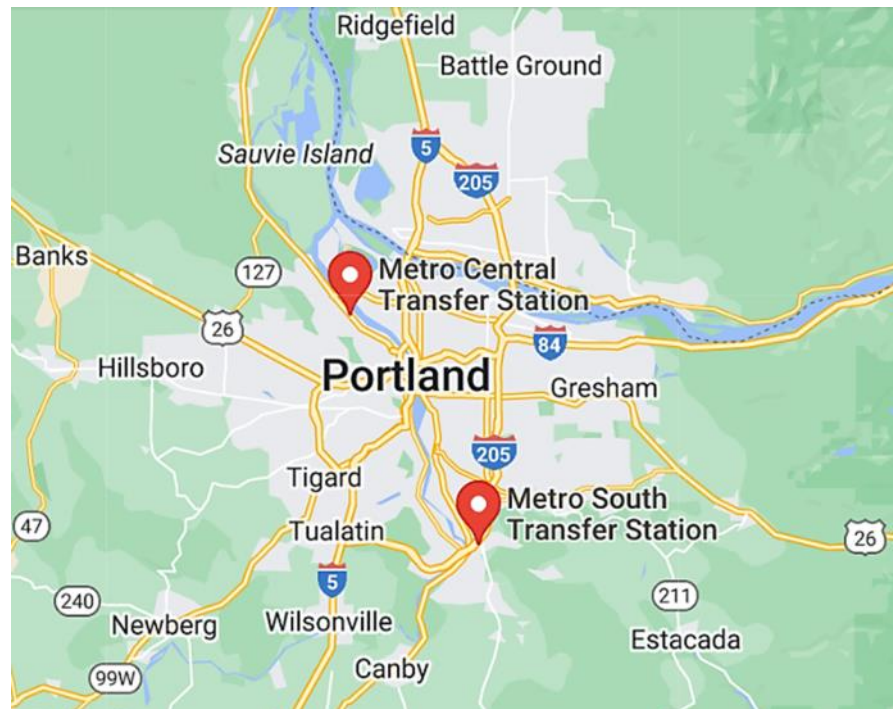
Transfer station operations are at a pivotal moment. South has been operating for 40 years and Central for 33 years. The same point of sale system has been used for over 35 years. In several areas, current operating risks are exacerbated by lack of clarity about what will happen next. This makes it difficult for employees and management to make best use of available resources. Without additional clarity, it is more likely that resources will be used for efforts that may be at cross-purposes.

The audit included 20 recommendations. Twelve were designed to strengthen internal controls and contract risk management practices for transfer station operations. Two focused on ensuring compliance with internal processes. The final six recommendations were related to reducing gaps and overlaps in WPES oversight.

Background

Metro's Waste Prevention and Environmental Services (WPES) department manages two publicly-owned solid waste transfer stations in the region. Metro Central (Central) is in Portland's northwest industrial area. Metro South (South) is in Oregon City. Together these facilities process about 39% (approximately 600,000 tons) of the waste generated in the region. In addition to garbage both facilities accept household hazardous waste.

Exhibit 1 Metro owns two solid waste transfer stations



Source: Google Maps

Both transfer stations are operated by a combination of Metro employees and contracted employees. At each site, Metro employees staff the scale house where loads are weighed and payments are processed. They also staff the household hazardous waste program at each facility. Contracted employees staff the transfer station, which includes moving material once it is inside the bays, compacting it, and loading it into semi-trailers for transport to the landfill or other processing facility.

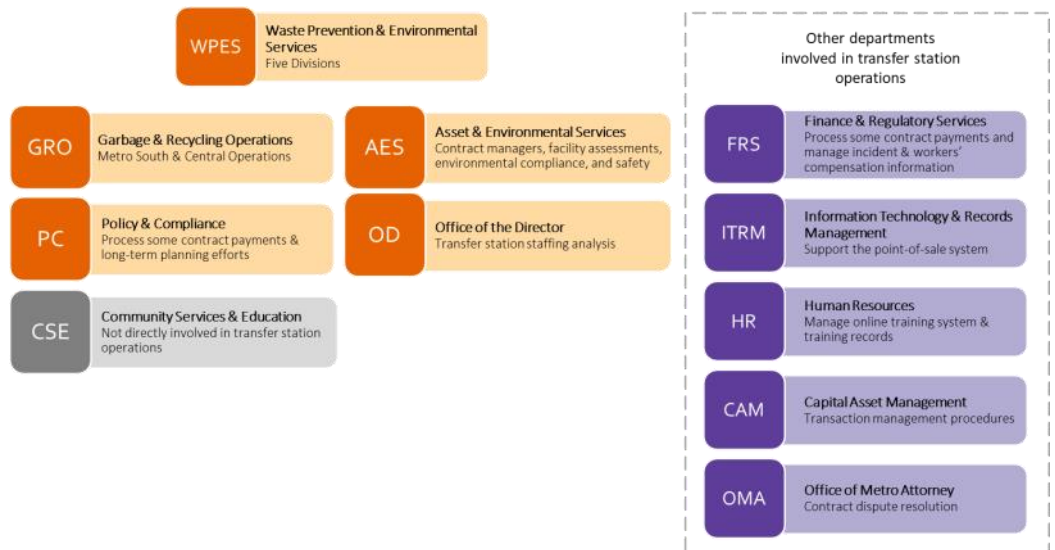
Although both transfer stations provide similar services and have co-managed operations, there are some variations between them. Central accepts commercial food waste, but South does not. Traffic management at South is staffed by Metro employees. At Central, contracted employees direct traffic.

There are also variations in the number of customers served and volume of material received at each station. South serves a larger number of self-haul customers compared to Central. Central has more commercial customers who bring larger loads compared to South. As a result, South manages more transactions and customers daily.

In addition to onsite operations, other contractors provide critical services at both transfer stations. WPES contracts with a trucking firm to deliver material to the landfill and has a separate contract with the landfill operator. Another contract provides diesel fuel for transportation. There are also several contracts to process and transport household hazardous waste.

WPES is organized into five divisions. The Garbage and Recycling Operations division includes the employees who work onsite at Central and South. Several other divisions are also involved in aspects of transfer station operations including processing payments to vendors, managing contracts, environmental compliance, and safety. At least one person from four of the five WPES divisions had some role in the parts of transfer station operations reviewed in this audit. Several other departments support transfer station operations including Finance and Regulatory Services (FRS), Information Technology & Records Management (ITRM), Human Resources (HR), Capital Asset Management (CAM), and the Office of Metro Attorney (OMA).

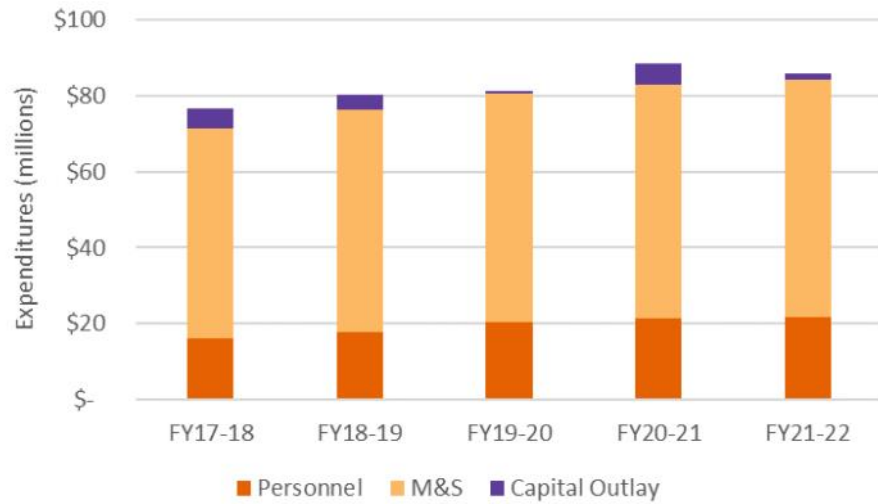
Exhibit 2 Employees in several WPES divisions are involved in transfer station operations



Source: Auditor's Office analysis of Waste Prevention and Environmental Services' organizational chart

WPES is Metro's second largest department. Expenditures in FY2021-22 were about \$86 million, which was 12% more than it was five-years ago. Materials and Service expenditures, which includes payments to contractors, accounted for about 73% followed by personnel costs at 25%. Capital outlay accounted for 2%. The department employed 193 full-time equivalent employees in the FY2021-22, which was 58% higher compared to five-years ago.

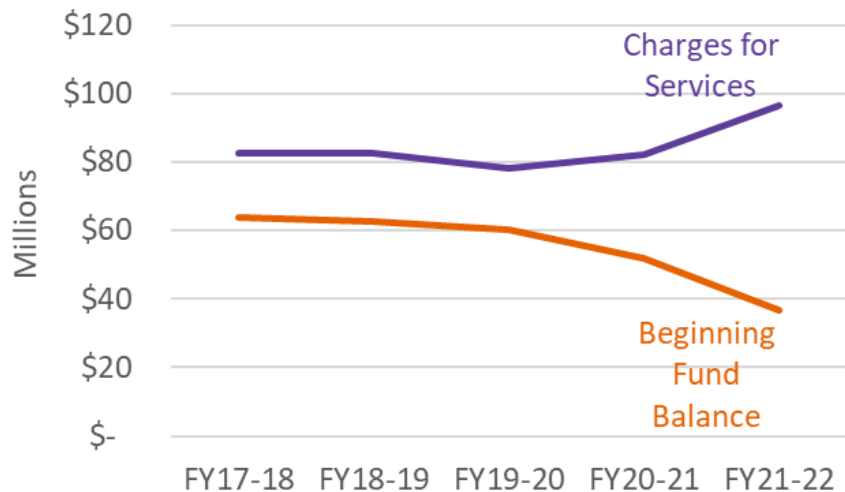
Exhibit 3 Expenditures grew by 12% over the last five years



Source: Auditor's Office analysis of audited expenditures adjusted for inflation

Over the last five-years, revenue from charges for services increased by 17% which was faster than expenditures (12%). During the same time, WPES spent a significant amount of its reserves. Usually when revenue rises faster than expenditures there is less need to use fund balances. About 57% (\$15 million) of the decreasing balance occurred between FY2020-21 and FY2021-22.

Exhibit 4 Revenue from service charges rose while the fund balance decreased



Source: Auditor's Office analysis of audited expenditures and revenues adjusted for inflation

Results

Metro's transfer station operations are at a critical moment in time. The global pandemic created significant challenges. Intense weather events like snow and ice storms, poor air quality, and extreme heat have closed the stations on several occasions in recent years. Long-serving employees have retired, or will retire, in the coming years. Buildings, equipment, and the point-of-sale system all require substantial investments.

In addition to these challenges, the audit found there were gaps in roles and responsibilities for transfer station operations that increased health and safety, and financial risks. Procedures to manage some risks were underdeveloped or not assigned. Ad hoc management practices reduced transparency and accountability for transfer station operations.

Audit results are summarized in five sections each with significant findings.

- Transfer station operations present significant risks
- Shared responsibilities increased health and safety risks
- Roles and responsibilities for contract management were undefined and inconsistent
- A long-term vision is needed to stabilize operations
- Successful change management requires leadership

The weaknesses identified in this report indicate a lack of basic management practices and commitment to a long-term vision for Metro's part of the regional solid waste system. Garbage and recycling services do not draw a lot of attention when working well, but if they are unable to meet the public's needs it can have a profound effect on their trust in government. The variety of stakeholders who may be affected by any change from the status quo, puts Metro at risk of using its resources for initiatives that are at cross-purposes. It will take sustained attention at the highest levels of the organization to overcome these challenges.

Transfer station operations present significant risks

Transfer station operations present significant safety, financial, and environmental risks. During the audit, we learned of several incidents that show how quickly things can escalate when procedures are not followed and managers do not monitor compliance.

Household hazardous waste (HHW) programs present the most obvious challenges because they are expected to take the most challenging materials. However, garbage and recycling loads can also present significant risks if they are not stored properly or contain dangerous materials. To ensure safety, all loads need to be properly screened and managed to effectively deal with potential hazards like lithium batteries, asbestos, or unknown chemicals.

The first interview for this audit had to be delayed because a toxic gas leak closed South. Other interviews were delayed because of an emergency at Central. The incident report indicated that the phones at the HHW building were not able to dial 911 during the emergency. A Metro Councilor learned that a fire occurred at South as the Metro Auditor was briefing them about risks identified during the audit.

Below are other examples that show the significance and breadth of risks associated with transfer station operations. In each of these cases policies and procedures were not known by employees or not followed. Had they been, some of the risks would have been reduced. This shows the importance of managers monitoring compliance and initiating corrective actions so that inherent risks do not become catastrophic.

Public and employee safety

On December 1, 2021, radium was dropped off at the South HHW facility. Employees contacted the State of Oregon's Radiation Protective Services (RPS) to get guidance on how to handle it. RPS inspected the material the next day but did not remove it. The radium was stored behind the truck wash station, which was closed as a result. The material remained on site for a little over four months in total.

RPS stated that human safety risks were low as long as no one was within three feet of the material for an extended period of time. Metro employees followed up with RPS several times in December and February. RPS inspected the items again at the end of January. Their readings indicated the material was still highly radioactive and a significant threat to human health. RPS stated that they would not be able to remove the material until April 2022 at the earliest.

In response, Metro hired another contractor who inspected and repackaged the material on March 10, 2022. The contractor provided their report to Metro on March 21, 2022. The report confirmed that extreme caution should be used when handling the radium or working near the material. After the radium was repackaged, the report stated that the exposure rate outside the fenced off area met the safety standard. The material was removed from Metro South on April 7, 2022.

We identified potential misalignments in policies and procedures related to this incident. There appeared to be inconsistent guidance for contractors and Metro employees. The guidance for contractors stated that all radiation incidents should be treated as an emergency. Guidance for Metro employees was less definitive. The differences may have impacted who at Metro was notified about the incident and how it was documented.

On March 23, 2022, South was evacuated when a grenade was found. Employees evacuated the buildings and congregated near the truck wash as specified in the emergency response plan. That meant employees ended up gathered near radioactive material while waiting for the bomb squad to respond. Fortunately, employees were near the material for less than an hour which reduced health risks. Nevertheless, these incidents show how important it is to have enough space to store harmful materials away from people, and the need to make timely decisions to minimize risks.

Cost containment

Informal management of the diesel fuel contract led to at least \$125,000 in overpayments. The contract dispute also cost about \$33,000 for a forensic accountant to document the extent of overpayments, as well as staff time in WPES and OMA to investigate and gather information.

Fuel invoices did not specify the actual fuel type provided and the fueling station was not set up to monitor the type of fuel used, which was a condition of the contract. WPES had not inspected the facility since June 2019, which meant one of the conditions of the contract's scope of work was not verified prior to awarding a new contract.

While the contract dispute was being investigated, WPES contracted with another diesel fuel provider. Several months after the new provider was engaged, employees were still working to ensure the appropriate rate was being charged.

Environmental stewardship

WPES' primary contractor to transport and dispose materials collected at each HHW facility did not provide certification of treatment or disposal for over 370 shipping manifests since 2016. This means Metro does not know what happened to the material after it was collected by the contractor.

Each manifest had several materials, and each required its own certification within one or two years of collection. Based on data provided by WPES, it appears that at least 3,400 items (i.e., barrels, pallets, etc.) have not been documented as required by the contract.

We also received data that indicated other contractors who have transported HHW materials have not provided required documentation for some shipments dating back to 2009. Without these documents, WPES cannot provide assurance to the public that their HHW materials were disposed of properly.

Shared responsibilities increased health and safety risks

The audit found the effectiveness of the health and safety program was reduced by shared responsibilities among and within Metro departments and external contractors. Despite three departments, and five cross-functional committees being involved in the program, significant gaps were evident. Policies and procedures were not kept up to date, required training was not offered or completed, and oversight of program effectiveness was not done.

To be effective, each part of the overall program needs to have a defined role and the program needs oversight. When clearly defined, duplication of efforts or gaps in coverage can be avoided. Gaps in coverage increase the chances that some risks to workers and the public are not adequately addressed.

Policies were not reviewed and updated as required

Transfer station operations are required to follow laws, policies, and procedures to protect employee health and safety. Legal requirements come from occupational safety and health laws at the state and federal level. Metro has several policies and procedures to ensure alignment with these requirements. These policies and procedures apply to WPES contractors and are referenced in operating contracts. Many health and safety policies are required to be reviewed annually to evaluate their effectiveness and accuracy. The annual reviews are supposed to be documented with signatures and dates. The audit found that reviews were not completed in a timely way for eight of the ten policies included in the audit.

The value of annual reviews was to ensure that staff were adhering to required procedures. By identifying deficiencies early, employers can make modifications to improve practices that support safe working conditions. Continued use of outdated policies and lapses in reviews could put workers at higher risk of injury and Metro at risk of non-compliance with legal requirements.

Exhibit 5 Policy evaluations were not current for eight of ten policies

Metro policy	Requirement	Last Review	Current
Hot Work Procedure	Review annually for effectiveness	2014	No
Confined Spaces	Evaluate annually	2014	No
Respiratory Protection	Evaluate effectiveness	2015	No
Job Hazard Analysis	Evaluate compliance	2016	No
Powered Industrial Trucks II	Evaluate compliance	2016	No
Energy Isolation Procedure	Evaluate compliance	2017	No
Elevated Work (Fall Protection)	Evaluate compliance	2020	No
Bloodborne Pathogens	Annual review	2020	No
Heat Illness Prevention Policy	Evaluate worksite adherence	2022	Yes
Wildlife Smoke Protection Policy	Evaluate worksite adherence	2022	Yes

Source: Auditor's Office evaluation of internal policies (as of 6/22/2023)

In addition to managing its own health and safety program, WPES also oversees contractor health and safety requirements. Provisions in South and Central operating contracts require adherence to Metro's policies and procedures. The purpose of oversight is to ensure contract terms are met.

We found that the health and safety contract requirements lacked oversight. At South, oversight was assigned, but the employee in that role had no

knowledge of the assignment and no prior involvement in contract management. At Central, responsibility for health and safety oversight was not assigned, but the superintendent stated that safety is discussed and documented in the monthly meetings, where staff are in attendance.

Required trainings were not completed

Health and safety policies also require workers to provide training. Annual training is intended to educate employees on hazards and provide guidance to promote safe work practices.

Transfer station workers encounter various types of hazards on the job. For example, in 2022, a near-miss incident at one of the transfer stations involved bags of broken and loose sharps containers. At another location, an unsecured container of sharps fell down a hazardous waste technician's arm. While no injuries were sustained, improper disposal of sharps containers had been an ongoing issue. These types of incidents show the importance of training to help employees prepare for the hazards they may face on the job.

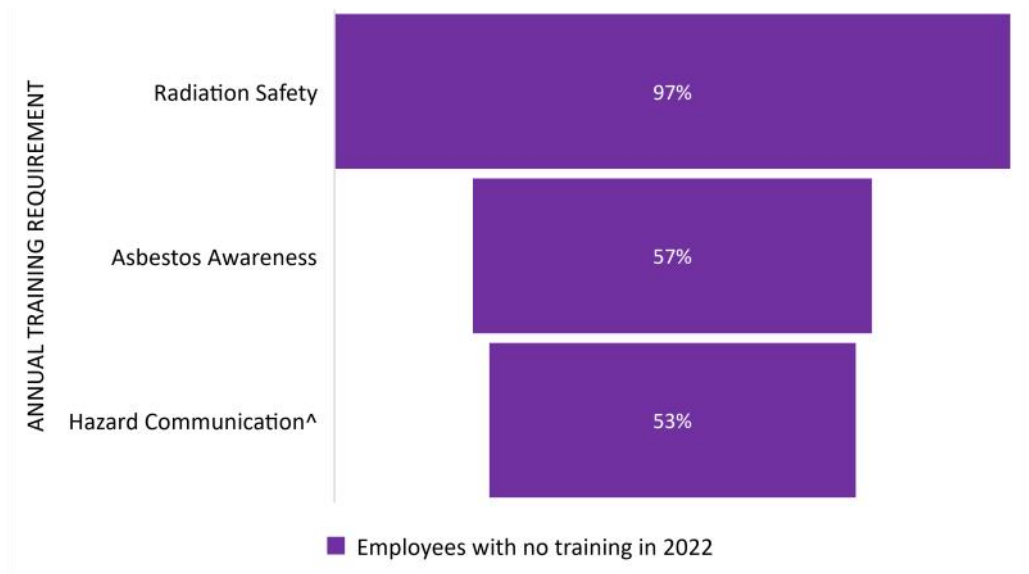
Training for dealing with bloodborne pathogens was one of the required trainings for all employees at risk of exposure to bloodborne pathogens or potentially infectious materials. Records showed that only four of the 58 employees meeting these criteria in 2022 completed training. This was an improvement from the prior year when no bloodborne pathogen trainings were documented.

Training deficiencies were also found when evaluating records for employees who work in hazardous waste positions. These employees encounter some of the most difficult types of material delivered to the transfer stations. This can include battery acids, toxic and corrosive chemicals, explosive devices, and weapons.

Hazardous waste employees also serve as emergency responders for incidents in any part of the transfer station. By rule, they are required to complete an initial series of hazardous waste operator emergency response trainings and retrain annually. Training documentation showed 23% of employees did not receive the annual refresher training in 2022.

WPES also required completion of annual safety trainings in other areas. Incomplete training requirements were found for asbestos awareness, hazard communication, and radiation safety. Fifty-seven percent of employees did not have training in asbestos awareness, which is a commonly encountered hazardous waste material. When trainings are not completed it not only put workers at risk, but also the public who visit transfer stations.

Exhibit 6 Lack of training can increase risk



Source: Auditor's Office analysis of training records

^It is possible that up to 63% of employees did not complete this training. Management stated that six employees took the course who were not included in the training records we received.

WPES contractors are also required to complete training. The South contract requires contractors to report a schedule of trainings in their annual report. The Central contract does not have the same requirement; however, contractors also include a schedule of trainings in their annual report. While the contractors have their own system for employee training, they are required to comply with federal, state, and local regulations, which includes training. Our review of contract terms and annual reports revealed possible lapses in meeting requirements related to training.

Our review of incident reports and monthly meeting summaries revealed the frequency and variety of health and safety issues that can arise at the transfer stations. This is why training is so important to ensure worker and public safety. Exhibit 7 contains a listing of some of the incidents in 2022 that appeared to be related to the topics covered in required trainings.

Exhibit 7 Incidents related to the topics covered in required trainings reveal risks to workers and the public

Date	Details
3/23/2022	Grenade found in bag on bay 2 tipping floor
4/3/2022	Customer slipped
4/4/2022	Truck with fire in hopper routed to Central
4/8/2022	Employee hit head with customer rear window
4/14/2022	Drum of toxic/corrosive aerosol spilled
5/19/2022	Pressurized cylinder caused fire in pit
5/19/2022	Worker lost control of forklift causing oil paint spill
6/10/2022	Loose sharps found in load
6/18/2022	Fire broke out in pile staged in bay 3
6/20/2022	Employee swinging spike hammer to open containers
6/21/2022	Spotter noticed suspected asbestos dumped in bay 1
7/2/2022	Binary explosive
7/12/2022	Customer given okay to bring in cannon ball relic
7/14/2022	Customer broke arm unloading vehicle in bay 2
7/14/2022	Asbestos bags accepted in public bay 1
8/3/2022	Can crusher failed and was not locked out for safety
8/15/2022	Trailer caught fire onsite near gravel lot
8/17/2022	Customer brought in radioactive uranium nitrate
8/24/2022	Lithium battery combusted causing fire
9/5/2022	Fire in transfer station building
9/6/2022	Evacuation due to sulfur dioxide leak on sort line
10/13/2022	Faulty acid spill neutralizer delayed response
10/13/2022	Evacuation due to unknown chemical vapors in bay 2
10/27/2022	Suspected blood on station floor
10/28/2022	Tear gas canister found on sort line
11/5/2022	Suspected asbestos found in parking lot
11/16/2022	Radiation detection equipment errors

Source: Auditor's Office review of incident reports that appeared to be related to topics addressed in required trainings

Incident data may not be complete or accurate

Two systems of reporting incidents were used during 2022. Reports were filed either electronically through the official incident report management system, or manually using a paper report form. During the audit we saw indications that incidents reported through the official system may not provide complete and accurate information. We received summary reports of incidents filed through the official system during 2022 for both transfer stations. The report showed a total of 144 incidents. After comparing these incidents to other sources of information, we found 60 additional incidents, or 29%, that were reported manually, outside the official incident report management system.

Metro requires employees to report incidents immediately after an event. This includes accidents, near misses, and property damage whether by employees or contractors. Prompt reporting and investigating of incidents helps to identify hazards so controls can be implemented to prevent a recurrence. Reporting could also help determine when changes to job functions are needed or retraining required.

There was one instance of an employee verbally reporting incidents at a monthly meeting for South that may not have been captured in a timely way. Both WPES employees and contractors were supposed to report through the incident system. Any gaps or delays in reported incidents could prevent effective risk management.

Incident reports may also be required to meet legal requirements. For example, we were told open flame fires were supposed to be reported to Oregon's Department of Environmental Quality. Meeting summaries showed that Metro had to remind the contractor at South about the reporting requirement on several occasions in 2022.

Few incidents were formally investigated

Initial incident responses can help address immediate risks by restricting access or containing and moving a hazard to a temporary staging area. However, an equally important aspect of incident reporting is that it can identify trends over time and help management prioritize actions to prevent serious incidents from reoccurring.

We heard there was insufficient data in the incident system to evaluate trends. Formal investigations were conducted on a discretionary basis. The written investigation policy provided for review was more than 5 years old and not reflective of current incident reporting practices.

In the absence of an updated policy, staff feedback was used as the basis to determine what should be done in response to specific incidents. We were told that if an incident report of something major was incomplete or clarification was needed, an after-action review (AAR) was done. AARs were supposed to document additional details of the incident as well as corrective actions that should be taken.

During 2022, there were a total of 204 reported incidents when information

from monthly meeting summaries and the official incident tracking system were combined. Only two of them resulted in an AAR.

Formalizing the AAR process within the WPES health and safety program would help to standardize follow-up responses to incident reporting. During the audit, we received a draft health and safety action plan which indicated WPES had begun work on formalizing its policy and procedures. It will be important to prioritize these efforts and put them into operation as soon as possible.

Health and safety goals were not prioritized in the most recent regional plan

We found health and safety goals were not prioritized in the most recent regional plan. In 2019, Metro adopted the 2030 Regional Waste Plan. The plan was intended to be used to guide regional policy and WPES' budget priorities.

In the previous version of the plan from 2008, language related to worker health and safety was clear and direct. Those objectives stated that WPES would:

- Place a high priority on worker health and safety.
- Reduce injuries by automating operations where effective.
- Implement health and safety plans that meet or exceed current minimum legal standards.

In the current plan, there was only one goal related to worker health and safety. An indicator used to measure success was the number of worker injuries. The most recent performance update from January 2023 stated that WPES was on track to meet this goal in 2020 and 2021, but no data was provided. Another part of the performance report stated that indicators to evaluate the goal was in progress.

After more than 30 years operating the two transfer stations, it is unclear why more time would be needed to evaluate performance on this goal. Workers' compensation and incident data, captured prior to the current incident reporting system, should have been available to evaluate performance. Strengthening health and safety priorities in the regional plan and conducting reliable performance assessments should be prioritized to ensure the transfer stations have adequate resources to operate safely.

Roles and responsibilities for contract management are undefined and inconsistent

Transfer station operations depend on contractors to provide services. The audit identified at least 15 contracts for various aspects of operations. We reviewed a sample of provisions from four of them to determine how oversight was managed. There was little documentation of roles and responsibilities, so we had to interview employees from several WPES divisions and FRS to understand who was involved.

Procurement services developed guidelines to help employees manage contracts effectively. The purpose was to evaluate risks even before the procurement process began. Employees were directed to proactively structure the solicitation, evaluations, and compliance monitoring activities appropriately to guard public resources.

Criteria was available to help employees determine what constituted high risk. Contracts that meet the criteria were expected to have a contract administration plan to manage them. Contract administration plans are supposed to be created by a multi-disciplinary team and be reviewed and approved by risk management.

The audit found WPES did not use tools consistently. Two contracts were not identified as high risk but had a contract administration plan. One contract that was not identified as high risk met the criteria for being high risk. Only two of the six contract administration plans had documented approvals as required. Some contracts that were identified as high risk and had a contract administration plan were not updated when significant changes were made in their scopes of work.

Insufficient risk assessment and contract administration planning increased the chance of WPES not getting what it paid for or paying more than it should have. Our review of a sample of contract provisions in four contracts indicated contractors were not in compliance with some contract requirements. When employees became aware of performance issues, they did not use all the available tools to hold contractors accountable.

There was no monitoring for compliance with procurement guidelines either by Procurement Services in FRS or by senior management in WPES. The contracts we reviewed that were most closely aligned with the procurement guidelines were over 10 years old, but their contract administration plans had not been updated when major changes to the scopes of work occurred. We also learned of some additional agreements in the form of Memorandums of Understanding (MOU) that WPES employees had reached with external parties. These examples raised questions about who had authority to sign agreements on Metro's behalf.

Exhibit 8 Risk management processes were inconsistent in four sampled contracts

Purpose	Contract Value*	Duration	Risk Identified	Risk Mgt. Plan Date
Central Operations^	\$79 million	2010-2023	Renewal	2010
South Operations	\$57 million	2020-2024	None	Undated
Diesel Fuel^	\$25 million	2020-2024	Financial	Undated
HHW Disposal	\$3 million	2022-2029	None	N/A

Source: Auditor's Office analysis of files as of February 2023

**Includes amendments as of February 2023*

^Separate memorandum of understanding in place related to the contracted services

The South contract administration plan was the only one that included a breakdown of responsibilities for specific contract requirements. The other two plans in our sample described compliance monitoring activities in general terms and assigned them either to the onsite transfer station manager or employees involved in processing payments.

Through interviews, we learned that there were generally three roles related to transfer station operating contracts.

- Employees who work at South and Central manage **day-to-day operations**. These employees are part of the Garbage and Recycling division in WPES.
- Other employees **reconcile invoices and initiate payments** for services. These employees were part of the Policy and Compliance division of WPES or were embedded FRS employees.
- Contract managers created the administrative plans and served as **liaisons between on the ground personnel and those who process payments**. These employees were part of a group of planning employees in the Asset and Environmental Stewardship division of WPES.

Each of these roles would benefit from additional documentation and checklists to know what is expected. There were detailed requirements in each contract and limited resources, so having clarity about the frequency and amount of time that should be spent monitoring each provision is essential.

Onsite personnel, led by each station's superintendent, rely on subject matter specialists (i.e., maintenance, environmental compliance) to ensure contractors are providing services as expected. Checklists and documentation for these roles were underdeveloped. Effective risk management requires good communication and standardized monitoring practices to maximize efficiency. Superintendents also manage WPES personnel who are also providing services and review some payment documentation each month.

Employees involved in payment processes used some standard templates and checklists. These appeared to improve the effectiveness and efficiency of reconciliations and approvals. We learned that some of these processes were initiated by contract managers, and some were created by the employees themselves. Since these employees report to different managers, it was not clear who had the authority and responsibility to approve business practices.

The contract manager role was the most undefined among the contracts we reviewed. In some cases, the contract manager was only involved in procurement. In others they worked on procurement, monitoring and business practice development.

We could not determine the specific cause of each variation in the contract manager role. It appeared to be based on employee availability and past work experience rather than documented roles and responsibilities. One employee was the contract manager for three of the four contracts we reviewed. The other contract manager role appeared to be shared between a variable-hour employee who worked on procurement issues, and the Central superintendent who was the primary contact with the contractor for their services at both transfer stations.

One of the benefits of having clear roles and responsibilities is that it helps employees know when they have authority to make decisions directly and when they need to get approval. Ensuring clear lines of communication is critical to avoid surprises. Below are some examples of decisions that could have a large effect, but were not clearly assigned to anyone:

- In response to two potentially racially motivated events at Metro South, WPES leadership agreed to pay for additional security at each station. The cost was about \$18,000 per month in our sample. It was unclear who had the authority to determine if these additional payments were still needed or if the operating contract should be amended.
- Metro leadership approved additional fire safety equipment for South, but the contract states that fire suppression equipment is the responsibility of the contractor. WPES paid about \$300,000 to install the equipment as well as ongoing monthly service fee (\$3,775) to operate it. Additional systems were being considered for Central and other parts of South during the audit. It was unclear who has the authority to make these decisions or if the operating contract should be amended.
- Test results and regulatory communications were not included in meeting summaries with the contractor in 2022. This information is required in the operating contracts. Metro and the contractors discussed these topics, but documentation was not included. Lack of regular reporting could limit who has access to test results and communication about compliance with permits.
- Scheduled maintenance work at each transfer station was not always timely. We were told there were regular meetings to discuss maintenance, but we also saw indications of reoccurring maintenance issues with some of the most important pieces of equipment (i.e., compactors) and at least one large maintenance expense (\$246,620) that indicated at least one major system, the waste filtration system at Central, was not functioning as expected. It was not clear who was responsible for ensuring maintenance efforts were sufficient and cost-effective.

Diesel fuel and household hazardous waste contracts need more oversight

Significant compliance issues with WPES' contracts for diesel fuel and primary HHW contracts were identified during the audit. Both contracts are critical to transfer station operations, but oversight was insufficient. This led to overpayments to the fuel contractor, and non-compliance with HHW reporting requirements.

WPES's oversight processes were mostly based on the dollar value of contracts rather than a more comprehensive understanding of all operational risks. For example, the HHW contract was not considered a major contract compared to other contracts for transfer station operations and it was not designated as high risk. However, it met the criteria for being high risk based on its annual expenditures being greater than \$225,000 per year and may also have met other criteria for environmental and operational risks.

Other causes included unclear roles and responsibilities for oversight. Long-term relationships with contractors had become informal with little

Informal management of fuel contract led to overpayments

verification or follow-up on some contract requirements. Weak change management processes to address personnel and contract changes also appeared to be an underlying cause.

Weak oversight of the diesel fuel contract led to at least \$125,000 in overpayments and additional costs to investigate and resolve the contract dispute. When it was signed, the contract was considered high risk and a contract administration plan was created. It was considered high risk because it was expected to cost more than \$250,000 per year and had the potential for fluctuations in unit pricing. The contract administration plan did not list any criteria, specific steps, or timelines to monitor contract compliance other than paying bills.

After the contract was in place, WPES presented an option to Metro Council to use a more environmentally friendly fuel type (R99) rather than the type specified in the contract (B5). In response, WPES created a separate MOU with another company to supply R99 to the primary contractor. The primary contractor was not bound by the MOU.

This resulted in WPES having two agreements for diesel fuel, but only one of them was a financial commitment. The other agreement did not require the primary contractor to use the fuel provided by the firm in the MOU. We were told the MOU was created to ensure sufficient supply of R99.

The contract administration plan was not updated when these changes were made. We were unable to find evidence that fuel invoices and bills of lading had ever been audited. No fuel samples were taken for almost two years until a concern was raised by an external party.

WPES tested a fuel sample from one truck that indicated the fuel was B5 not R99. It also notified the diesel fuel provider of the test result. Subsequent fuel samples indicated R99 was being supplied. Invoices paid by WPES all listed the fuel type as B5 even though payments were based on the rate for R99.

Our evaluation of contract requirements showed WPES had not inspected the fueling station since 2019, which was after a new contract with the same provider was awarded. That appeared to contradict procurement rules, which require documentation of the contractor's ability to meet requirements before signing a contract.

Had the fueling station been inspected as required, it would have been clear that the tanks were not set up to separate R99 from B5. That made it impossible to tell what quantity of each fuel type is being provided. It also made it very difficult to test the fuel type because B5 and R99 are mixed in the tanks.

Another fuel contract has been used while the contract dispute was being investigated. There have been challenges to determine the appropriate rate for R99 in the new contract. Employees have been working with the contractor since at least November 2022 to resolve the issue, but it had not been settled as of May 2023.

Shared responsibilities to manage the HHW contract led to non-compliance

The primary contractor for HHW transport and disposal did not provide required documentation for the materials it collected. It also did not provide documentation of insurance coverage for a little over three years from 6/1/2019 to 6/28/2022. This gap increased financial risk to Metro. Lack of documentation for the materials collected meant that WPES does not have assurance that the materials were managed and disposed of as required.

These issues resulted from shared responsibilities for contract management between onsite personnel at each transfer station and the contract manager. HHW employees worked directly with the contractor to prepare material for transport and manage shipping manifests. The Central Superintendent worked with the contractor to ensure the materials collected were aligned with the disposal plan and cost schedule. Another employee was identified as the contract manager but only worked on procuring the contract.

This distribution of responsibilities made it difficult to know who had the authority and responsibility to track and follow-up on missing documentation. It also resulted in the need for two short-term contract extensions when the procurement process was not completed before the contract expired. As a result, WPES had no other option to continue operations, which reduced Metro's bargaining power for several months and likely resulted in higher costs.

Payment structure for the South operating contract is complex

The complexity of the South operating contract shows how critical it is to document roles and responsibilities for contract management. The contract is over 650 pages long and has a complex payment structure which increases financial risks. The operator is reimbursed for equipment and maintenance costs. Reconciling these payments requires tracking 71 pieces of equipment including their depreciation schedules and maintenance work, which can fluctuate from month-to-month.

Metro and the contractor split revenue for the commodities recovered for reuse and recycling at the transfer station. Reconciliation of these payments requires tracking the quantity, and value, of 37 different types of materials. Each material can result in revenue to WPES and the contractor if there is a market for it. Each material could also be a cost if the commodity cannot be resold.

For example, ferrous metal was the most valuable commodity recovered in the sample payments we reviewed. It was worth about \$51,000 per month, which was split equally between Metro and the contractor. In contrast, residential organic material (i.e., yard debris mixed with food waste) was the most costly material. WPES paid the contractor about \$150,000 per month to process it in addition to the fixed per ton payments (about \$57,000 per month) for the same material to be reloaded into larger shipments.

There are other payments in the contract that need to be reconciled to ensure accuracy. Payments for workers and their wages appear to be as complex as the material recovery payments but were not part of the scope of

this audit. A 2013 audit found the contractor had not provided the amount of labor required. At that time Metro management stated that they preferred to give contractors flexibility to manage staffing levels rather than require compliance with the staffing levels in the contract.

There are also fixed payments for each ton of material received at the transfer station. The contract also includes performance incentives or penalties for clearing bay floors and managing the volume of material in the compactor pit. Each of these payments requires employees to review documentation to ensure WPES got what it paid for.

A detailed contract administration plan was created for the contract, but we did not see any evidence that it was used to manage the contract. At least one person was unaware that they were assigned to a task in the contract administration plan. Employees involved in payment reconciliation stated that the South contract requires much more of their time compared to Central.

During the audit, WPES was negotiating a new operating contract for Central. We were told the contract was likely to be structured like the South contract. If this is the case, WPES may need to allocate additional resources for contract management. There may also be higher monthly costs in the new contract. In our sample, monthly payments for South averaged \$780,000 per month and did not include work done by WPES personnel for traffic management. Payments to operate Central averaged \$758,000 per month and included traffic management.

Stronger oversight of transactions needed

There were other examples that showed unclear roles and responsibilities were not limited to contract management. Concerns about cash controls at the scale houses were reported to the Accountability Hotline in 2020 and 2021. Specific allegations of misconduct were investigated by HR, but inconsistent practices between transfer stations indicated the need for updated policies and procedures.

During COVID, some cash controls like random cash audits and segregation of duties among supervisors and employees were altered to limit in-person interactions or respond to staffing shortages. These changes increased the risk of fraud, waste, or abuse.

Metro's financial auditing firm conducted a review of transaction management in 2021 that recommended updated policies and procedures for employees who use the point-of-sale system. A draft of the updated policies and procedures for transaction management was created in November 2022. Sections of it were rewritten in April 2023. We were told it was still under review in May 2023, which was nearly two years after management received the recommendations from the financial auditors.

Exhibit 9 Timeline of creating new policies and procedures for transaction management



Source: Auditor's Office analysis of reports to the Accountability Hotline. Investigation documents reviewed during this audit.

The draft policies and procedures we reviewed did not include information about overall oversight and compliance monitoring. It only included a description of onsite personnel. This raised questions about who had responsibility to ensure policies and procedures are followed consistently at each transfer station.

Sampled transactions showed it may take significantly more work to reconcile transactions at South compared to Central, which appears to create an imbalance in workload between employees in the same position. South had 69% more transactions per day on average. Cash and credit card transactions at South were double what they were at Central. South also had twice as many no-charge transactions compared to Central. No-charge transactions are for household hazardous waste customers or loads that only contain recycled material. In our sample, voided transactions at South (59) were also more numerous than Central (10).

Exhibit 10 Metro South processed significantly more transactions per day than Metro Central in our sample

Type	Average per day			
	Transactions		Amounts	
	Central	South	Central	South
Credit Card	277	548	\$16,990	\$37,462
Charge Account	152	121	\$65,733	\$51,941
Cash	29	66	\$1,592	\$4,203
Check	1	2	\$159	\$194
No Charge*	80	174	\$0	\$0
Total	540	910	\$84,473	\$93,801

Source: Auditor's Office analysis of sampled transactions (2/22/22; 4/4/22; 6/23/22; 7/30/22, 9/4/22; & 12/16/22) at Metro Central and South.

*Household hazardous waste customers or loads with only recycled materials.

Prior to COVID, random cash audits were completed by WPES personnel. They were stopped in 2020 and resumed in 2021. When restarted, they stopped being random so onsite employees may be aware of when they will occur.

During the audit there were discussions underway between WPES and FRS about roles and responsibilities for transaction oversight. FRS was asked to participate in cash audits but declined. In one instance a discrepancy during the daily cash count was reported to a manager in FRS. The concern was addressed, but the process indicated lack of clarity about roles and responsibilities. The draft policies and procedures we reviewed did not include any roles assigned to the manager in FRS.

Documentation for some contracts was incomplete

Unfulfilled roles and responsibilities impacted the completeness of contract documentation. Content Manager is Metro's official document management system. Files in the system are supposed to contain the official records to show procurement laws, administrative rules, and policies and procedures were followed for each contract. Procurement Services in FRS was supposed to ensure contract documentation was complete.

Review of solid waste contracts showed incomplete documentation was available for several contracts. There were examples of contract related documents not being available in Content Manager, but employees had them in their own files. There was at least one example where missing documentation for one of the contract provisions in our sample could not be found at all. Documentation of the contractor solicitation and evaluation process for WPES' \$115 million solid waste hauling contract was not in Content Manager. That contract was not part of our sample, but it would be a significant gap if the documents were not retained somewhere else.

Some of the gaps in documentation may have had several interrelated causes. Prior to COVID, Metro committed to centralizing procurement activities to increase consistency across the agency. When employees began working remotely during the pandemic, processes that had been paper based were transitioned to electronic workflows that used the accounting system and email for review and approval.

We were told budget reductions and staff shortages had created a backlog in Procurement Services for managing documentation and making sure it was in Content Manager. We also learned that online training for employees involved in procurement had stopped and only in person training was currently available. Metro's internal website for procurement states that procurement processes are under review.

Regardless of the cause, documentation for contracts is a key control for legal compliance, adherence to administrative rules, effective contract management, transparency, and accountability. Extensive guidelines and administrative rules to document procurement processes and ongoing contract management are available on Metro's internal website.

A long-term vision is needed to stabilize operations

Transfer station operations are at a pivotal moment. South has been operating for 40 years and Central for 33 years. The same point of sale system has been used for over 35 years. Several long-serving employees have retired in recent years.

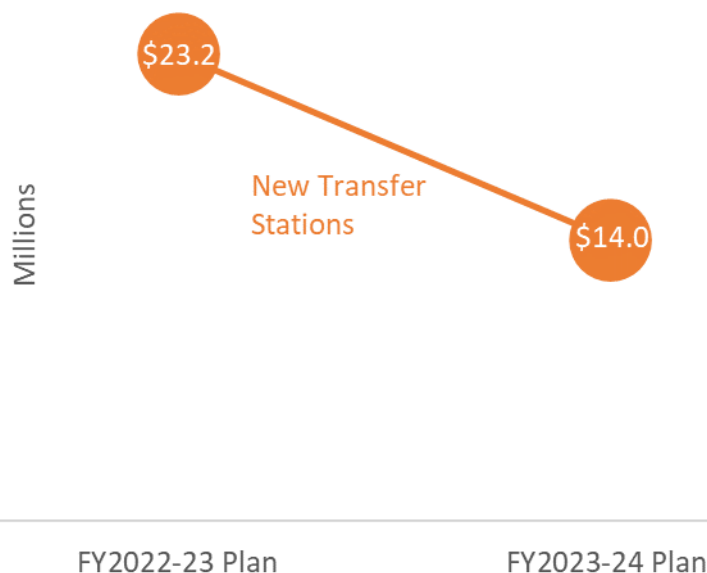
At the same time, both transfer stations face uncertainty about their long-term operations. During the audit, several ideas about Metro's role in the solid waste system were being discussed. These included not operating any transfer stations, building additional transfer stations, and changing the types of services offered at existing transfer stations. Each of these ideas would be a significant change for the regional solid waste system and could have a substantial impact on WPES' costs, personnel, and public services.

Regardless of what decisions are made, a long-term plan is needed to stabilize operations. This audit identified significant risks in the current operating environment, which require immediate attention. In several areas, current operating risks are exacerbated by lack of clarity about what will happen next. This makes it difficult for employees and management to make best use of available resources. Without additional clarity, it is more likely that resources will be used for efforts that may be at cross-purposes. Once Metro commits to its long-term vision, it will take time and strategic thinking to successfully manage change.

Some employees expected WPES to eventually operate both Central and South entirely in the future. We also learned of potential plans to change the services offered at South and Central's role in managing commercial food waste.

The lack of clarity is evident in WPES' capital improvement plans. Plans for a new Metro West facility and a replacement of South changed significantly between budgets. Last year's budget included \$23.2 million for these projects. This year's budget only included \$14 million. Based on last year's plan, both new facilities would have been under construction in FY2026-27. Currently, only one facility is expected to be under construction by FY2027-28.

Exhibit 11 WPES' plans for new transfer stations changed significantly in the last year



Source: Auditor's Office analysis of capital improvement plans for FY2022-23 and FY2023-24

In response to these challenges, WPES began work on a Garbage and Recycling System Plan that is anticipated to summarize options for additional investments in the regional solid waste system including Metro's facilities. Progress on the plan has been delayed several times. It was initially proposed to be completed in FY2021-22. The workplan presented to Council in March 2022 said it would be complete by summer 2023. The most recent update stated it would be done in spring 2024, but only two of the five phases of the project were complete as of May 2023.

Other analyses have been done recently to assess the physical condition of Central and South but have not been finalized. These reports indicated potentially \$5 million in unfunded maintenance. The draft facility assessment estimates showed about \$19.5 million may be needed to maintain South and Central combined through 2027. WPES' capital improvement plan through FY2027-28 includes about \$14.4 million to maintain the two transfer stations.

Central is considering public operations and an expanded role in processing food waste

There were at least two potentially significant changes to Central operations identified in the audit. One was related to who operates the facility. The other was potential operational changes related to commercial food waste.

When the operating contract for Central was set to expire at the end of 2023, WPES began a planning process to take over operations rather than use contractors. That plan was put on hold in early 2022 and a new contract was being negotiated during the audit. WPES purchased two pieces of equipment in anticipation of taking over operations.

Another significant change that was in process at Central was purchasing equipment and partnering with City of Portland's Bureau of Environmental Services to use commercial food waste to generate energy. Metro mandated that businesses separate food waste beginning in 2023 and anticipated additional food waste processing capacity could be needed as a result.

The status of the partnership with Portland was unclear during the audit. WPES personnel signed a MOU, but Metro leadership stated that the original commitments in the agreement had changed. It appeared the plan was for Central to purchase a machine (i.e., de-packer) to improve efficiency, but not move forward with storing the material onsite and transporting it to the energy generation plant.

South needs to be replaced

A June 2021 report presented the business case for replacing South. It summarized the history of the facility, previous analysis of its operating lifespan, and current challenges. Around that time negotiations were underway to purchase land where a new South transfer station could be built. In December 2021, Metro decided not to move forward with the land purchase. That decision meant that South is expected to continue operating at its current location for a minimum of 10 years.

Not purchasing the land has led to uncertainty about how Metro plans to maintain operations on such a challenging site. The challenges documented in the June 2021 report included:

- Unsafe and unwelcoming conditions for self-haul customers
- No space to accept and process food waste
- Insufficient space to accept and sort recyclable materials
- No space to recover materials for reuse, repair, resale
- Major site reconfiguration is impractical and expensive
- High risk for vehicle accidents on the site
- Customers in close proximity to heavy equipment and open garbage pit
- Flooding, earthquake, landslide, and other natural disaster risks
- Compatibility with other land uses
- Aging infrastructure
- Stormwater management risk
- Long wait times for customers
- Difficult maneuvering for customers
- Compliance with asbestos regulations
- Customer confusion with facility layout
- Inefficiencies in handling and sorting materials for staff
- Limited space for storage creates conflict of uses
- Multiple, small buildings (not originally built for transfer station customer use) create inefficiencies
- Limited site access and circulation

During the audit there were multiple incidents that showed the risks identified in the report were not hypothetical. The fire department had to

respond to fires on several occasions. One of which was reported to have caused almost \$200,000 in damage. The facility was closed because of a toxic gas leak. The truck wash station was closed because radioactive material was stored there.

In addition, there were other examples of environmental, health and safety, and financial risks associated with South.

- The area where the most hazardous material is stored is located at the lowest point of the site and flooded in 1996.
- Additional staff had to be onsite to manage traffic to ensure safe operations.
- There were high readings of methane gas on a neighboring property in 2022 which could increase the risk of explosion and increased the cost of projects at South to mitigate for it.
- A new residential housing development was proposed for a neighboring property which could increase traffic near the site and increase the number of people living near the facility.

Some of these challenges have been documented in previous studies going back to 2001. That year a consultant completed a master plan that estimated South would reach its operating capacity between 2011 and 2016. A 2008 master plan update concluded it had reached its maximum capacity due to increased vehicle traffic. Additional studies completed in 2009, 2012, and 2016 focused on the services offered at South. The goal was to try to bridge the gaps between the customer volume, services offered, and site constraints.

After Metro decided not to move forward with purchasing land to rebuild South, it established an interim solutions team. In May 2022, the team identified 12 projects to stabilize operations while a longer-term plan was being developed. Personnel involved in day-to-day operations noted some improvement as a result of one of these projects, but they did not appear to have led to significant improvements yet.

The point-of-sale system needs to be updated

The point-of-sale system used at the transfer station needs to be updated. The system is critical to day-to-day operations, and WPES' payments to contractors. Weaknesses in the system have been documented by Metro's ITRM department and financial auditors.

During the audit we analyzed a sample of transactions from both transfers stations for six dates in 2022. The samples showed the system was used to process over 1,000 transactions and between \$55,000 - \$297,000 per day.

In April 2019, ITRM assessed the system and documented risks in a report. Five of the 10 risks identified were rated as high or unacceptable. The other five were rated as low or medium in significance. Many of the significant risks were related to system knowledge and ongoing support for the system in the future. Since that time, the WPES employee with the most knowledge

and experience with the system retired, and the software developer indicated he may not support the system in the future.

Exhibit 12 An April 2019 assessment documented significant risks in the point-of-sale system in five of 10 categories analyzed

Short Description	Risk Assessment
Risk and impact of losing Metro subject matter expert	Unacceptable
Level of support during critical needs and planned requests	Unacceptable
Implications of the software company going out of business, being sold, or the primary owner retires	Very High
Impact of how system is configured, documented, and updated	Unacceptable
Ability to maintain functionality using new hardware or software	Unacceptable
Possibility of a break in the data flows to other systems	Medium
General software upgrades/updates	Medium
Procurement card industry (PCI) breach or change in requirements	Medium, but bordering on unacceptable
Hardware/software failure	Low
Risk from upgrading or not upgrading	Medium
Ability of Metro staff to support the system	Medium

Source: Auditor's Office summary of "Metro Transfer Station Software Environment: Observations, Opportunities and Risk Analysis with Potential Mitigations," April 2019

After the evaluation was complete, a request for proposal process began to determine if there were suitable alternatives for the system. When COVID began in March 2020, the initiative stopped. In November 2020, concerns about potential fraud were reported to the Accountability Hotline. Metro's financial auditors reviewed the system in early 2021. Their July 2021 report documented similar risks as the previous report.

During this audit, several employees shared stories about how fragile the system is to maintain. One employee stated that they had to wake up in the middle of the night to reset the system. Others noted that outdated technology could reduce the efficiency of the automated scale. When Metro Council increased the tonnage level for the minimum fee in the summer of 2022, employees had to work overnight to implement the change, but it was not successful. A retired employee had to be brought in to make the new rate calculation work correctly.

Successful change management requires leadership

In 2022, a request for proposals was unsuccessful. Another procurement process was started by ITRM in early 2023. Three respondents were selected for further testing. Based on the current project timeline, ITRM expects to select a finalist in September 2023. If that timeline holds, the next step would be to plan how to implement a new system without disrupting operations that run for 362 days each year at two different sites.

The information in this report shows how disruptive change can be. Some changes like COVID are out of Metro's control and require flexibility to respond. Other changes can be seen in advance and require proactive planning to manage them. Even when proactive planning occurs, the process of implementing changes is the primary driver of success.

Changing conditions often prompt new risks, or changes to existing risks, that need to be assessed. Change management is the process of guiding organizational change to fruition; from the earliest stages of conception and preparation, through implementation and, finally, to resolution. An effective management strategy is crucial to ensure organizations successfully transition and adapt to change.

Exhibit 13 Change management involves five critical steps



Source: Auditor's Office summary of Harvard Business Review's "5 Critical Steps in the Change Management Process," 2020

Metro is a planning agency and there have been many plans developed to guide WPES operations over the years. However, these plans seem to lose their effectiveness because of underdeveloped processes to commit to a vision, sustain implementation through organizational culture and practices, and meaningfully review progress and results.

Some of the causes identified in the audit were:

- Lack of succession planning and knowledge transfer.
- Undefined and inconsistent management roles and practices for oversight, monitoring and corrective actions.
- Involving too many stakeholders without clear decision-making authority and responsibility for outcomes.
- Lack of clarity about on the ground operations among decision-makers.
- Ineffective communication up and down the management hierarchy.
- Reliance on individual employees to make things work rather than a coordinated system.
- A tendency to try to replicate current business processes rather than address the root causes that would increase efficiency and effectiveness.

These observations are similar to the conclusions from WPES' December 2019 organizational assessment. The department has been reorganized a few times since then to address structural challenges. Successful change management will require efforts across Metro to commit to a plan and strategy to stabilize operations and set the course for WPES's role in the solid waste system for the future. Further delays in reaching agreement internally put a critical part of Metro's public services at risk of failure.

Data can provide a valuable lens to learn and respond to changing conditions. The audit identified several data sources to help managers monitor and analyze operations, but they did not appear to be used consistently.

- For the health and safety program, data related to onsite incidents and workers' compensation claims can provide early warnings about potential issues when they are analyzed and communicated proactively.
- For contract management, analyzing costs and developing checklists to help employees monitor compliance can help identify longer-term trends that may not be evident when processing monthly payments or dealing with the issue of the day.
- For transactions, point-of-sale data can help understand variation between transfer stations and associated risks. It can also provide a snapshot of what happened on a given day and compare it to long-term averages to help identify indications of waste, fraud, or abuse.

Similar weaknesses have been identified previously

Previous audits identified similar weaknesses to the findings in this audit. Good management practices state that management (WPES), with oversight from the oversight body (Metro Council and executive leadership), should take corrective action as necessary to ensure accountability in the organization.

Exhibit 14 Previous audits have made recommendations to address similar risks

Both recommendations were in process		Status
2013 Audit Recommendations		In process
1. Strengthen the design and management of department safety programs.		In process
2. Regularly review and analyze incident reports and workers' compensation claims data to identify potential safety concerns.		
a. Work with departments to identify safety issues using this analysis.		
b. Once a safety issue is identified, work with departments to develop strategies to improve safety.		

Table 2 Contracting Weaknesses Disclosed in Prior Audits	
Audit	Contracting problems identified
Performance Audit Report, Metro's Contracting Process March 1993	Limited performance standards and no formal practices or requirements for monitoring contractor performance.
Purchasing Benchmarks and Opportunities May 1999	Essentially no monitoring of service contractors
Parking Revenue: Better Controls Are Needed September 1999	No monitoring or evaluating parking contractor, and poor controls over parking revenues
Portland Oregon Visitor's Association Contract September 2000	No objective basis for evaluating the contractor's performance

Recommendation	Status
Define and document the authority, roles and responsibilities of the various organizational units and positions involved in contracting activities, including the Contract Office, departments, and project manager.	Not clear
Enhance the role of the Contract Office by providing it with the resources, authority and responsibility for oversight, quality control and support activities.	Procurement have authorized quality control
Improve contract oversight by conducting formal risk assessments to identify contracts requiring close monitoring and audits.	Metro currently has no particular focus on the risk of contracts
Establish a management reporting system geared toward providing oversight information to top management and departmental directors.	A monthly contract management information report
Designate a formal contract coordinator in each department responsible for assuring that contracts are properly planned and monitored separate from the project manager and with the authority to counsel and direct project managers in developing contracts and evaluating contractor performance.	Was implemented and changed.
Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in monitoring and evaluating contractor performance...and conducting risk assessments.	Procedures and guidance exist for procurement process but not for monitoring performance or conducting risk assessments.

Standard Practice	
Procedures are clear: Policies and procedures for administering contracts are clear and accessible to staff.	Metro required administration plans for some high risk contracts. More specific guidance for plans would be helpful.
Responsibility and authority assigned: Roles and responsibilities of staff who manage contracts are well-defined.	Responsibility assigned in administration plans, but some staff not performing roles.
Documentation occurs: Staff perform and document monitoring. Reports have sufficient detail to support monitoring.	Program documented monitoring; however, in some cases, program lacked data/analytics for adequate monitoring.
Action is taken: Staff follow process to address problems.	Program did not consistently document violations of staffing requirement, lessening the ability to take action.

Source: Excerpts from previous audits by the Office of the Metro Auditor related to risk and contract management published in 2000, 2008, 2011, and 2018.

When corrective actions are not addressed, or not sustained, it increases the chance of repeating the same mistakes.

- Previous health and safety audit recommendations in 2006, 2013 and 2018 focused on the need for adequate training, clear roles and responsibilities, and data analysis to identify and mitigate risks.
- Previous contract management audits show long-term (1993, 1999, 2000, 2008, and 2011) and persistent weaknesses in processes to ensure Metro gets what it paid for from contractors.

Recommendations

To strengthen internal controls for transfer station operations, the WPES Director, Deputy Director and division managers should:

1. Formally assign oversight responsibility for the following:
 - a. WPES' health and safety program
 - b. Contract risk management policies and procedures
 - c. Transaction management policies and procedures
 - d. Point-of-sale system controls
2. Document policies and procedures including checklists for each role and update them when operations change.
3. Train employees on policies and procedures.
4. Establish annual policy and program reviews.
5. Redefine the Asset and Environmental Services division's system planners as business analysts with responsibility for monitoring:
 - a. contract administration,
 - b. operational trends, and
 - c. strategic planning for operational changes.
6. Develop a formal quarterly management report that includes standard data and analysis of operations.
7. Distribute the report among stakeholders throughout the chain of command (oversight, management, employees) and hold quarterly meetings to discuss and manage challenges.

To strengthen contract risk management practices for transfer station operations, WPES should:

8. Assess all transfer station related contracts against FRS' contract risk criteria.
9. Designate the HHW transport and disposal contract as a high risk contract to increase oversight.
10. Update contract administration plans at least annually for each high-risk contract.
11. Develop checklists and other guidance for each contract administration plan.
12. Train employees who are assigned roles in the contract administration plans.

To ensure contract risk management processes are followed, the CFO and WPES Director should:

13. Meet regularly to monitor compliance with policies and procedures and initiate any corrective actions that may be needed.

To align Metro's procurement processes with Oregon law and Metro's Administrative Rules, Procurement Services should:

14. Finalize policies, procedures and guidance to ensure complete documentation of contract files are available in Content Manager.

To reduce gaps and overlaps in WPES internal controls, the COO, WPES Director and Deputy Director should:

15. Complete the garbage and recycling systems plan as soon as possible.
16. Develop a plan to prepare Metro to implement new or changed operations resulting from the plan.
17. Finalize the facility condition assessments for Metro South and Metro Central.
18. Update the WPES capital improvement plan based on finalized condition assessments.
19. Continue to evaluate the costs and benefits of switching to entirely Metro run transfer station operations to inform future decision-making.
20. Assign responsibility for creating and managing a change management plan to implement the new point-of-sale system.

Scope and methodology

The purpose of our audit was to determine whether Metro had effective policies and procedures to manage transfer station operating risks. There were three objectives:

1. Determine if controls over health and safety at Central and South were sufficient to meet Metro guidelines and OSHA standards.
2. Determine if performance management controls were sufficient to ensure WPES received that for which it paid.
3. Determine if the point-of-sale system captured complete and accurate transaction information.

To develop our audit objectives, we reviewed laws, policies and procedures, and reports. We reviewed contract documents, previous audits, procurement guidance, historical solid waste plans, Council resolutions and meeting materials. We interviewed managers and employees and toured both transfer stations. We interviewed employees in the Office of the Metro Attorney and reviewed information related to ongoing investigations, as well as Accountability Hotline investigation summaries. We reviewed adopted budgets, organizational structure, and annual reports.

To complete our objectives, we reviewed contract provisions, transaction records, training records, and incident reports. We judgmentally sampled provisions from four contracts to determine how oversight was managed. We reviewed transaction records to test the accuracy of the existing point-of-sale system. In addition, we examined employee training records, incident response types and frequencies, and evaluated roles and responsibilities for contract management, employee training, and incident investigations.

The 2030 Regional Waste Plan was reviewed to understand priorities driving budget decisions. Best practices relating to elements of its health and safety program were also reviewed.

This audit was included in the FY 2022-23 audit schedule. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management response

Memo



Date: September 20, 2023
To: Brian Evans, Metro Auditor
From: Marissa Madrigal, Chief Operating Officer
Marta McGuire, Director of Waste Prevention and Environmental Services
Subject: Management Response to Transfer Station Operating Controls Audit

Auditor Evans:

Thank you for the opportunity to respond to the audit of Waste Prevention and Environmental Services (WPES) Transfer Station Operations Controls. We appreciate the time and attention spent evaluating our operations and developing recommendations. We wholeheartedly acknowledge the significant risks facing our transfer stations and applaud your focus on safety, responsible contract management and improving internal controls.

Most governments can go a long time without encountering the kinds of risks Metro manages each and every day at our transfer stations. The audit references a few of the more difficult scenarios we encounter such as receipt of radioactive material, explosives and other hazardous materials like asbestos. Metro takes the safety of our employees and our statutory responsibility to receive these materials seriously because our entire community is safer when these dangerous materials are quickly identified and disposed of properly. Nonetheless, your report identifies some critical deficiencies in training and contract oversight that my office, WPES, Finance and Regulatory Services (FRS), Information Technology (IT) and Human Resources (HR) are committed to addressing with urgency.

In acknowledging the risks inherent in our scope of responsibility, it is important to note that Metro's transfer stations have and continue to provide reliable services to the public. The COVID-19 pandemic presented significant challenges to Metro's garbage and recycling operations including staff illness and attrition, labor and supply shortages, and an inability to schedule in-person trainings and emergency response drills due to distancing requirements. Despite these challenges, Metro's garbage and recycling operations adapted systems and practices to provide uninterrupted service to commercial waste collectors and more public customers than ever before. In 2022, Metro handled over 450,000 individual transactions and, based on available survey data and qualitative information sent from customers, there was no change in historically positive customer satisfaction.

We also want to highlight the proactive measures WPES has taken through structural change. While the department underwent a reorganization in 2020 to align with the 2030 Regional Waste Plan adopted in 2019, operational impacts from the COVID-19 pandemic highlighted the need for

additional change. In the winter of 2021 and spring of 2022, WPES created a new department structure that will address many of the concerns that you raise in your report. Staffing for this new structure is almost complete.

As part of its new department structure, WPES established an Asset and Environmental Stewardship (AES) division to focus on the priority areas of facility maintenance, health and safety, environmental compliance and contract oversight. A safety specialist hired in 2022 works in this division and is in the process of developing a comprehensive safety program for all WPES facilities: transfer stations, Metro Paint, RID Patrol and St. Johns Landfill. The safety program includes a health and safety plan for each facility and a job hazard analysis for each position, which will inform any needed changes to the required training curriculum for each individual. WPES has signed a new safety training contract and is working to remedy training deficiencies experienced during the pandemic.

In addition, AES is playing a key role in procuring a replacement point-of-sale system for the transfer stations. That procurement is now in the final stages and AES (overseen by the Director's office) will lead implementation of a new system – including a comprehensive change management plan as recommended in the audit. Your recommendations reinforce Metro and WPES' commitment to continuous improvement in safety and contract management. In partnership with FRS, IT and the Office of the Metro Attorney (OMA), we are pleased to share the actions we have already taken to address the conditions you note, as well as the additional measures we will put in place to fully meet your recommendations. In the spirit of continuous improvement, we recognize that there is always work to do as best practices in each of these areas evolve.

Please find our responses to your audit recommendations below.

Strengthen internal controls for transfer station operations

Recommendation 1: Formally assign oversight responsibility for the following:

- a. WPES' health and safety program
- b. Contract risk management policies and procedures
- c. Transaction management policies and procedures
- d. Point-of-sale system controls

Response: Management agrees these are important areas for clarifying roles and responsibilities, and began work in three areas prior to the audit:

- Beginning in fall of 2022 and concluding in spring of 2023, WPES and FRS delineated and defined WPES risk and safety roles and responsibilities, as well as shared functions across the two departments.
- In early 2023, WPES established a cross-departmental work group with FRS and OMA representatives to more clearly define specific contract management roles and responsibilities under the current WPES organizational structure. This work group's meetings are ongoing.

- Transaction management (e.g., cash handling) procedures were finalized in June 2023.

Proposed Plan: Oversight responsibility for these areas will be as follows:

- WPES' health and safety program – AES Division Director
- Contract risk management policies and procedures – FRS Deputy Director
- Transaction management policies and procedures – WPES Garbage and Recycling Operations (GRO) Division Director
- Point-of-sale-system controls – WPES Deputy Director

The WPES Deputy Director will convene the AES and GRO Division Directors and FRS Deputy Director to clarify and document oversight responsibilities in the four areas listed above.

Timeline: Complete by November 30, 2023.

Recommendation 2. Document policies and procedures including checklists for each role and update them when operations change.

Response: Management agrees that it is important to clearly document policies and procedures and update them when operations change. In some situations, checklists are a useful tool for administering policies and procedures, but we do not agree that checklists are practical in all situations. For example, overall day-to-day oversight of transfer station operations is so varied that it does not lend itself to easy use of a daily checklist. Certain activities associated with day-to-day operations, such as site inspections and safety briefings, may benefit from the use of a checklist. Currently, WPES has detailed, step-by-step instructions that document how to reconcile invoices and how to obtain approval of invoices, and timelines comprising the due diligence needed to make the monthly major contract payments. These instructions, developed in 2021 and 2022, are not technically checklists, but continue to meet our needs.

As you note in your report, transaction management policies and procedures were under review in May 2023; we are pleased to report that those were completed in June 2023.

Proposed Plan: For health and safety, WPES will work with Metro's centralized Risk and Safety team in FRS (Risk) to complete operational SOPs and job hazard analyses. The responses to Recommendations 10 and 11 commit WPES to reviewing contract administration plans on an annual basis and adjusting as needed, including developing checklists, where they would be useful for contract administration.

Timeline: Metro will complete operational SOPs and job hazard analyses by June 30, 2024. WPES will complete safety inspection checklists for transfer stations and will complete its review of contract administration plans by June 30, 2024.

Recommendation 3. Train employees on policies and procedures.

Response: Management agrees that employees should be trained on all policies and procedures relevant to their work assignments. WPES employees are active participants on current committees to document such policies and procedures.

WPES provided 24-hour and 8-hour refresher trainings on Hazardous Waste Operations & Emergency Response (HAZWOPER) to HHW staff this summer, scheduled radiation awareness training for HHW staff and asbestos awareness training for Traffic and HHW staff and is in the process of scheduling OSHA 10 training for transfer station staff. OSHA 10 training includes walking and working surfaces, including fall protection; exit routes, emergency action plans, fire prevention plans and fire protection; electrical hazards; personal protective equipment; and hazard communication. Transfer station staff are scheduled for First Aid and CPR training this fall. WPES is working to establish annual onboarding and refresher health and safety training courses, which will be informed by the operational SOPs and job hazard analyses noted in the response to Recommendation 2. The WPES Safety Specialist will be certified as an OSHA 10 and 30 instructor to provide annual training for staff going forward, and will similarly be certified in First Aid and CPR training to provide biannual safety training for staff going forward. The WPES Safety Specialist will monitor health and safety training compliance through Metro Learning.

Proposed Plan: Health and safety training will be identified for each individual based on the operational SOPs and job hazard analyses currently in progress. Those trainings will be offered and tracked through Metro Learning and the WPES Safety specialist will partner with the Risk and the HR training and development team to identify and assign appropriate training, pulled from existing curriculum, to each employee. Further, WPES will develop guidance on what type of incidents will require after-action reviews (AARs), and how to best implement outcomes of AARs in health and safety documentation and training. WPES will establish twice yearly safety standdowns, during which operations are suspended, at each transfer station to provide safety training and complete hands-on drills.

For contract risk management training, please see response to Recommendation 12.

Point-of-sale systems controls training will be developed once a product is selected, and a training plan will be incorporated into the change management plan cited in the response to Recommendation 20.

To implement ongoing training on transaction management procedures and point-of-sale systems controls for existing staff, the WPES Deputy Director will assign the WPES Employee Development Program Manager to work with the GRO Division Director to explore the use of Metro Learning or another tool to initiate an annual training on policies and procedures, and to track completion of such training. New staff receive transaction management procedures training during onboarding.

Timeline: Safety standdowns will begin in Fall of 2024 and health and safety training will be completed by June 30, 2025. A plan for ongoing training on transaction management procedures and point-of-sale systems controls will be completed by June 30, 2024.

Recommendation 4. Establish annual policy and program reviews.

Response: Management agrees that periodic policy and program review is important and that WPES can improve its documentation of new procedures when operations change.

Proposed Plan:

Risk has already put processes in place to review and update all required Metro-wide safety policies on an annual basis and will similarly review each required Metro-wide safety program, update as needed, and post to the HR Policy MetroNet page when complete. WPES will establish twice yearly safety standdowns, during which operations are suspended at each transfer station to review operational and safety policies and procedures.

Regarding contract risk management policy review, please see our response to Recommendation 10.

Regarding transaction management and point-of-sale procedures, the WPES Deputy Director and GRO Division Director will develop a process for annual review.

Timeline: As part of the review process led by Risk, all policies cited in Exhibit 5 of the Auditor's report will be evaluated by June 30, 2024. Safety standdowns will begin in Fall of 2024. Annual review of management and point-of-sale procedures will begin in Fall of 2024.

Recommendation 5. Redefine the Asset and Environmental Stewardship division's system planners as business analysts with responsibility for monitoring:

- a. contract administration,
- b. operational trends, and
- c. strategic planning for operational changes.

Response: Management agrees that contract administration, operational trends and strategic planning for operational changes are important activities. Clarity around monitoring responsibility is also important.

Proposed Plan: WPES will assess staff capacity against department priorities to more clearly delineate roles and responsibilities related to monitoring contract administration, operational trends and strategic planning for operational change. Monitoring these activities is currently shared among work teams. A single point of responsibility for each will be defined and clearly assigned and communicated.

Timeline: WPES will clarify planner, analyst and management roles in monitoring contract administration, operational trends and strategic planning for operational change by June 30, 2024.

Recommendation 6. Develop a formal quarterly management report that includes standard data and analysis of operations.

Response: Management is already meeting this recommendation. WPES distributes a monthly operations performance report to a wide internal audience including WPES, FRS and OMA. The summary report illustrates data trends in tons, transactions, material recovery and costs. Real-time data on daily tonnage, material and customer counts that informs the reports for each transfer station is also available for view through a WPES dashboard. In addition to the monthly reports, WPES invites a wide internal audience to quarterly discussions of operational trends and anomalies. Separately, a WPES senior management analyst convenes management and staff from each site's operations teams along with the transfer, transport and disposal contractors

monthly to review performance, customer feedback, incidents, equipment maintenance and repairs, environmental and regulatory compliance, and to coordinate upcoming site activities. In addition, periodic safety-specific meetings are held for each operating site. As of August 2023, 44 safety meetings were held this calendar year.

Proposed Plan: No change. The monthly reports and quarterly and monthly meetings described above will continue indefinitely.

Timeline: The next two quarterly meetings are scheduled for November 1, 2023 and February 14, 2024, and monthly meetings will continue uninterrupted.

Recommendation 7. Distribute the report among stakeholders throughout the chain of command (oversight, management, employees) and hold quarterly meetings to discuss and manage challenges.

Response: Please see response to Recommendation 6.

Proposed Plan: No change.

Strengthen contract risk management practices for transfer station operations

Recommendation 8. Assess all transfer station-related contracts against FRS' contract risk criteria.

Response: Management agrees with this recommendation.

Proposed Plan: FRS staff will work with WPES staff to assess all transfer station-related contracts against the contract risk tool, which is scheduled to be updated this fiscal year. In addition, Procurement Services will modify the Procurement Request Form to ask the contracting department to identify risks, including those related to safety, environmental and overall policy compliance, in consultation with OMA and Risk. This form will continue to be used jointly with the other tools and resources available to contract managers to help identify and manage/mitigate risk. By implementing a revised risk section in the Procurement Request Form, OMA will be automatically notified of any identified risks. This adjusts Procurement Services' current intake processes which already includes risk identification in Step 4 of the Procurement Request Form. The current process is related to determining the proper insurance to cover the identified risk. Currently, high risk, non-standard and formally procured contracts are reviewed by the Office of Metro Attorney.

Timeline: Complete by June 30, 2024.

Recommendation 9. Designate the HHW transport and disposal contract as a high-risk contract to increase oversight.

Response: The new household hazardous waste (HHW) transport and disposal contract, which became effective on January 31, 2023, was treated as a high-risk contract from the beginning of the RFP planning process. The contract manager worked closely with OMA and Risk in developing the contract, RFP clauses and insurance requirements. While we agree that this contract is "high risk," we disagree that its formal designation as a "high risk" contract would have granted Metro

the ability or leverage to receive the certificates of disposal/certificates of treatment missing under the prior HHW transport and disposal contract. There is no regulatory requirement for hazardous waste transport and disposal contractors to provide certificates of disposal or certificates of treatment for the types of waste accepted by Metro HHW, i.e., *household* hazardous waste. But because these certificates are of significant interest to Metro and the public, OMA and WPES have successfully ensured that the current iteration of this contract subjects the contractor to liquidated damages for failure to provide timely certificates to Metro. This solution gives Metro leverage to ensure accountability and transparency, as well as a clear avenue for resolution before terminating the contract.

Important additional context is that because of the nature of the hazardous waste industry as a whole, transport of material can be delayed with multiple storage stops before end disposal – sometimes for up to two years. Metro requires documentation of these certificates from our contractor to help ensure Metro knows where its HHW is currently located or is finally disposed. In addition, the Metro Central Transfer Station Superintendent routinely requests certificates of disposal/certificates of treatment for both HHW facilities at each meeting with the contractor.

These meetings occur on a monthly basis at minimum but often occur weekly.

Proposed Plan: The new contract administration plan currently under development for the HHW transport and disposal contract will address areas of high risk by identifying GRO staff with oversight responsibility, setting clear expectations of those staff in documentation, checking invoices, checking certificates of disposal/certificates of treatment, following the Waste Disposal Plan and ensuring the vendor obtains prior approval from Metro for using facilities not approved within the Waste Disposal Plan.

Timeline: The contract administration plan for the HHW transport and collection contract will be finalized by December 31, 2023.

Recommendation 10. Update contract administration plans at least annually for each high-risk contract.

Response: Management agrees with this recommendation.

Proposed Plan: WPES will develop a schedule to review high-risk contracts on an annual basis and update contract administration plans as necessary.

Timeline: Complete plan reviews by June 30, 2024, and review at least annually.

Recommendation 11. Develop checklists and other guidance for each contract administration plan.

Response: Management agrees with this recommendation.

Proposed Plan: As mentioned in the response to Recommendation 10, WPES will develop a schedule to review the high-risk contract administration plans on an annual basis. The purpose of contract administration plans is to provide guidance to contract managers; where these plans require additional guidance, WPES will develop checklists as an added tool for contract administration.

Timeline: Contract reviews and development of additional checklists or guidance identified as part of that review will be completed by June 30, 2024.

Recommendation 12. Train employees who are assigned roles in the contract administration plans.

Response: Management agrees with this recommendation. WPES leadership also identified this training as a significant need and has been coordinating with other departments to develop contract management/administration guidance and training. OMA advised that contract management training requires a tailored approach for different types of contracts: construction, operational, service, real estate and on-call. In addition, levels of contract management responsibility vary in relation to the size of the contract. Contract management training should also address the roles of Procurement, OMA, contract administrators, department purchasing coordinators and specialized support for project managers, such as for construction contracts. Training would include how to develop a scope of work, track charges, expenditures and deliverables; understand legal language, contract administration controls and contract finances. WPES has identified a project manager to lead this work.

Proposed Plan: In partnership with FRS, HR and OMA, WPES will coordinate to develop a training plan for contract administration. Contract managers responsible for riskier contracts will be prioritized for immediate training.

Timeline: The plan will be complete by June 30, 2024.

Ensure contract risk management processes are followed

Recommendation 13. Meet regularly to monitor compliance with policies and procedures and initiate any corrective actions that may be needed.

Response: Management agrees with this recommendation. Management staff from FRS and WPES meet on a regular basis, and we will ensure those meetings include discussions to monitor compliance with policies and procedures and initiate any corrective actions that may be needed.

Proposed Plan: FRS and WPES will update standing meeting agendas to include this topic.

Timeline: Complete by November 30, 2023.

Align Metro's procurement processes with Oregon law and Metro's Administrative Rules

Recommendation 14. Finalize policies, procedures and guidance to ensure complete documentation of contract files are available in Content Manager.

Response: Management agrees with this recommendation. FRS' Procurement Services team has been aware of some inconsistency in properly filing contract documents in Content Manager. In response, Procurement Services hired a new Contract Specialist in March of 2023 who has implemented a document checklist of all procurement and contract-related files that need to be

filed in Content Manager for each contract.

Proposed Plan: Procurement Services is currently writing a new document filing procedure to ensure completeness and accuracy of all procurement and contract-related files.

Timeline: Complete by June 30, 2024.

Reduce gaps and overlaps in WPES internal controls

Recommendation 15. Complete the garbage and recycling systems plan as soon as possible.

Response: Management agrees with this recommendation.

Proposed Plan: The Garbage and Recycling System Facilities Plan will provide a long-range infrastructure plan and key investments needed to fulfill the Regional Waste Plan goals including improving access to reuse, recycling and garbage service. The plan is designed to provide options for Council to decide the future infrastructure investments. The plan development is structured across five phases and is currently in phase three of development.

Timeline: Complete in Spring of 2024.

Recommendation 16. Develop a plan to prepare Metro to implement new or changed operations resulting from the plan.

Response: Management agrees with this recommendation.

Proposed Plan: When the Systems Facility Plan is complete, WPES will prepare a plan or plans to guide any operational changes.

Timeline: WPES will propose a plan or plans by Spring of 2024, contingent on Metro Council direction.

Recommendation 17. Finalize the facility condition assessments for Metro South and Metro Central.

Response: Management agrees with this recommendation. WPES engaged a contractor to complete facility condition assessments in 2022. While the assessment project was in process the WPES Facilities Manager departed Metro for another position. The project was substantially complete but required subject matter expert review. WPES' new Facilities Manager started in July 2023 has worked with the contractor to finalize the condition assessments; the Facilities Manager has subsequently identified renewal and replacement projects using the assessment data, and those projects are included in WPES' capital improvement plan.

Proposed Plan: No changes, this recommendation is complete.

Recommendation 18. Update the WPES capital improvement plan based on finalized condition assessments.

Response: Management agrees with this recommendation.

Proposed Plan: WPES commissioned the facility condition assessments for the purpose of

informing the replacement and renewal amount needed in the capital improvement plan. WPES staff are currently working with Capital Asset Management department staff to evaluate the condition assessment documents and estimate full project costs. The capital improvement plan is under development as of September 2023 and the condition assessments will be fully incorporated during the next FY cycle.

Timeline: Complete by October 31, 2024.

Recommendation 19. Continue to evaluate the costs and benefits of switching to entirely Metro run transfer station operations to inform future decision-making.

Response: Management agrees with this recommendation. Metro competitively procures new transfer station operating contracts approximately every 10 years. Each time one of Metro's two operating contracts is replaced, staff consider which operating model would best serve the public interest. Per Regional Waste Plan guidance (Goal 3), throughout 2021 and 2022 Metro thoroughly assessed the opportunity for operating Metro Central with public staff. While Metro ultimately did not decide to fully staff the station with public employees, Metro will be playing a larger direct role in operations at Metro Central. Beginning Jan. 1, 2024 Metro will own and maintain most of the heavy equipment used by the contractor on site.

Proposed Plan: At the next transfer station operations procurement opportunity, staff will again assess costs, benefits and risks of staffing operations with public employees versus contracting for the work.

Timeline: Ongoing as part of the normal operations contract procurement process.

Recommendation 20. Assign responsibility for creating and managing a change management plan to implement the new point-of-sale system.

Response: Management agrees with this recommendation. WPES is working jointly with executive stakeholders from IT, HR, FRS, OMA, and Capital Asset Management in the RFP phase and has already developed a communications plan and begun discussing a change management plan.

Proposed Plan: WPES will need a signed contract with the selected vendor to inform implementation and finalization of a change management plan. The WPES AES Division Director will work with the vendor and an IT project manager to develop a change management plan.

Timeline: WPES will need a signed contract with the selected vendor to inform a timeline.

I want to express my gratitude to you and your team for performing this audit and for the opportunity to submit a management response.

Sincerely,



Marissa Madrigal, Chief Operating Officer

In response to a request for clarification about the training schedule, management provided the following additional information:

Thank you for the opportunity to clarify our response, commitment, and sense of urgency in regard to employee training. The FY 24-25 goal for completion of training set out in our response is referring to new/and or individualized trainings determined by the new JHAs and operational SOPs. It does not refer to trainings on existing SOPs or required trainings that have been missed. For that, we have provided HAZWOPER refresher training for HHW staff (August 29-31 and Sept. 5 and 8) and have training scheduled for all employees in transfer station operations in the short term which will run concurrently with our efforts to revise SOPs and JHAs. We apologize if that was not clear in our response and we are happy to amend our response for clarity if that is okay with you.

In a change that I believe demonstrates our commitment, going forward Metro is planning to curtail transfer station operations twice a year to create time for employees to attend safety standdowns. The first was tentatively booked for September of 2024, but I have asked the department to push that up to hit a May 2024 date.

In addition, a few upcoming trainings include but are not limited to:

- Two trainings in Radiation Awareness for HHW staff: Sept. 26 and 29, Oct 6 and 9
- Three trainings in Asbestos Awareness for all staff that did not attend the 3-day AHERA Asbestos Hazard Emergency Response Act) training: Sept. 20, Nov. 2 and Nov. 8
- Two HAZWOPER 8-hour trainings for HHW and Recology staff: Sept. 22 and 15
- One HAZWOPER 24-hour training for HHW staff, plus two Traffic staff for awareness: Aug 29 through 31
- Four trainings in OSHA 10 for transfer station staff: Nov 14 and 15, Nov 28 and 29, Dec 4 and 5, Dec 21 and 22
- Emergency Response Training (First Aid and CPR): To be scheduled this fall

To further explain the timeline for *new/individualized* training as a result of SOPs and JHAs, it is OSHA (Occupational Safety and Health Administration) best practice to use operational SOPs and job hazard analyses (JHAs) to identify training specific to individuals. Under the OSH Act General Duty clause, employers must mitigate and keep worksites free from hazards to the best of our ability. This requires codifying tasks for each job to identify clear steps and hazards specific to those tasks. The SOPs and JHAs will take time to complete since most are being generated for the first time or have not been updated in nearly 15 years. WPES reports that there are nearly 80 SOPs to contend with for HHW, and they undergo a multilevel revision process that involves management and front line workers. Once complete, they are considered living documents and will be updated as needed and through annual reviews.



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Transfer Station Operating Controls: Strengthen management practices to reduce risks

Why this audit is important

Metro's Waste Prevention and Environmental Services (WPES) department manages two publicly-owned solid waste transfer stations in the region. Together these facilities process about 39% of the waste generated in the region.

The purpose of this audit was to determine whether Metro had effective policies and procedures to manage safety, financial, and environmental risks. Garbage and recycling services do not draw a lot of attention when working well, but if they are unable to meet the public's needs it can have a profound effect on their trust in government.

Metro's transfer station operations are at a critical moment in time. Intense weather events like snow and ice storms, poor air quality, and extreme heat have closed the stations on several occasions in recent years. Long-serving employees have retired, or will retire, in the coming years. Buildings, equipment, and the point-of-sale system all require substantial investments.



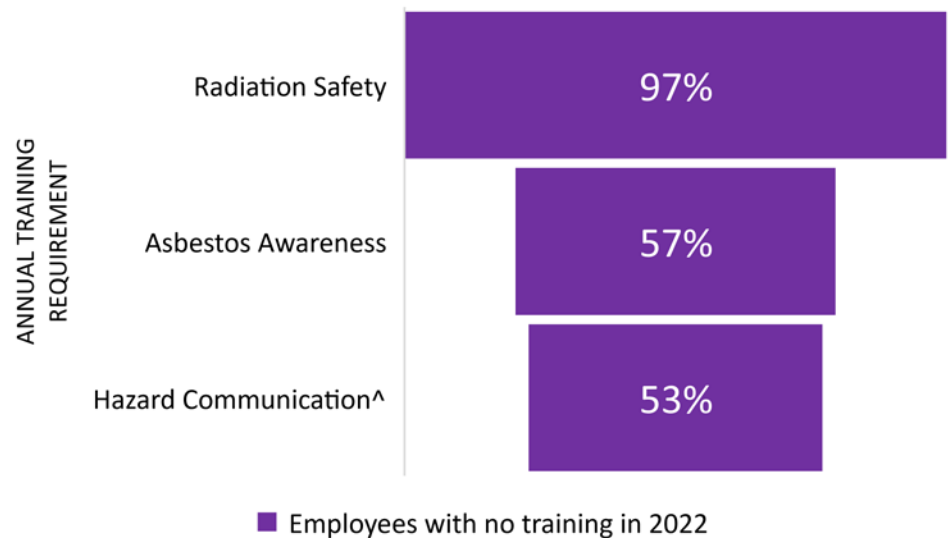
Source: Metro South, 2030 Regional Waste Plan, March 2019

What we found

The audit found there were gaps in roles and responsibilities for transfer station operations that increased health and safety, and financial risks. Procedures to manage some risks were underdeveloped or not assigned. Ad hoc management practices reduced transparency and accountability for transfer station operations.

The effectiveness of the health and safety program was reduced by shared responsibilities among and within Metro departments and external contractors. Policies and procedures were not kept up to date, required training was not offered or completed, and oversight of program effectiveness was not done.

Lack of training can increase risk



Source: Auditor's Office analysis of training records

^It is possible that up to 63% of employees did not complete this training. Management stated that six employees took the course who were not included in the training records we received.

The audit also found risk management tools were not used consistently. Insufficient risk assessment and contract administration planning increased the chance of WPES not getting what it paid for or paying more than it should have.

The weaknesses identified in this report indicate a lack of basic management practices and commitment to a long-term vision for Metro's part of the regional solid waste system. It will take sustained attention at the highest levels of the organization to overcome these challenges.

What we recommend

The audit included 20 recommendations. Twelve were designed to strengthen internal controls and contract risk management practices. Two focused on ensuring compliance with internal processes. The final six recommendations were related to reducing gaps and overlaps in WPES oversight.

Agenda Item No. 4.1

Ordinance No. 23-1498, For the Purpose of Amending Certain
Metro Code Chapters in Title V ("Solid Waste") for Housekeeping
updates and to Incorporate Plain Language Best Practices
Ordinance

Metro Council Meeting
Thursday, October 19, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CERTAIN	)	ORDINANCE NO. 23-1498
METRO CODE CHAPTERS IN TITLE V (SOLID)	
WASTE) FOR HOUSEKEEPING UPDATES AND	)	Introduced by Chief Operating Officer
TO INCORPORATE PLAIN LANGUAGE BEST	)	Marissa Madrigal in concurrence with
PRACTICES	)	Council President Lynn Peterson

WHEREAS, in December 2022 Metro Council adopted Resolution No. 22-5293. This required that Metro Code be written using plain and inclusive language best practices, and acknowledged that Metro's regulatory code chapters should be updated frequently to ensure consistency with state and federal law and quickly address regulatory clarity concerns; and

WHEREAS, Resolution No. 22-5293 also establishes an expectation that all Metro Code chapters be reviewed on a regular basis. This ensures that the Metro Code remains consistent internally; is updated to reflect changes in law, circumstances or best practices; and is clear; concise; inclusive; and transparent; and

WHEREAS, Metro Code Chapter 5.01 (Solid Waste Facility Regulation) and Metro Code Chapter 5.05 (Solid Waste Flow Control) are two regulatory chapters in Title V that should be reviewed annually to ensure they keep abreast with changes in state or federal law and have ongoing regulatory clarity; and

WHEREAS, pursuant to Resolution No. 22-5293, Metro staff has reviewed Metro Code chapters 5.01 and 5.05 to incorporate plain and inclusive language best practices; and

WHEREAS, for the past several months, solid waste staff have compiled a list of future necessary code changes when they discovered errors in the code, and this code housekeeping update corrects those errors; and

WHEREAS, the changes and updates to these code chapters do not change Metro policy, nor are they intended as substantive changes to current regulations and requirements; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.01 (Solid Waste Facility Regulation) is amended as set forth in Exhibit A, with inserted text underlined and deleted text in strikethrough.
2. Metro Code Chapter 5.05 (Solid Waste Flow Control) is amended as set forth in Exhibit B, with inserted text underlined and deleted text in strikethrough.

ADOPTED by the Metro Council this 19th day of October 2023.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

EXHIBIT A
Ordinance No. 23-1498
Solid Waste Facility Regulation

CHAPTER 5.01

SOLID WASTE FACILITY REGULATION

GENERAL PROVISIONS

- 5.01.010 Purpose
- 5.01.020 Authority and Jurisdiction
- 5.01.030 Prohibited Activities
- 5.01.040 Exemptions to Prohibited Activities

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

- 5.01.050 License Requirements and Fees
- 5.01.060 Pre-Application Conference for Licenses
- 5.01.070 Applications for Licenses
- 5.01.080 License Issuance
- 5.01.090 License Contents
- 5.01.100 Record-keeping and Reporting for Licenses
- 5.01.110 License Renewal
- 5.01.120 Transfer of Ownership or Control of Licenses
- 5.01.130 Change of Authorizations for Licenses
- 5.01.140 Variances for Licenses

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

- 5.01.150 Franchise Requirements and Fees
- 5.01.160 Pre-Application Conference for Franchises
- 5.01.170 Applications for Franchises
- 5.01.180 Franchise Issuance
- 5.01.190 Franchise Contents
- 5.01.195 Putrescible Waste Tonnage Allocation Framework
- 5.01.200 Record-keeping and Reporting for Franchises
- 5.01.210 Franchise Renewal
- 5.01.220 Transfer of Ownership or Control of Franchises
- 5.01.230 Change of Authorizations for Franchises
- 5.01.240 Variances for Franchises

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

- 5.01.250 General Obligations of All Regulated Parties
- 5.01.260 Obligations and Limits for Selected Types of Activities
- 5.01.270 Direct Haul of Putrescible Waste

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

- 5.01.290 Inspections, Audits and other Investigations of Solid Waste Facilities
- 5.01.300 Regional System Fees
- 5.01.310 Determination of Rates

ENFORCEMENT AND APPEALS

- 5.01.320 Enforcement Provisions
- 5.01.330 Penalties
- 5.01.340 Appeals

MISCELLANEOUS PROVISIONS

- 5.01.350 Miscellaneous Provisions

Repealed

- 5.01.010 Definitions
[Repealed Ord. 14-1331]
- 5.01.065 Issuance and Contents of Certificates
[Repealed Ord. 03-1018A Sec. 7]
- 5.01.080 Term of Franchise
[Repealed Ord. 98-762C Sec. 21]
- 5.01.085 Franchises for Major Disposal System Components
[Repealed Ord. 98-762C Sec. 21]
- 5.01.190 Right to Purchase
[Repealed Ord. 98-762C Sec. 46]
- 5.01.230 Additional Provisions Relating to the Licensing of Yard Debris Processing
- 5.01.380 Facilities and Yard Debris Reload Facilities
[Repealed Ord. 98-762C Sec. 49]
- 5.01.130 Administrative Procedures for Franchisees
[Repealed Ord. 98-762C Sec. 29]
- 5.01.131 Designation and Review of Service Areas and of Demand
[Repealed Ord. 12-1272 Sec. 4]
- 5.01.160 Reports from Collection Services
[Repealed Ord. 98-762C Sec. 42]
- 5.01.210 Acceptance of Tires at a Disposal Site
[Repealed Ord. 98-762C Sec. 48]
- 5.01.220 Additional Provisions Relating to Issuance of a Franchise for a Facility
Processing Petroleum Contaminated Soil
[Repealed Ord. 98-762C Sec. 48]
- 5.01.280 Authority of Chief Operating Officer to Adopt and Amend Rules, Standards,
and Forms
[Repealed Ord. 19-1441]
- 5.01.400 Treatment of Existing Licenses and Franchises
[Repealed Ord. 03-1018A Sec. 23]

GENERAL PROVISIONS

5.01.010 Purpose

- (a) This chapter governs the regulation of solid waste disposal sites and solid waste facilities within Metro. The purposes of this chapter are to:
 - (1) Protect and preserve the health, safety and welfare of Metro's residents;
 - (2) Implement the Regional Waste Plan cooperatively with federal, state and local agencies;
 - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all ~~citizens~~ residents of Metro; and
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery.
- (b) The provisions of this chapter ~~shall~~ will be liberally construed to accomplish these purposes. [Ord. 81-111, Sec. 3; Ord. 95-621A, Sec. 2; Ord. 98-762C, Secs. 2-3; Ord. 02-974; Ord. 16-1387; Ord. 19-1432.]

5.01.020 Authority and Jurisdiction

- (a) Metro's solid waste regulatory authority is derived from the Oregon Constitution, ORS Chapter 268 for solid waste and the Metro Charter. It includes authority to regulate solid waste generated or disposed within Metro and all solid waste facilities located within Metro.
- (b) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those contained in this chapter. Nothing in this chapter is intended to abridge or alter the rights of action by the State or by a person which exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. [Ord. 98-762C, Secs. 4-5; Ord. 02-974; Ord. 16-1387.]

5.01.030 Prohibited Activities

Except as otherwise provided in this chapter, or in ~~Metro Code~~ Chapter 5.05, it is unlawful for:

- (a) Any person to establish, operate, maintain or expand a solid waste facility or disposal site within Metro without an appropriate license or franchise from Metro.
- (b) Any person or solid waste facility to either (1) mix source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal, or (2) to dispose of source-separated recyclable material by any method other than reuse or recycling. As used in this subsection, "reuse or recycling" includes the transfer, transport or delivery of such materials to a person or facility that will reuse or recycle them.
- (c) A licensee or franchisee to receive, process or dispose of any solid waste unless authorized by the license or franchise.

- (d) Any person to transport any solid waste to or to dispose of any solid waste at any place other than a solid waste facility or disposal site that is operated by a licensee or franchisee or is otherwise exempt under Section 5.01.040.
- (e) A licensee or franchisee to violate or fail to meet the rules, performance standards, procedures, and forms adopted pursuant to ~~Section Chapter 5.01.280.5.08.~~
- (f) Any person to treat or dispose of petroleum contaminated soil by ventilation or aeration except at the site of origin.
- (g) Any person to store electronic device waste uncovered and outside of a roofed structure. [Ord. 81-111, Sec. 4; Ord. 87-217, Sec. 1; Ord. 95-621A, Sec. 3; Ord. 98-762C, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 2; Ord. 06-1102, Sec. 1; Ord. 16-1387.]

5.01.040 Exemptions to Prohibited Activities

- (a) The provisions of this chapter do not apply to a:
 - (1) Municipal or industrial sewage treatment plants ~~s~~ accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
 - (2) Disposal sites ~~s~~, transfer stations ~~s~~, or solid waste ~~facilities~~ facility owned or operated by Metro, except that Metro must pay regional system fees per Section 5.01.300.
 - (3) Conversion technology ~~facilities~~ facility that exclusively receives ~~s~~ non-putrescible waste for use as feedstock that has been:
 - (A) Extracted from other solid waste: and
 - (B) Processed to meet prescribed specifications for direct introduction into a conversion technology process.
 - (4) Specific material recyclers ~~s~~ that receives ~~s~~ and processes ~~s~~ a single type of non-putrescible recyclable material that holds intrinsic value in established reuse and recycling markets such as scrap metal, plastic, paper or similar commodities.
 - (5) Facility ~~ies~~ that exclusively receives ~~s~~, processes ~~s~~, transfers ~~s~~ or disposes ~~s~~ of inert waste.
 - (6) Persons ~~s~~ who generates ~~s~~ and maintains ~~s~~ residential compost piles for residential garden or landscaping purposes.
 - (7) Residences ~~s~~, parks ~~s~~, community gardens ~~s~~ and homeowner associations ~~s~~.
 - (8) ~~Universities~~ University, schools ~~s~~, hospitals ~~s~~, golf courses ~~s~~, industrial parks ~~s~~, and other similar ~~facilities~~ facility, if the landscape waste or yard debris was generated from the facility's own activities, the product remains on the facility grounds, and the product is not offered for off-site sale or use.
 - (9) An operation or facility that processes wood wastes, unless:
 - (A) The wood wastes are processed for composting; or

- (B) The operation or facility is other-wise regulated under this chapter.
- (10) Temporary transfer station~~s~~ or processing center~~s~~ established and operated by a government for 60 days or less to temporarily receive, store or process solid waste, provided that Metro finds an emergency situation exists.
- (11) Person~~s~~ who own~~s~~ or operate~~s~~ a mobile facility that processes petroleum contaminated soil at the site of origin and retains any treated petroleum contaminated soil on the site of origin.
- (b) Notwithstanding Section 5.01.040(a), all persons must comply with Sections 5.01.030(a), (b), (d) and (f).
- (c) The provisions of Section 5.01.290 apply to the activities and facilities described in Sections 5.01.040(a)(3) through 5.01.040(a)(11). [Ord. 81-111, Sec. 5; Ord. 82-136, Sec. 1; Ord. 91-422B, Sec. 2; Ord. 95-621A, Sec. 4; Ord. 98-762C, Sec. 7; Ord. 00-866, Sec. 2; Ord. 02-933, Sec. 1; Ord. 02-974; Ord. 03-1018A, Sec. 3; Ord. 06-1102, Sec. 2; Ord. 07-1147B, Sec. 2; Ord. 16-1387; Ord. 17-1411.]

APPLICATIONS FOR SOLID WASTE FACILITY LICENSES

5.01.050 License Requirements and Fees

- (a) A Metro solid waste license is required of any person owning or controlling a facility at which the person performs any of the following activities:
 - (1) Processing non-putrescible waste.
 - (2) Processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or by any other methods that destroy or remove such petroleum contamination from the soil.
 - (3) Processing of yard debris or yard debris mixed with residential food waste.
 - (4) Reloading solid waste.
 - (5) Processing wood waste for use as an industrial fuel if such facility is otherwise regulated under this chapter.
- (b) The annual fee for a solid waste license may not exceed \$300.~~00~~.
- (c) The application fee for a new or renewal license is \$300.~~00~~. The application fee is due at the time of filing.
- (d) The annual solid waste license fee is in addition to any other fee, tax or charge imposed upon a licensee.
- (e) The licensee must pay the license fee in the manner and at the time required by the Chief Operating Officer. [Ord. 81-111, Sec. 15; Ord. 98-762C, Secs. 8-9; Ord. 98-762C, Sec. 40; Ord. 98-767, Sec. 5; Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 02-974; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.060 Pre-Application Conference for Licenses

- (a) An applicant for a new license must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new license does not file an application for a license within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing another application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.070 Applications for Licenses

- (a) An applicant for a new or renewal license must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) A license application must also include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning ~~director~~ department of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (6) Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.080 License Issuance

- (a) The Chief Operating Officer may approve or deny license applications and impose conditions on any approved license as the Chief Operating Officer considers appropriate.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officers considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Before approving or denying a license application, the Chief Operating Officer must provide public notice and an opportunity for public comment on the license application.
- (d) The Chief Operating Officer will determine if the proposed license meets the requirements of Section 5.01.070 based on the:
 - (1) Submitted application,
 - (2) Chief Operating Officer's investigation regarding the application information, and
 - (3) Public comments.
- (e) If the Chief Operating Officer does not approve or deny a new license application within 180 days after the applicant files a complete application, the license is deemed granted for the solid waste facility or activity requested in the application. The deadline for the Chief Operating Officer to approve or deny an application may be extended as provided in this section. If a license is issued pursuant to the subsection, then the license will contain the standard terms and conditions included in other comparable licenses issued by Metro.
- (f) At any time after an applicant files a complete license application, the deadline for the Chief Operating Officer to approve or deny the application is extended if:
 - (1) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Chief Operating Officer to act is restarted as of the date Metro receives the applicant's modifications; or
 - (2) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (g) An applicant may withdraw its application at any time before the Chief Operating Officer's decision and may submit a new application at any time thereafter.

- (h) If the Chief Operating Officer denies a license request, the applicant may not file a new application for the same or substantially similar license for at least six months from the denial date. [Ord. 98-762C, Secs. 16-17; Ord. 02-974; Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.090 License Contents

- (a) A license will specify authorized activities, the types and amounts of wastes the solid waste facility may accept, and any other conditions the Chief Operating Officer imposes.
- (b) In addition to this section's requirements, if a license authorizes the licensee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading, the license is subject to the [requirements of Section 5.01.260 and any corresponding](#) rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to [Section 5.01.260 Chapter 5.08](#).
- (c) The license must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
 - (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) Record-keeping. A licensee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives, recycles, reloads or disposes.
- (d) A license term may not exceed five years, except that the Chief Operating Officer may extend the license term for up to one year. [Ord. 98-762C, Secs. 16-17; Ord. 02-974;

Ord. 03-1018A, Sec. 8; Ord. 06-1098B, Sec. 2; Ord. 07-1138, Sec. 1; Ord. 07-1139, Sec. 2; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.100 Record-keeping and Reporting for Licenses

- (a) A licensee must maintain accurate records of the information that the Chief Operating Officer requires. A licensee must report the required information on the forms, in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. The licensee or its authorized representative must sign the report and certify it as accurate.
- (b) A licensee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.
- (c) A licensee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the licensee received the complaint, and any response by the licensee to the complaint.
- (d) A licensee must retain all records required by this chapter for three years (except for the complaint records in subsection (c)) and make them available for inspection by the Chief Operating Officer.
- (e) Any information the licensee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the licensee requests exception from disclosure consistent with Oregon Law. [Ord. 98-762C, Secs. 38-39; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.110 License Renewal

- (a) The Chief Operating Officer is responsible for approving or denying a solid waste facility license renewal. The Chief Operating Officer will approve or deny a license renewal consistent with this section.
- (b) A licensee seeking renewal of a license must submit a request as required by this section not less than 120 days before the license's expiration date. The licensee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$300.~~00~~ application fee; and
 - (3) Provide a statement of proposed material changes from the previous license application, along with any other information the Chief Operating Officer requires.
- (c) The Chief Operating Officer must approve a solid waste facility license renewal unless the Chief Operating Officer determines that the proposed renewal is not in

the public interest. The Chief Operating Officer may attach conditions to any renewed license.

- (d) The Chief Operating Officer is not obligated to renew a license earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.120 Transfer of Ownership or Control of Licenses

- (a) A licensee must notify Metro within 10 days if the licensee leases, assigns, mortgages, sells or otherwise transfers control of the license to another person, whether whole or in part. The transferee of a license must meet the requirements of this chapter.
- (b) The term for any transferred license is for the remainder of the original term unless the Chief Operating Officer establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.130 Change of Authorizations for Licenses

- (a) A licensee must submit an application pursuant to Section 5.01.070 when the licensee requests authority to:
 - (1) Accept wastes other than those the license authorizes, or
 - (2) Perform activities other than those the license authorizes, or
 - (3) Modify other limiting conditions of the applicant's license.
- (b) The licensee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorizations or limits to the applicant's license does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (d) A licensee must notify Metro in writing when the licensee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.00. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.140 Variances for Licenses

- (a) The Chief Operating Officer may grant specific variances from particular requirements of this chapter to applicants for licenses or to licensees to protect public health, safety and welfare.
- (b) In order to grant a variance, the Chief Operating Officer must find that the licensee or applicant can achieve the purpose and intent of the particular license

requirement without compliance and that compliance with the particular requirement:

- (1) Is inappropriate because of conditions beyond the applicant's or licensee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A licensee or applicant must request a variance in writing and must concisely state why the Chief Operating Officer should grant the variance. The Chief Operating Officer may investigate the request as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must approve or deny the variance request within 60 days.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.050.
- (f) If the Chief Operating Officer denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to ~~Code~~ Chapter 2.05.
- (g) If the Chief Operating Officer denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the date of denial. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

APPLICATIONS FOR SOLID WASTE FACILITY FRANCHISES

5.01.150 Franchise Requirements and Fees

- (a) A Metro solid waste franchise is required of any person owning or controlling a facility at which the person performs any of the following activities:
 - (1) Processing putrescible waste other than yard debris and yard debris mixed with residential food waste.
 - (2) Operating a transfer station.
 - (3) Operating a disposal site or an energy recovery facility.
 - (4) Any process using chemical or biological methods whose primary purpose is reduction of solid waste weight or volumes.
 - (5) Any other activity not listed in this section or exempted by Metro Code Section 5.01.040.
- (b) The annual fee for a solid waste franchise is \$500.~~00~~.
- (c) The franchise fee is in addition to any other fee, tax or charge imposed upon a franchisee.

- (d) The franchisee must pay the franchise fee in the manner and at the time required by the Chief Operating Officer.
- (e) The application fee for a new or renewal franchise is \$500.~~00~~. The application fee is due at the time of filing. [Ord. 98-762C, Secs. 8-9. Ord. 00-866, Sec. 3; Ord. 02-933, Sec. 2; Ord. 03-1018A, Sec. 4; Ord. 14-1332; Ord. 16-1387.]

5.01.160 Pre-Application Conference for Franchises

- (a) An applicant for a new franchise must attend a pre-application conference. The purpose of the conference is to provide the applicant with information regarding the requirements for the proposed facility and to have the applicant describe the proposed facility's location, site conditions and operations.
- (b) If an applicant for a new franchise does not file an application for a franchise within one year from the date of the pre-application conference, the applicant must attend a subsequent pre-application conference before filing any application. [Ord. 98-762C, Secs. 11-12; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

5.01.170 Applications for Franchises

- (a) An applicant for a new or renewal franchise must file the application on forms or in the format required by the Chief Operating Officer.
- (b) The applicant must include a description of the activities the applicant proposes to conduct and a description of the waste it seeks to accept.
- (c) An application for a franchise must include the following information:
 - (1) Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the franchise term;
 - (2) A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;
 - (3) A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the cost of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;
 - (4) Signed consent by the property owner(s) agreeing to the property's proposed use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the franchise or refuses any franchise renewal;
 - (5) Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations,

expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and Development Commission; and

- (6) Any current permit and a list of anticipated permits that any other governmental agency may require. If the applicant has previously applied for other permits, the applicant must provide a copy of the permit application and any permit that another governmental agency granted as a result.
- (d) An analysis of the factors described in Section 5.01.180(f) must accompany an application for a franchise. [Ord. 81-111, Sec. 7; Ord. 82-136, Sec. 2; Ord. 91-422B, Sec. 3; Ord. 95-621A, Sec. 5; Ord. 98-762C, Sec. 13; Ord. 00-866, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 5; Ord. 04-1056, Sec. 1; Ord. 05-1093, Sec. 1; Ord. 06-1098B, Sec. 1; Ord. 06-1101; Ord. 07-1139, Sec. 1; Ord. 07-1161, Sec. 1; Ord. 14-1332; Ord. 16-1387.]

5.01.180 Franchise Issuance

- (a) The Chief Operating Officer will review franchise applications filed under Section 5.01.170. Council may approve or deny the franchise application.
- (b) The Chief Operating Officer may make any investigation regarding the application information as the Chief Operating Officer considers appropriate. This includes the right of entry onto the applicant's proposed site.
- (c) Upon the basis of the application, evidence submitted and results of the investigation, the Chief Operating Officer will make a recommendation regarding whether the:
 - (1) Applicant is qualified;
 - (2) Proposed franchise complies with the Regional Waste Plan;
 - (3) Proposed franchise meets the requirements of Section 5.01.170; and
 - (4) Applicant has complied or can comply with all other applicable regulatory requirements.
- (d) The Chief Operating Officer will provide the recommendations required by subsection (c) to the Council, together with the Chief Operating Officer's recommendation regarding whether Council should grant or deny the application. If the Chief Operating Officer recommends that Council grant the application, the Chief Operating Officer may also recommend specific conditions of the franchise.
- (e) After Council receives the Chief Operating Officer's recommendation, the Council will issue an order granting or denying the application. The Council may attach conditions to the order or limit the number of franchises granted. If the Council issues an order to deny the application, the order is effective immediately.
- (f) The Council will consider the following factors when determining whether to issue a franchise:

- (1) Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Waste Plan;
 - (2) The effect that granting a franchise will have on the cost of solid waste disposal and recycling services for the ~~citizens~~ residents of the region;
 - (3) Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;
 - (4) Whether granting a franchise is likely to adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;
 - (5) Whether the applicant has demonstrated the strong likelihood that it will comply with all requirements and standards of this chapter, the administrative rules and performance standards adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08 and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.
- (g) If the Council does not approve or deny a new franchise application within 180 days after the applicant files a complete application the franchise is deemed granted for the solid waste facility or disposal site requested in the application. The deadline for the Council to approve or deny an application may be extended as provided in this section. If a franchise is issued pursuant to the subsection, then the franchise will contain the standard terms and conditions included in other comparable franchises issued by Metro.
- (h) At any time after an applicant files a complete franchise application, the deadline for the Council to approve or deny the application is extended if:
- (1) The Council extends the deadline for up to an additional 60 days, which the Council may do only once for any single application;
 - (2) The applicant substantially modifies the application during the review period, in which case the 180 days review period for the Council to act is restarted as of the date Metro receives the applicant's modifications; or
 - (3) The applicant and Chief Operating Officer mutually agree to extend the deadline for a specified time period.
- (i) An applicant may withdraw its application at any time before the Council's decision and may submit a new application at any time thereafter.
- (j) If the Council denies a franchise request, the applicant may not file a new application for the same or substantially similar franchise for at least six months from the denial date.
- (k) A franchise term may not exceed five years, except that the Chief Operating Officer may extend the term of a franchise for up to one year. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387; Ord. 19-1432.]

5.01.190 Franchise Contents

- (a) The franchise is the Council's grant of authority to accept the waste and perform the activity or activities described in the franchise, the conditions under which these activities may take place and the conditions under which Metro may revoke the authority.
- (b) Franchises must be in writing and include:
 - (1) The term of the franchise;
 - (2) The specific activities the franchisee may perform and the types and amounts of waste the franchisee may accept at the solid waste facility;
 - (3) Any other conditions the Council considers necessary to ensure the franchisee complies with the intent and purpose of this chapter; and
 - (4) Indemnification of Metro in a form acceptable to the Metro Attorney.
- (c) A franchise that authorizes a franchisee to accept mixed non-putrescible waste for the purpose of conducting material recovery or reloading is subject to the rules, procedures, performance standards, design requirements, and operating requirements adopted pursuant to ~~Section 5.01.280~~Chapter 5.08. The franchise must require that the facility operate in a manner that meets the following general performance goals:
 - (1) Environment. It is designed and operated to avoid undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of hazardous waste asbestos and other prohibited wastes.
 - (2) Health and Safety. It is designed and operated to avoid conditions that may degrade public health and safety including, but not limited to, fires, vectors, pathogens and airborne debris.
 - (3) Nuisances. It is designed and operated to avoid nuisance conditions including, but not limited to, litter, dust, odors, and noise.
 - (4) Material Recovery. Facilities that conduct material recovery on non-putrescible waste must be designed and operated to recover materials in a timely manner, to meet standards in Section 5.01.260, and to protect the quality of non-putrescible waste that has not yet undergone material recovery.
 - (5) Reloading. Facilities that reload non-putrescible waste must be designed and operated to rapidly and efficiently reload and transfer that waste to a Metro authorized processing facility while protecting the quality of non-putrescible waste that has not yet undergone material recovery.
 - (6) Record-keeping. A franchisee must maintain complete and accurate records of the amount of all solid waste and recyclable materials that it receives,

recycles, reloads or disposes. [Ord. 98-762C, Secs. 19-20; Ord. 02-974; Ord. 03-1018A, Sec. 10; Ord. 07-1138, Sec. 2; Ord. 14-1332; Ord. 16-1387.]

5.01.195 Putrescible Waste Tonnage Allocation Framework

- (a) The Chief Operating Officer will allocate putrescible waste tonnage amounts to a transfer station in accordance with the allocation methodology under applicable administrative rule and this chapter's requirements.
- (b) The Chief Operating Officer may allocate tonnage to either a transfer station that is franchised under this chapter or a transfer station that is designated under Chapter 5.05.
- (c) In addition to the allocation methodology factors adopted by administrative rule, the Chief Operating Officer may also consider the following factors when allocating tonnage amounts annually:
 - (1) The public benefits to the regional solid waste system;
 - (2) How the allocation will affect the regional solid waste system;
 - (3) How the allocation will affect the proportional amount of regional tonnage reserved for Metro's transfer stations (a minimum of 40 percent of the regional tonnage is to be reserved for Metro transfer stations);
 - (4) The proportional amount of regional tonnage allocated to companies;
 - (5) The rate that the transfer station charges for accepting putrescible waste; and
 - (6) Any other factor the Chief Operating Officer considers relevant to achieve the purposes and intent of this section.
- (d) The Chief Operating Officer may further adjust a transfer station's tonnage allocation at other times if it is in the public interest and necessary to address a significant disruption as defined in Chapter 5.00. An adjustment under this subsection does not require Council approval.
- (e) The Chief Operating Officer may not allocate more than 40 percent of the available regional tonnage to any combination of transfer stations owned by the same company. [Ord. 18-1426.]

5.01.200 Record-keeping and Reporting for Franchises

- (a) A franchisee must maintain accurate records of the information the Chief Operating Officer requires and report that information on the forms or in the format and within the reporting periods and deadlines that the Chief Operating Officer establishes. A franchisee's authorized representative must sign the report and certify it as accurate.
- (b) A franchisee must provide copies of any correspondence with any federal, state or local government agency related to the regulation of a solid waste facility within five days of the correspondence.

- (c) A franchisee must maintain records of any written complaints received from the public or a customer and retain them for not less than one year. This includes, but is not limited to, information regarding the nature of the complaint, the complainant's name, address and phone number, the date the franchisee received the complaint, and any response by the franchisee to the complaint.
- (d) A franchisee must retain all records required by this chapter (except for the complaint records in subsection (c)) for three years and allow the Chief Operating Officer to inspect them.
- (e) All information that the franchisee submits to Metro is public record and subject to disclosure pursuant to the Oregon Public Records Act, except that portion of the information that the franchisee requests exception from disclosure consistent with Oregon Law. [Ord. 14-1332; Ord. 16-1387.]

5.01.210 Franchise Renewal

- (a) The Council approves or denies a solid waste facility franchise renewal. A franchisee seeking renewal of a franchise must submit a request as required by this section not less than 120 days before the franchise's expiration date. The franchisee must:
 - (1) File a completed application for renewal;
 - (2) Pay a \$500-~~00~~ application fee; and
 - (3) Provide a statement of proposed material changes from the previous franchise application along with any other information the Chief Operating Officer or the Council requires.
- (b) The Chief Operating Officer will make a recommendation regarding whether the renewal meets the criteria in Section 5.01.180. The Council must approve renewal of a solid waste facility franchise unless the Council determines that the proposed renewal is not in the public interest or does not meet the criteria outlined in Section 5.01.180. The Council may attach conditions or limitations to the renewed franchise.
- (c) The Council is not obligated to renew a franchise earlier than the franchise's expiration date even if the franchisee files a renewal request more than 120 days before the existing franchise expires. [Ord. 98-762C, Secs. 22-23; Ord. 98-767, Sec. 3; Ord. 02-974; Ord. 03-1018A, Sec. 11; Ord. 14-1332; Ord. 16-1387; Ord. 17-1411.]

5.01.220 Transfer of Ownership or Control of Franchises

- (a) A franchisee must notify Metro within 10 days if the franchisee leases, assigns, mortgages, sells or otherwise transfers control of the franchise to another person, whether whole or in part. The transferee of a franchise must meet the requirements of this chapter.
- (b) The term for any transferred franchise is for the remainder of the original term unless the Council establishes a different term. [Ord. 81-111, Sec. 10; Ord. 98-762C, Sec. 24; Ord. 02-974; Ord. 03-1018A, Sec. 12; Ord. 14-1332; Ord. 16-1387.]

5.01.230 Change of Authorizations for Franchises

- (a) A franchisee must submit an application pursuant to Section 5.01.170 when the franchisee requests authority to:
 - (1) Accept wastes other than those the franchise authorizes, or
 - (2) Perform activities other than those the franchise authorizes, or
 - (3) Modify other limiting conditions of the applicant's franchise.
- (b) The franchisee must file an application for a change in authorization or limits on forms or in the format provided by the Chief Operating Officer.
- (c) An application for a change in authorization or limits to the applicant's franchise does not substitute for an application that Metro would otherwise require under Section 5.01.150.
- (d) A franchisee must notify Metro in writing when the franchisee proposes to cease accepting authorized wastes or cease performing authorized activities at the solid waste facility or disposal site.
- (e) The application fee for changes of authorizations or limits is \$100.~~00~~. [Ord. 98-762C, Secs. 25-26; Ord. 98-767, Sec. 4; Ord. 02-974; Ord. 03-1018A, Sec. 13; Ord. 14-1332; Ord. 16-1387.]

5.01.240 Variances for Franchises

- (a) Upon the Chief Operating Officer's recommendation, the Council may grant specific variances from particular requirements of this chapter to applicants for franchises or to franchisees upon conditions the Council considers necessary to protect public health, safety and welfare.
- (b) In order to grant a variance, the Council must find that the franchisee can achieve the purpose and intent of the particular franchise requirement without compliance and that compliance with the particular requirement:
 - (1) Is inappropriate because of conditions beyond the applicant's or franchisee's control; or
 - (2) Would be rendered extremely burdensome or highly impractical due to special physical conditions or causes.
- (c) A franchisee or applicant must request a variance in writing and must concisely state why Council should grant the variance. The Chief Operating Officer may make an investigation as the Chief Operating Officer considers necessary.
- (d) The Chief Operating Officer must recommend to the Council whether to approve or deny the variance within 120 days after Metro receives the variance request.
- (e) A request for a variance does not substitute for an application that Metro would otherwise require under Section 5.01.150.

- (f) If the Council denies a variance request, the Chief Operating Officer must notify the person requesting the variance of the right to a contested case hearing pursuant to ~~Code~~ Chapter 2.05.
- (g) If the Council denies a request for a variance, the requesting party may not file a new application for the same or substantially similar variance for at least six months from the denial date. [Ord. 81-111, Sec. 12; Ord. 98-762C, Sec. 27; Ord. 02-974; Ord. 14-1332; Ord. 16-1387.]

OBLIGATIONS AND LIMITATIONS FOR SOLID WASTE FACILITIES

5.01.250 General Obligations of All Regulated Parties

All persons regulated by this chapter must:

- (a) Allow the Chief Operating Officer reasonable access to the premises for purposes of inspection and audit to determine compliance with this chapter, the Code, the license or franchise, and the performance standards and administrative rules adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08.
- (b) Ensure that solid waste transferred from the facility goes to the appropriate destination under this chapter, ~~Metro Code~~ Chapter 5.05, and other applicable local, state and federal laws, rules, regulations, ordinances, orders and permits.
- (c) Maintain insurance during the license or franchise term in the amounts specified in the license or franchise or any other amounts as state law may require for public contracts, and to give 30 days' written notice to the Chief Operating Officer of any lapse or proposed cancellation of insurance coverage or performance bond.
- (d) Indemnify and save harmless Metro, the Council, the Chief Operating Officer, Metro employees and Metro agents from any and all loss, damage, claim, expense including attorney's fees, or liability related to or arising out of the licensee's or franchisee's performance of or failure to perform any of its obligations under the license or franchise or this chapter.
- (e) Agree to no recourse whatsoever against Metro or its officials, agents or employees for any loss, costs, expense or damage arising out of:
 - (1) Any provision or requirement of the license or franchise;
 - (2) Metro's enforcement of the license or franchise; or
 - (3) Any determination that a license or franchise or any part thereof is invalid. [Ord. 81-111, Sec. 13; Ord. 98-762C, Sec. 28; Ord. 02-974; Ord. 03-1018A, Sec. 15; Ord. 16-1387; Ord. 17-1411.]

5.01.260 Obligations and Limits for Selected Types of Activities

- (a) A solid waste facility that receives ~~sd~~ non-putrescible waste and is subject to licensing or franchising under this chapter must:

- (1) Perform material recovery from non-putrescible waste that it receives at the facility as specified in this section or as otherwise specified in its license or franchise, or
 - (2) Transport the non-putrescible waste to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (b) Notwithstanding subsection (a) above, a facility that exclusively receives non-putrescible source-separated recyclable material is not subject to the requirements of this section.
- (c) A licensee or franchisee subject to subsection (a) must:
 - (1) Process non-putrescible waste accepted at the facility and delivered in drop boxes and self-tipping trucks to recover cardboard, wood, and metals, including aluminum. The processing residual may not contain more than 15 percent, by total combined weight, of cardboard or wood pieces of greater than 12 inches in size in any dimension and metal pieces greater than eight inches in size in any dimension.
 - (2) Take quarterly samples of processing residual that are statistically valid and representative of the facility's residual (not less than a 300-pound sample) and provide results of the sampling to Metro in the monthly report due the month following the end of that quarter.
- (d) Based on observation, audits, inspections and reports, Metro inspectors will conduct or require additional analysis of waste residual at the facility in accordance with Section 5.01.290(c). Failure to maintain the recovery level specified in Section 5.01.260(c)(1) is a violation enforceable under Metro Code. Metro will not impose a civil penalty on the first two violations of this subsection by a single licensee or franchisee.
- (e) Failure to meet the reporting requirements in subsection (c)(2) is a violation enforceable under Metro Code.
- (f) A transfer station franchisee:
 - (1) Must accept putrescible waste originating within the Metro boundary only from persons who are franchised or permitted by a local government unit to collect and haul putrescible waste.
 - (2) Must not accept hazardous waste unless the franchisee provides written authorization from the DEQ or evidence of exemption from such requirement.
 - (3) Is limited in accepting putrescible waste during any year to an amount of putrescible waste as established by the Council in approving the transfer station franchise application.
 - (4) Must provide an area for collecting source-separated recyclable materials without charge at the franchised solid waste facility, or at another location more convenient to the population being served by the franchised solid waste facility.

- (5) Must serve the public interest of the region by serving all haulers collecting solid waste inside the region; and
- (6) Must serve the public interest of the region by serving all haulers collecting solid waste inside the transfer station's waste shed.

Any person may request or the Chief Operating Officer may initiate an investigation of a franchisee to ensure that it complies with this section.

- (g) A reload facility licensee must transport all non-putrescible waste received at the facility to a solid waste facility authorized by Metro to recover useful materials from solid waste.
- (h) A solid waste facility licensee or franchisee cannot crush, grind or otherwise reduce the size of non-putrescible waste unless the:
 - (1) Size reduction is a specific step in the facility's material recovery operations, reload operations, or processing residual consolidation or loading operations; and
 - (2) Licensee or franchisee described the size reduction in a Metro-approved operating plan. [Ord. 98-762C, Secs. 30-31; Ord. 00-866, Sec. 5; Ord. 01-916C, Sec. 4; Ord. 02-952A, Sec. 1; Ord. 03-1018A, Sec. 16; Ord. 07-1147B, Sec. 3; Ord. 12-1272, Sec. 3; Ord. 13-1306, Sec. 3; Ord. 16-1387; Ord. 17-1411; Ord. 18-1426.]

5.01.270 Direct Haul of Putrescible Waste

A franchisee authorized by Metro to deliver putrescible waste directly to a disposal site must:

- (a) Transport the putrescible waste to Metro's contract operator for disposal of putrescible waste;
- (b) Comply with the performance standards for management of unacceptable waste adopted by the Chief Operating Officer pursuant to ~~Section 5.01.280~~Chapter 5.08; and
- (c) Provide transportation or arrange for transportation by a transportation service provider that complies with the following performance standards for long-haul transportation by highway:
 - (1) All solid waste transported through the city limits of Arlington, Oregon, is subject to any routing, timing, parking or other operational requirements established by the city of Arlington.
 - (2) All equipment satisfies all federal, state, and local regulations. In addition, the use of exhaust brakes is prohibited.
 - (3) All solid waste is transported in completely sealed containers with leak-proof design considered wind-, water-, and odor-tight, and is capable of withstanding arduous, heavy-duty, repetitive service associated with the long-haul transport of solid waste. Containers using tarps or flip-tops are prohibited. Any spillage from the transport vehicles is prohibited.

- (4) The average weight of solid waste payloads transported during each calendar month is not less than 25 tons.
- (5) Any staging areas used is located in areas outside or excluded from the Columbia River Gorge National Scenic Area (NSA).
- (6) All transport vehicles use only designated stopping points outside the Columbia River Gorge NSA except in cases of emergency.
- (7) Use of rest areas, turnouts, scenic vista points, and state parks is limited to cases of emergency.
- (8) Transportation is prohibited in the Columbia River Gorge NSA during the following times:
 - (A) 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August, and September.
 - (B) Daylight hours on Saturdays in June, July, August, and September.
 - (C) All hours on Sunday in June, July, August, and September.
- (9) All solid waste is transported by use of vehicles utilizing splash and spray suppressant devices behind each wheel, and utilizing rain suppressant side flaps on all non-turning axles.
- (10) All solid waste is transported by use of vehicles and equipment that is suitably painted and presents an acceptable appearance.
- (11) A franchisee representative and its transportation carrier must annually meet with the gorge communities and interested parties to receive input and discuss issues related to transportation of solid waste.
- (12) The franchisee must report to Metro any accidents, citations, and vehicle inspections involving vehicles of the franchisee's transportation carrier during the transporting of solid waste on behalf of the franchisee.
- (13) A franchisee representative and its transportation carrier must meet monthly with Metro to discuss operational problems, complaints and any extraordinary occurrences.
- (14) The franchisee must immediately report any violations of this subsection to Metro. [Ord. 98-762C, Secs. 32-33; Ord. 02-974; Ord. 16-1387; Ord. 17-1411.]

REGULATORY ADMINISTRATION OF SOLID WASTE FACILITIES

5.01.280 [Repealed Ord. 19-1441; Effective February 19, 2020]

5.01.290 Inspections, Audits, and other Investigations of Solid Waste Facilities

- (a) The Chief Operating Officer is authorized to make such inspection, audit, or other investigation as the Chief Operating Officer considers appropriate to ensure compliance with this chapter, the Code, the franchise or license, and administrative

rules and performance standards adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08. Licensed or franchised facilities must allow access to the facility premises, and all other solid waste facilities, at all reasonable times during business hours with or without notice, and during non-business hours with 24 hours notice.

- (b) Inspections, audits, or other investigations authorized under subsection (a) will occur regularly and as the Chief Operating Officer determines necessary. The Chief Operating Officer will report the results of each inspection, audit, or other investigation in the format approved by the Chief Operating Officer.
- (c) The Chief Operating Officer may access and examine any records during the inspections, audits, or other investigations if the Chief Operating Officer considers the records pertinent to the license or franchise, or to the provisions of this chapter. These records include but are not limited to the licensee's, franchisee's or solid waste facility operator's books, papers, records, equipment, blueprints, operation and maintenance records, logs and operating rules and procedures. As part of the inspections, audits, or other investigations, the Chief Operating Officer may take samples and conduct analysis of any waste or other material, including storm water runoff, water treatment or holding facilities, leachate, soil and solid waste. The Chief Operating Officer will coordinate any sampling or follow-up activities with DEQ or local jurisdictions as necessary to avoid redundant requirements on operations.
- (d) Any violation discovered by an inspection, audit, or other investigation is subject to the penalties provided in Section 5.01.330. [Ord. 98-762C, Secs. 36-37; Ord. 02-974; Ord. 03-1018A, Sec. 18; Ord. 07-1147B, Sec. 4; Ord. 16-1387.]

5.01.300 Regional System Fees

- (a) Pursuant to Chapter 5.02, regional system fees apply to solid waste facilities and disposal sites that Metro owns, operates, licenses or franchises, or which are liable for payment of the fees pursuant to a special agreement with Metro.
- (b) Regional system fees are in addition to any other fee, tax or charge imposed upon a solid waste facility or disposal site.
- (c) Regional system fees must be separately stated upon records of the solid waste facility or disposal site.
- (d) Regional system fees and finance charges on those fees must be paid as specified in ~~Metro Code~~ Chapter 5.02. [Ord. 81-111, Sec. 16; Ord. 86-214, Sec. 1; Ord. 91-422B, Sec. 4; Ord. 93-509, Sec. 2; Ord. 95-621A, Sec. 7; Ord. 98-762C, Sec. 41; Ord. 00-866, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 19; Ord. 14-1332; Ord. 16-1387.]

5.01.310 Determination of Rates

- (a) The Council may establish facility rates if it finds that setting facility rates is in the public interest as a matter of metropolitan concern.
- (b) Notwithstanding any other provision of this section:
 - (1) Licensees are exempt from all rate setting; and

- (2) Franchisees are exempt from rate setting unless Metro requires rate setting as a franchise condition. [Ord. 81-111, Sec. 19; Ord. 82-136, Sec. 4; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 43-44; Ord. 03-1018A, Sec. 20; Ord. 16-1387.]

ENFORCEMENT AND APPEALS

5.01.320 Enforcement Provisions

- (a) Any person who violates any provision of this chapter or who fails to comply with a license or franchise condition is subject to the fines and penalties set forth in this chapter.
- (b) The Chief Operating Officer may investigate whether there is sufficient cause to suspend, modify or revoke a franchise or license. If there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Chief Operating Officer will notify the franchisee or licensee in writing of the alleged violation, and the necessary steps the violator must take to correct the violation. If the franchisee or licensee is unable to or refuses to correct the violation within a reasonable time after Metro sends notice, the Chief Operating Officer may provide notice to the franchisee or licensee that Metro will impose penalties pursuant to Section 5.01.330 or that Metro will suspend, modify or revoke the franchise or license.
- (c) The Chief Operating Officer will send the notice upon finding that the franchisee or licensee has:
- (1) Violated the franchise or license, the administrative rules or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated there under or any other applicable law or regulation;
 - (2) Misrepresented material facts or information in the franchise or license application, or other information that Metro requires the licensee or franchisee to submit;
 - (3) Refused to provide adequate service at a licensed or franchised site, facility or station, after Metro provides written notification and reasonable opportunity to do so;
 - (4) Misrepresented the gross receipts from the operation of the licensed or franchised site, facility or station;
 - (5) Failed to pay when due the fees required under this chapter; or
 - (6) Violated a city or county ordinance if the ordinance requires licensees or franchisees to comply with the Metro solid waste facility regulation code.
- (d) Except as provided in subsection (e), if the Chief Operating Officer revokes, modifies or suspends a license or franchise, it does not become effective until Metro gives the licensee or franchisee an opportunity to request a contested case hearing under ~~Metro Code~~Chapter 2.05.

- (e) If Metro finds a serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee, the Chief Operating Officer may in accordance with ~~Code~~ Chapter 2.05 immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, in the case of a franchise, the Chief Operating Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If Metro immediately suspends a franchise, the franchisee has 30 days from the suspension date to request a contested case hearing under ~~Code~~ Chapter 2.05.
- (f) If Metro revokes a franchise or license, all franchisee or licensee rights in the franchise or license become void. [Ord. 81-111, Sec. 20; Ord. 82-136, Sec. 5; Ord. 95-621A, Sec. 8; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 45; Ord. 02-974; Ord. 03-1018A, Sec. 21; Ord. 14-1332; Ord. 16-1387.]

5.01.330 Penalties

- (a) Each violation of this chapter is punishable by a fine of not more than \$500.00. Each day a violation continues constitutes a separate violation. Metro may join separate offenses in one Notice of Violation in several counts.
- (b) If the Chief Operating Officer finds that a licensee or franchisee is in violation of this chapter, the Code, the license or franchise, or the administrative rules or performance standards adopted pursuant to ~~Section 5.01.280~~ Chapter 5.08, the Chief Operating Officer will provide written notice to the violator describing the violation and requiring the violator to correct the violation within the time specified in the notice.
- (c) If a licensee or franchisee fails to correct the violation within the specified time period, the Chief Operating Officer will issue a Notice of Violation, indicating the continuing violation, the date of re-inspection and the fine imposed as specified in subsection (a).
- (d) If after re-inspection, the Chief Operating Officer finds the licensee or franchisee has failed to correct the violation, the violation is punishable by a fine as specified in subsection (a). Metro will give notice of a final deadline for correcting the violation at the time of re-inspection.
- (e) If the licensee or franchisee fails to correct the violation after the final deadline, the licensee or franchisee must cease the activity resulting in the violation.
- (f) Metro will conduct further inspections to ensure that the licensee or franchisee suspends the offending activity. If the licensee or franchisee fails to suspend the offending activity, the Chief Operating Officer may:
 - (1) Impose a remedy suitable to Metro to be implemented by and at the expense of the licensee or franchisee;
 - (2) Suspend all solid waste activities on site;

- (3) Impose a lien on the property for the amount of the fines; or
- (4) Suspend, modify or revoke the license or franchise pursuant to Section 5.01.320.
- (g) In addition to subsection (a), Metro may enjoin any violation of this chapter upon suit in a court of competent jurisdiction, and the violator may also be subject to a civil penalty not to exceed \$500.~~00~~ per day for each day of violation. [Ord. 81-111, Sec. 22; Ord. 91-436A, Sec. 2; Ord. 98-762C, Sec. 47; Ord. 98-767, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 22; Ord. 14-1332; Ord. 16-1387.]

5.01.340 Appeals

- (a) Any applicant, franchisee or licensee may request a contested case hearing pursuant to ~~Code~~ Chapter 2.05 upon the suspension, modification, revocation or refusal by the Council or Chief Operating Officer, as appropriate, to issue, renew, modify or transfer a franchise or license or to grant a variance.
- (b) Except as provided in subsection (d), if the Council refuses to renew a franchise or the Chief Operating Officer refuses to renew a license, the refusal does not become effective until Metro affords the franchisee or licensee an opportunity for a contested case hearing if one is requested.
- (c) The refusal by either the Council or Chief Operating Officer to grant a variance, or to issue, modify or transfer a franchise or license is effective immediately. The franchisee, licensee or applicant may request a hearing on the refusal within 30 days of notice of the refusal.
- (d) Upon a finding of serious danger to the public health or safety, the Chief Operating Officer may suspend a franchise or license or the Council or Chief Operating Officer may refuse to renew a franchise or license and that action is effective immediately. If a franchise or license renewal is refused, the franchisee or licensee has 30 days from the date of the action to request a contested case hearing. [Ord. 81-111, Sec. 11; Ord. 95-621A, Sec. 6; Ord. 02-974; Ord. 03-1018A, Sec. 14; Ord. 16-1387.]

MISCELLANEOUS PROVISIONS

5.01.350 Miscellaneous Provisions

- (a) The Chief Operating Officer is responsible for the administration and enforcement of this chapter.
- (b) Metro's granting of a license or franchise does not vest any right or privilege in the licensee or franchisee to receive specific quantities of solid waste during the license or franchise term.
- (c) Metro has the power to regulate, in the public interest, the exercise of the privileges it grants by a license or franchise. Metro may establish or amend rules, regulations or standards regarding matters within Metro's authority and enforce those requirements against licensees or franchisees.

- (d) No waiver of any license or franchise condition is effective unless it is in writing and signed by the Chief Operating Officer. If Metro waives a license or franchise condition, that waiver does not waive or prejudice Metro's right to require performance of the same condition or any other condition.
- (e) Metro will construe, apply and enforce a license or franchise in accordance with the laws of the State of Oregon.
- (f) If a court of competent jurisdiction determines that any license or franchise provision is invalid, illegal or unenforceable in any respect, that determination does not affect the validity of the remaining provisions in the license or franchise.
- (g) Nothing in this chapter limits the power of a federal, state, or local agency to enforce any provision of law relating to any solid waste facility or disposal site that it is authorized or required to enforce or administer.
- (h) Nothing in this chapter should be construed as relieving any owner, operator, or designee from the obligation of obtaining all required permits, licenses, or other clearances and complying with all orders, laws, regulations, reports or other requirements of other regulatory agencies, including but not limited to, local health departments, regional water quality control boards, local land use authorities, and fire authorities. [Ord. 98-762C, Secs. 52-53; Ord. 02-974; Ord. 03-1018A, Sec. 24; Ord. 14-1332; Ord. 16-1387.]

EXHIBIT B
Ordinance No. 23-1498
Solid Waste Flow Control

CHAPTER 5.05

SOLID WASTE FLOW CONTROL

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5.05.020	Special Findings for Solid Waste Flow Control
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5.05.040	Prohibited Activities
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5.05.055	Limited Capacity Landfills and New Landfills
5.05.060	Designated Facilities of the System
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5.05.240	Solid Waste Tracking System
5.05.250	Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations
5.05.270	Contested Case Proceedings

Repealed

5.05.010	Definitions [Repealed Ord. 14-1331]
5.05.260	Authority of Chief Operating Officer to Adopt and Amend Rules, Standards, and Forms [Repealed Ord. 19-1441]

5.05.010 Purpose

- (a) This chapter governs the regulation of solid waste transported, managed and disposed at locations outside the Metro ~~regional jurisdictional~~ boundary. The purposes of this chapter are to:
 - (1) Protect and preserve the health, safety and welfare of Metro's residents;
 - (2) Implement the Regional Waste Plan cooperatively with federal, state and local agencies;
 - (3) Provide a coordinated regional disposal and resource recovery program and a solid waste management plan to benefit all ~~citizens~~ residents of Metro;
 - (4) Reduce the volume of solid waste disposal through source reduction, recycling, reuse and resource recovery; and
 - (5) Protect the ~~citizens~~ residents of the region from liability arising from the use of a disposal site subject to federal law.
- (b) The provisions of this chapter ~~shall will~~ be liberally construed to accomplish these purposes. [Ord. 16-1389; Ord. 19-1432.]

5.05.020 Special Findings for Solid Waste Flow Control

The Council makes the following findings:

- (a) Metro has limited land and resources for the disposal, transfer and recovery of resources from solid and liquid waste, and it is the Council's responsibility to protect and judiciously utilize Metro's limited land and resources.
- (b) Metro has developed ~~the system as~~ a regional waste disposal and recovery system within the framework of a Regional Waste Plan, and it has done so in cooperation with federal, state and local agencies for the benefit of all Metro ~~citizens~~ residents.
- (c) Pursuant to the authority granted to Metro under ORS ~~Chapter~~ 268, Metro may require any person or class of persons who generate solid or liquid waste to make use of a designated facility of the system.
 - ~~(1) The system's disposal sites or solid waste facilities, or~~
 - ~~(2) Metro's designated disposal sites or solid waste facilities.~~
- (d) ORS 268.317 ~~, and~~ ORS 268.360 and the Regional Waste Plan authorize Metro to require any person or class of persons who pickup, collect, or transport solid or liquid waste to make use of a designated facility of the system.
 - ~~(1) The system's disposal sites or solid waste facilities, or~~
 - ~~(2) Metro's designated disposal sites or solid waste facilities.~~

~~(e) Under the authority granted in ORS 268.317, ORS 268.360 and the Regional Waste Plan, this chapter's provisions authorize Metro to require persons who generate, pickup, collect or transport solid or liquid waste to make use of:~~

~~(1) The system's disposal sites or solid waste facilities, or~~

~~(2)(1) Metro's designated disposal sites or solid waste facilities.~~ [Ord. 89-319; Ord. 01-917, Sec. 2; Ord. 02-974; Ord. 16-1389; Ord. 19-1432.]

5.05.030 Authority, Jurisdiction, and Application

- (a) Metro's solid waste flow control authority is derived from ORS Chapter 268 for solid waste and the Metro Charter. It includes the authority to regulate solid waste generated within the Metro jurisdictional boundary.
- (b) This chapter governs:
 - (1) The transportation, transfer, disposal and other processing of all solid waste generated within the Metro jurisdictional boundary as authorized by state law; and
 - (2) Any person who generates solid waste within the Metro jurisdictional boundary; and
 - (3) Any person who transports, transfers, disposes or otherwise deals with or processes solid waste generated within the Metro jurisdictional boundary.
- (c) All solid waste regulation is subject to the authority of all other applicable laws, regulations or requirements in addition to those ~~contained~~ in this chapter. Nothing in this chapter abridges or alters the rights of action by the State or by a person that exist in equity, common law, or other statutes to abate pollution or to abate a nuisance. The provisions of this chapter should be liberally construed to accomplish these purposes. [Ord. 89-319; Ord. 01-917, Sec. 3; Ord. 02-974; Ord. 03-1019, Sec. 2; Ord. 16-1389.]

5.05.040 Prohibited Activities

- (a) ~~Unless a person has a valid, Metro-issued non-system license, No~~ person may transport, or cause to be transported, solid waste generated within the Metro jurisdictional boundary to ~~any non-system solid waste facility or disposal site without a valid, Metro-issued non-system license.~~
- (b) No person may falsely state to a system facility operator that solid waste delivered to that facility for disposal was generated outside of the Metro jurisdictional boundary if the waste was actually generated inside of the Metro jurisdictional boundary.
- (c) No person may direct another person to falsely state to a solid waste system facility operator that solid waste delivered to that facility for disposal was generated

outside of ~~the~~ Metro jurisdictional boundary if the waste was actually generated inside of ~~Metro~~the boundary. A person is deemed to have directed another person to make false statements under this subsection if the person doing the directing knew or reasonably should have known that the person transporting the solid waste to the system facility would falsely state the origin of the solid waste being delivered. [Ord. 01-917, Secs. 4-5; Ord. 02-974; Ord. 06-1104; Ord. 16-1389.]

5.05.050 Exemptions to Prohibited Activities

- (a) This chapter does not apply to transportation, transfer or processing of, or other dealing with, non-putrescible source-separated recyclable materials that are either: (i) reused or recycled, or (ii) transferred, transported or delivered to a person or facility that will reuse or recycle them.
- (b) If a designated facility is in compliance with all local, state, federal and Metro regulations, including any agreement entered into between Metro and the system facility, then a non-system license is not required of any person to:
 - (1) Transport solid waste generated within the Metro jurisdictional boundary to that designated facility, or
 - (2) Utilize the designated facility for disposing or processing solid waste that was generated within the Metro jurisdictional boundary.
- (c) A non-system license is not required for a government agency to transport solid waste to the Covanta Waste-to-Energy facility located in Brooks, Oregon, for the primary purpose of destroying the waste in order to assure public safety or for the public good. Solid waste exempt under this subsection includes, but is not limited to, contraband, postage stamps, expired pharmaceuticals, and lottery tickets. [Ord. 01-917, Secs. 6-7; Ord. 02-974; Ord. 06-1106; Ord. 16-1389.]

5.05.055 Limited Capacity Landfills and New Landfills

- (a) No person may dispose of solid waste generated within the Metro jurisdictional boundary at a limited capacity landfill or new landfill.
- (b) Metro will not accept any application for a designated facility or non-system license that seeks to dispose of solid waste generated within the Metro jurisdictional boundary at a limited capacity landfill or new landfill.
- (c) If a solid waste system facility becomes a limited capacity landfill, then within 30 days of becoming a limited capacity landfill Metro will terminate any existing designated facility agreement and non-system license in effect for that facility.
- (d) This section does not apply to a disposal site that holds an applicable permit issued by the appropriate state or federal authority to:

- (1) Accept hazardous waste for disposal under Subtitle C of the Resource Conservation and Recovery Act; or
- (2) Accept only cleanup material such as contaminated soil and sediment. [Ord. 17-1401; Ord. 22-1478.]

5.05.060 Designated Facilities of the System

- (a) ~~Designated Facilities.~~ The following ~~described facilities~~ are designated facilities of the system, ~~and the Metro Council finds that these facilities meet the criteria set forth in Metro Code Chapter 5.05:~~
 - (1) Metro owned or operated disposal sites or solid waste facilities.
 - (2) Disposal sites or solid waste facilities within the Metro's jurisdictional boundary that are subject to Metro regulatory authority under Chapter 5.01.
 - (3) Disposal sites or solid waste facilities located outside the Metro's jurisdictional boundary that the Council designates as part of the system, and which Council authorizes to accept waste generated from inside the ~~Metro~~ boundary under:
 - (A) An agreement between Metro and the disposal site or solid waste facility owner; or
 - (B) A non-system license that Metro issues to the waste generator or the person transporting the waste to the disposal site or solid waste facility.
- (b) The Council will consider a list of designated facilities for adoption by resolution:
 - (1) At least every five years as set forth in Metro Code Section 5.05.090; or
 - (2) Any time there is a proposed change to the list under Metro Code Sections 5.05.070 or 5.05.080 pursuant to administrative ~~procedures~~rules.
- (c) A disposal site or solid waste facility located outside the Metro jurisdictional boundary may:
 - (1) Apply to Metro to become a designated facility of the system unless otherwise prohibited under this chapter; or
 - (2) Request that Metro remove it from the list of designated facilities.
- (d) The Chief Operating Officer will provide an application form and will consider the factors set forth in Metro Code Section 5.05.070 when determining whether to recommend to the Council any addition to the designated facility list. [Ord. 14-1333; Ord. 14-1334; Ord. 14-1335; Ord. 14-1337; Ord. 16-1389.]

5.05.070 Adding Facilities to the Designated Facilities List

- (a) The Council may add a facility to the list of designated facilities either:
 - (1) On its own motion;
 - (2) Upon the Chief Operating Officer's recommendation; or
 - (3) Upon a facility application under Metro Code Section 5.05.060(c).
- (b) The Council will consider the following factors when deciding whether to add a facility to the designated facilities list:
 - (1) The degree to which Metro had knowledge of prior facility users and waste types accepted at the facility and the degree to which those wastes pose a future risk of environmental contamination;
 - (2) The facility owner's and operator's record of regulatory compliance with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;
 - (3) The adequacy of the facility's operational practices and management controls;
 - (4) The expected impact on the region's recycling and waste reduction efforts;
 - (5) The facility designation's compatibility with Metro's existing contractual arrangements;
 - (6) The facility's record of compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
 - (7) Other benefits or detriments accruing to regional residents if Council designates the facility. [Ord. 14-1337; Ord. 16-1389.]

5.05.080 Removing From and Amending the Designated Facilities List

- (a) The Council may remove a facility from the designated facilities list:
 - (1) On its own motion;
 - (2) Upon the Chief Operating Officer's recommendation; or
 - (3) Upon a facility's request under Metro Code Section 5.05.060(c).
- (b) In deciding whether to remove a facility from the designated facilities list, the Council will consider:
 - (1) Changes in facility operations, including without limitation whether the facility is not operating, whether the facility has changed the type of waste it accepts, or whether the facility has changed the method for accepting the waste;

- (2) Changes in legal requirements that apply to the facility;
 - (3) The facility's record of regulatory compliance. This includes but is not limited to public health and safety regulations and environmental regulations;
 - (4) Changes in ownership of the facility;
 - (5) Other benefits or detriments accruing to regional residents if Council removes the facility from the list of designated facilities; and
 - (6) Any other factor the Council considers appropriate to accomplish the purposes of this chapter.
- (c) Council may remove a facility from the designated facilities list upon the facility's request under Metro Code Section 5.05.060(c) without considering the factors set forth in subsection (b).
 - (d) The Chief Operating Officer may change a facility name or address on the designated facilities list without Council action if no substantive change has occurred as set forth in subsection (b). [Ord. 14-1337; Ord. 16-1389.]

5.05.090 Contents of Designated Facilities List and Council Adoption Every Five Years

- (a) The designated facilities list will include the name and address of:
 - (1) The designated facilities located outside the Metro ~~region~~jurisdictional boundary; and
 - (2) Metro-owned facilities.
- (b) Disposal sites and solid waste facilities within the Metro's jurisdictional boundary that are subject to Metro regulatory authority are designated facilities of the system but will not be included on the list described in subsection (a).
- (c) In addition to any resolution adopted under Metro Code Sections 5.05.070 and 5.05.080, the Council will adopt by resolution a list of designated facilities at least every five years. [Ord. 14-1337; Ord. 16-1389.]

5.05.100 Agreements with Designated Facilities

- (a) The Chief Operating Officer may execute an agreement between Metro and a designated facility located outside the ~~region~~jurisdictional boundary for any solid waste that Council approves pursuant to Section 5.05.070. This authority includes any later amendments to the agreement.
- (b) An agreement between Metro and a designated facility must specify the types of waste that the facility can accept from within the Metro jurisdictional boundariesboundary.

- (c) An agreement between Metro and a designated facility may not authorize the acceptance of non-putrescible waste originating or generated within the Metro jurisdictional boundaries if the waste has not yet undergone material recovery, unless:
- (1) The designated facility receives non-putrescible waste from a facility that Metro has issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
 - (2) The designated facility receives non-putrescible waste from a designated facility that has an agreement with Metro authorizing it to perform material recovery on non-putrescible waste; or
 - (3) The designated facility and Metro have an agreement authorizing the facility to perform material recovery on non-putrescible waste pursuant to subsection (d).
- (d) Any agreement between Metro and a designated facility that authorizes the facility to accept non-putrescible waste that (i) has not yet undergone material recovery, (ii) is not comprised of processing residual, and (iii) originated or generated within the Metro jurisdictional boundaries, must:
- (1) Require the designated facility to perform material recovery on the waste; and
 - (2) Demonstrate, in a manner that can be verified and audited, that the processing achieves material recovery substantially comparable to that required of an in-region material recovery facility under Metro Code Section 5.01.260 by either:
 - (A) Meeting the material recovery requirements for all non-putrescible waste received at the facility, whether or not from within the Metro jurisdictional boundaries; or
 - (B) Keeping all non-putrescible waste received from within the Metro jurisdictional boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
 - (3) Demonstrate, in a manner that can be verified and audited, that the facility substantially complies with:
 - (A) The performance goals described in Metro Code Sections 5.01.090(c) and 5.01.190(c); and
 - (B) The rules, performance standards, design requirements, and operating requirements applicable to licensed and franchised material recovery facilities operating within the Metro region-jurisdictional boundary and adopted by Metro as administrative rules pursuant to Metro Code

Chapter 5.08. [Ord. 89-319; Ord. 91-388, Sec. 2; Ord. 92-471C, Sec. 1; Ord. 93-483A, Sec. 1; Ord. 01-917, Sec. 8; Ord. 02-979; Ord. 02-974; Ord. 03-1019, Sec. 3; Ord. 03-999; Ord. 05-1081, Sec. 1; Ord. 05-1083, Sec. 1; Ord. 07-1138, Sec. 4; Ord. 07-1147B, Sec. 10; Ord. 08-1195; Ord. 08-1197A; Ord. 14-1337; Ord. 16-1389; Ord. 22-1478.]

5.05.110 Non-System License to Use Non-System Facility

- (a) A non-system license is required for any person to transport, or cause to be transported, any solid waste generated within the Metro jurisdictional boundary to any non-system facility for subsequent processing or disposal.
- (b) The Chief Operating Officer may approve or deny applications for non-system licenses to transport residential yard debris containing food waste, residential food waste, non-putrescible waste, special waste and cleanup material.
- (c) The Metro Council may approve or deny an application for a non-system license to transport putrescible waste after the Chief Operating Officer reviews the application. [Ord. 14-1337; Ord. 16-1389.]

5.05.120 Application for Non-System License

- (a) Any person requesting a non-system license must apply to the Chief Operating Officer on forms or in the format that the Chief Operating Officer requires. Applicants may apply for a limited-duration non-system license that has a term of not more than 120 days and is not renewable.
- (b) An application for a non-system license must set forth the following information:
 - (1) The applicant's name and address;
 - (2) The proposed waste generation site location;
 - (3) The nature of the solid waste;
 - (4) The expected tonnage of the solid waste, including:
 - (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
 - (5) The facts and circumstances that the applicant believes justifies Metro to issue the proposed non-system license;
 - (6) The non-system facility at which the solid waste would be transported, disposed of or otherwise processed; and
 - (7) The beginning date of the non-system license (or for limited duration non-system licenses, the non-system license term, not to exceed 120 days).

- (c) The Chief Operating Officer may also require the applicant to provide additional written information as the Chief Operating Officer considers necessary to determine whether to issue the proposed non-system license.
- (d) An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within the Metro jurisdictional boundaryies must provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-system facility must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.260. [Ord. 14-1337; Ord. 16-1389.]

5.05.130 Non-System License Application Fees

An applicant must pay an application fee along with the application in an amount as specified in the following table:

Type of Non-System License Application	Application Fee for a New Non-System License	Application Fee for the Renewal of a Non-System License	Application Fee for Change in Authorization to an Existing Non-System License
Non-system licenses that authorize a limited-duration term of 120 days or less.	\$250	Not applicable. Limited-duration non-system licenses are not subject to renewal.	\$250
Non-system licenses that authorize the transport of 500 tons or less of solid waste per year.	\$500	\$100	<ul style="list-style-type: none">• \$250 for change resulting in authorization of 500 tons or less per year.• \$500 for change resulting in authorization of more than 500 tons per year.

Non-system licenses that authorize the transport of more than 500 tons of solid waste per year.	\$1,000	\$1,000	\$250
Type of Non-System License Application	Application Fee for a New Non-System License	Application Fee for the Renewal of a Non-System License	Application Fee for Change in Authorization to an Existing Non-System License
Non-system licenses that authorize the transport of waste that is exempt from the payment of Metro's regional system fee.	\$100	\$50	\$50

[Ord. 14-1337; Ord. 16-1389.]

5.05.140 Factors to Consider Regarding Non-System License Issuance

The Chief Operating Officer or Council, as applicable, will consider the following factors to the extent relevant to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;
- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;
- (3) The adequacy of the non-system facility's operational practices and management controls;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The proposed non-system license's effect with Metro's existing contractual arrangements;
- (6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental regulations; and

- (7) Any other factor the Chief Operating Officer considers appropriate. [Ord. 14-1337; Ord. 16-1389.]

5.05.150 Non-System License Issuance Timetable for Non-Putrescible Waste

- (a) The Chief Operating Officer will issue a non-system license for non-putrescible waste, special waste, cleanup material, yard debris mixed with residential food waste, residential food waste or any other solid waste other than putrescible waste according to the following timelines and circumstances:
- (1) New non-system licenses. Within 60 days after the Chief Operating Officer receives a completed application along with any additional information the Chief Operating Officer may require, the Chief Operating Officer will determine whether to issue the non-system license and will inform the applicant in writing of that determination.
 - (2) Non-system license renewals.
 - (A) A non-system license renewal application must be substantially similar to the existing non-system license with regard to waste type, quantity and destination.
 - (B) A non-system licensee must submit a completed non-system license renewal application at least 60 days before the existing non-system license expires, along with any additional information the Chief Operating Officer may require.
 - (C) The Chief Operating Officer will determine whether to renew the non-system license and will inform the applicant in writing of that determination before the existing non-system license expires.
 - (D) The Chief Operating Officer is not obligated to make a determination earlier than the non-system license's expiration date, even if the licensee files the renewal request more than 60 days before the existing non-system license expires.
- (b) The Chief Operating Officer may impose conditions on the issuance of a new or renewed non-system license for non-putrescible waste as the Chief Operating Officer considers necessary under the circumstances to accomplish the purposes of this chapter. [Ord. 14-1337; Ord. 16-1389.]

5.05.160 Non-System License Issuance Timetable for Putrescible Waste

- (a) The Chief Operating Officer will make recommendations to the Council regarding whether to issue or renew a non-system license for putrescible waste. If the Chief Operating Officer recommends that Council issue or renew the non-system license for putrescible waste, the Chief Operating Officer will recommend to the Council specific conditions of the non-system license.

- (b) New non-system licenses. The Council will determine whether to issue the non-system license and will direct the Chief Operating Officer to inform the applicant in writing of that determination within 120 days after Metro receives a completed application for a non-system license for putrescible waste, including receipt of any additional information the Chief Operating Officer may require.
- (c) Non-system license renewals.
 - (1) An application for renewal of an existing non-system license must be substantially similar to the existing non-system license with regard to waste type, quantity and destination.
 - (2) A non-system licensee must submit a completed application to renew the non-system license at least 120 days before the existing non-system license expires, along with any additional information the Chief Operating Officer requires.
 - (3) The Council will determine whether to renew the non-system license. The Council will inform the applicant in writing of that determination before the existing non-system license expires.
 - (4) The Council is not obligated to make a determination earlier than the expiration date of the existing non-system license, even if the licensee files its renewal request more than 120 days before the existing non-system license expires.
- (d) The Chief Operating Officer or Council, as applicable, may impose conditions on the issuance of a new or renewed non-system license for putrescible waste as they consider necessary under the circumstances. [Ord. 14-1337; Ord. 16-1389.]

5.05.170 Issuance of Non-System License; Contents

Each non-system license must be in writing and must set forth the following:

- (1) The name and address of the waste hauler or other person to whom Metro issues the non-system license;
- (2) The nature of the solid waste allowed by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste allowed by the non-system license;
- (4) The non-system facility where the licensee will transport the solid waste allowed by the non-system license, or the facilities at which the licensee will otherwise process the solid waste;
- (5) The expiration date of the non-system license. The expiration date may not be more than:
 - (A) 120 days from the issue date for a limited-duration non-system license;

- (B) Three years from the issue date for a new full-term non-system license; and
 - (C) Two years from the issue date of a renewed full-term non-system license.
 - (D) Notwithstanding the provisions of this subsection, the Chief Operating Officer may extend the term of any non-system license for up to an additional six months beyond the original expiration date.
- (6) Any conditions the Chief Operating Officer imposes as provided above and which the licensee must comply with during the non-system license term, including but not limited to conditions that address the factors in Section 5.05.140. [Ord. 14-1337; Ord. 16-1389.]

5.05.180 Non-System Licensee Requirements

Each non-system licensee is required to:

- (1) Maintain complete and accurate records of, including but not limited to, the information required by the Chief Operating Officer regarding all solid waste transported, disposed or otherwise processed pursuant to the non-system license, and make those records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report to Metro the number of tons of solid waste transported, disposed or otherwise processed each month pursuant to the non-system license by no later than the 15th day following the end of each month;
- (3) Pay to Metro a fee equal to the ~~r~~Regional ~~s~~System ~~f~~Fee and ~~e~~Excise ~~t~~Tax multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed each month in accordance with the non-system license and Chapters 5.02 and 7.01;
- (4) When solid waste generated from within the Metro jurisdictional boundary is mixed in the same vehicle or container with solid waste generated outside the ~~Metro~~ boundary, the licensee must report to Metro that the load in its entirety was generated within the ~~Metro~~-boundary. The licensee must pay the ~~r~~Regional ~~s~~System ~~f~~Fee and ~~e~~Excise ~~t~~Tax on the entire load unless the non-system licensee provides Metro with records demonstrating the total weight of the solid waste in the vehicle or container that was generated within the Metro jurisdictional boundary; and
- (5) Comply with all conditions and requirements found in the non-system license. [Ord. 14-1337; Ord. 16-1389; Ord. 22-1478.]

5.05.190 Failure to Comply with Non-System License

- (a) If a non-system licensee fails to comply with the requirements set forth in Section 5.05.180 or with any non-system license condition imposed pursuant to Section 5.05.170, the Chief Operating Officer may:
 - (1) Impose penalties, or
 - (2) Modify, suspend, or terminate the non-system license pursuant to Section 5.05.250.
- (b) If the Chief Operating Officer finds a violation, the Chief Operating Officer will provide written notice to the licensee describing the violation and requiring the licensee to correct the violation within the time specified in the notice. [Ord. 89-319; Ord. 91-388; Ord. 01-917, Sec. 9; Ord. 02-979; Ord. 02-974; Ord. 03-992B, Sec. 1; Ord. 03-1019, Sec. 4; Ord. 06-1098B, Sec. 3; Ord. 06-1105; Ord. 07-1138, Sec. 5; Ord. 07-1139, Sec. 3; Ord. 07-1161, Sec. 2; Ord. 07-1147B, Sec. 11; Ord. 14-1337; Ord. 16-1389.]

5.05.195 Putrescible Waste Tonnage Allocation Framework

- (a) The Chief Operating Officer will allocate putrescible waste tonnage amounts to a transfer station in accordance with the allocation methodology under applicable administrative rule and this chapter's requirements.
- (b) The Chief Operating Officer may allocate tonnage to either a transfer station that is designated under this chapter or franchised under Chapter 5.01.
- (c) In addition to the allocation methodology factors adopted by administrative rule, the Chief Operating Officer may also consider the following factors when allocating tonnage amounts annually to a transfer station located outside the regional-Metro jurisdictional boundary:
 - (1) The public benefits to the regional solid waste system;
 - (2) How the allocation will affect regional solid waste system;
 - (3) How the allocation will affect the proportional amount of regional tonnage reserved for Metro's transfer stations (a minimum of 40 percent of the regional tonnage is to be reserved for Metro transfer stations);
 - (4) The proportional amount of regional tonnage allocated to companies;
 - (5) The rate that the transfer station charges for accepting putrescible waste from the Metro regionjurisdictional boundary; and
 - (6) Any other factor the Chief Operating Officer considers relevant to achieve the purposes and intent of this section.
- (d) The Chief Operating Officer may further adjust a transfer station's tonnage allocation at other times if it is in the public interest and necessary to address a significant disruption as defined in Chapter 5.00. An adjustment under this subsection does not require Council approval.

- (e) The Chief Operating Officer may not allocate more than 40 percent of the available regional tonnage to any combination of transfer stations owned by the same company. [Ord. 18-1426.]

5.05.196 Obligations and Limits for Selected Types of Activities

- (a) To be eligible to receive a tonnage allocation from Metro when a transfer station is located outside the Metro ~~regional-jurisdictional~~ boundary, the transfer station must:
 - (1) Be a designated facility in accordance with 5.05.070; and
 - (2) Enter into an agreement with Metro in accordance with 5.05.100.
- (b) A designated transfer station that ~~received~~ receives putrescible waste from the Metro ~~region-jurisdictional boundary~~ must:
 - (1) Demonstrate it has the authorization from the applicable local or state solid waste authority to accept solid waste from the Metro ~~region-jurisdictional boundary~~;
 - (2) Allow Metro to inspect, monitor, review and audit as if it were a facility located inside the ~~Metro jurisdictional-regional~~ boundary in accordance with Chapter 5.01;
 - (3) Report information monthly to Metro on all solid waste accepted or rejected that was generated from within the Metro ~~jurisdictional-regional~~ boundary;
 - (4) Collect and remit regional system fees to Metro monthly in accordance with Chapter 5.02 on all solid waste accepted from the Metro ~~jurisdictional-regional~~ boundary; and
 - (5) Collect and remit excise taxes to Metro monthly in accordance with Chapter 7.01 on all solid waste accepted from the Metro ~~jurisdictional-regional~~ boundary.

Any person may request or the Chief Operating Officer may initiate an investigation of a designated facility to ensure that it complies with this section. [Ord. 18-1426; Ord. 22-1478.]

5.05.200 Issuance of Required Use Orders

- (a) The Chief Operating Officer may issue a “required use order” to any person within ~~the~~ Metro ~~jurisdictional boundary~~. This order requires the recipient to deliver waste to a specific designated facility. The Chief Operating Officer must comply with the provisions of this section and Section 5.05.210 if the Chief Operating Officer issues a required use order.
- (b) The following priorities apply when determining whether to issue a required use order:

- (1) Metro will allow persons to use the designated facility of their choice to the extent doing so is consistent with state, Metro and local regulations, facility obligations and facility limitations; and
- (2) It may be necessary for the Chief Operating Officer to override the facility choice of a person if the Chief Operating Officer finds that allowing specific persons to exercise their choice appears likely to:
 - (A) Overload or underutilize a specific designated facility or facilities; or
 - (B) Create system inefficiencies or negative impacts on the public health, safety or welfare as specified by the Chief Operating Officer.
- (c) When determining whether it is necessary to issue or amend a required use order, the Chief Operating Officer will consider the following factors:
 - (1) The location of the person's route and/or facilities in relation to designated facilities, in terms of travel time and/or distance;
 - (2) The equipment being utilized by the person at the time of the order's issuance in relation to the equipment handling capabilities of designated facilities;
 - (3) The types of waste being disposed of by the person, in relation to the capabilities of designated facilities to most appropriately process those wastes; and
 - (4) Other considerations that the Chief Operating Officer finds relevant, including but not limited to other health, safety and welfare considerations. [Ord. 89-319; Ord. 91-388, Sec. 3; Ord. 01-917, Sec. 11; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.210 Content of Required Use Orders; Notice

- (a) Required use orders will contain the following:
 - (1) The names of the persons subject to the required use order, together with the person's address or place of business and telephone number;
 - (2) The type and quantity of solid waste subject to the required use order;
 - (3) The name and location of the designated facility that the recipient is required to use;
 - (4) The effective date of the required use order. Absent an emergency, the effective date may not be less than 10 days from the date of the order;
 - (5) A brief description of the procedure for how a recipient may request that the Chief Operating Officer reconsider either issuance or specific details of the order; and
 - (6) Any other information the Chief Operating Officer considers necessary.

- (b) Within two days after the date of any required use order, the Chief Operating Officer will give notice of the required use order as follows:
 - (1) By United States mail, postage prepaid, to each person subject to the required use order at the person's last known address; and
 - (2) By any other method that the Chief Operating Officer considers necessary, and most likely, to ensure actual notice to the person subject to the order.
- (c) The failure of any person subject to a required use order to receive notice of the order does not affect the order's validity and it does not excuse any person from complying with the order's terms. [Ord. 89-319; Ord. 91-388, Sec. 4; Ord. 14-1337; Ord. 16-1389.]

5.05.220 Requests for Reconsideration of Required Use Order

- (a) Any person receiving a required use order may request that the Chief Operating Officer reconsider issuance of the order or specific details of the order. The requesting person may premise the request on any matter that was relevant to the order's issuance, as specified in Metro Code Section 5.05.200.
- (b) A request for reconsideration must be in writing and on a form provided by Metro. To be timely, the Chief Operating Officer must receive a request for reconsideration within 30 days of the required use order's issuance date, as specified in the order.
- (c) The Chief Operating Officer will review a request for reconsideration and, within 15 days of receipt, either affirm or modify the order.
 - (1) The affirmance or modification will be considered timely if Metro deposits it in the mail within the 15-day period, with regular ~~first-class~~first-class postage and addressed to the person requesting review.
 - (2) The affirmance or modification must include a brief statement of the decision's basis, and a brief statement on how the requesting party may request that the Chief Operating Officer review the decision.
- (d) The reconsideration process is intended to be informal. It may include personal, written, or telephone contact between the requesting party and the Chief Operating Officer or Finance and Regulatory Services staff.
- (e) If the Chief Operating Officer fails to issue a timely decision, the person receiving the order may appeal the decision to a hearings officer as specified in Metro Code Section 5.05.230.
- (f) A request for reconsideration does not stay the order issued. A required use order is effective on the date issued, and will remain in effect until Metro modifies or revokes the order. [Ord. 91-388, Sec. 5; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.230 Appeals to the Hearings Officer

- (a) Any person receiving a required use order may appeal the order to a hearings officer. The hearings officer may review any matter that was relevant to the order's issuance, as set forth in Metro Code Section 5.05.200.
- (b) An appeal to the hearings officer must be in writing and on a form provided by Metro. The hearings officer must receive the appeal within 30 days of the order's issuance date or affirmance date.
- (c) Within 15 days of receiving the appeal, the hearings officer must issue a written order either affirming or modifying the Chief Operating Officer's decision.
 - (1) The hearings officer's order is timely if it is deposited in the mail within the 15-day period, with regular ~~first-class~~first-class postage and addressed to the appellant.
 - (2) The hearings officer's order must include a brief statement of the basis for the decision, and a brief statement of the process for contested case review of the decision by the Council.
- (d) If the appellant is not satisfied with the hearings officer's order, or if the hearings officer fails to issue a timely order, the person receiving the Order may appeal the order to the Council as a contested case proceeding. The contested case hearing will be limited to the following whether:
 - (1) Exceptional circumstances of the person justify Council to revoke or modify the order; or
 - (2) The order is likely to cause extreme financial hardship to the person subject to the order.
- (e) An appeal does not stay the order issued. A required use order is effective on the date issued and remains in effect until modified or revoked. [Ord. 91-388, Sec. 5; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.240 Solid Waste Tracking System

The Chief Operating Officer will maintain a system for tracking solid waste that is generated, collected, transported or disposed within or outside the Metro jurisdictional boundary for the purpose of ensuring compliance with the requirements of this chapter. [Ord. 89-319; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

5.05.250 Solid Waste Flow Control Enforcement; Fines, Penalties and Damages for Violations

- (a) Any person who violates any provision of this chapter, any non-system license condition, or a required use order is subject to the fines and penalties set forth in this section.

- (b) The Chief Operating Officer may assess the following fines and penalties:
- (1) A fine not to exceed \$500 for each violation; and
 - (2) A revocation of credit by Metro for the use of any system facility until the violator pays in full all fines owing under this chapter as a result of any violation.
- (c) In addition to the fines and penalties in subsection (b):
- (1) Any person who fails to comply with any non-system license condition must pay to Metro a fine in an amount equal to (i) the regional system fee multiplied by (ii) the number of tons (or fractions thereof) of solid waste generated within the Metro jurisdictional boundary transported, disposed of or otherwise processed in violation of the non-system license conditions;
 - (2) Any person who, without having a non-system license then in effect, transports solid waste generated within the Metro jurisdictional boundary to, or utilizes or causes to be utilized for the processing or disposal of any solid waste generated within ~~Metro~~the boundary, any non-system facility must pay to Metro a fine in an amount equal to the non-system license application fee that would have otherwise been required to authorize the waste disposed, plus an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the Metro jurisdictional boundary transported, recycled, disposed of or otherwise processed to or at any non-system facility; and
 - (3) Any person who violates Metro Code Section 5.05.040(b) by falsely stating the origin of waste transported to a system facility must pay to Metro a fine in an amount equal to the regional system fee and excise tax multiplied by the number of tons (or fractions thereof) of solid waste generated within the Metro ~~jurisdictional~~regional boundary transported to the system facility.
- (d) Metro may commence an appropriate legal action to collect the fines and penalties provided for above. Metro may also seek to enjoin any violation of this chapter or any failure to comply with any condition of a non-system license or required use order.
- (e) An authorized gatehouse employee may enforce a required use order at any Metro-owned facility by denying facility access to any person if the person is:
- (1) Subject to a required use order, and
 - (2) Attempting to deliver waste to a facility not specified in the required use order.

This enforcement is in addition to the fines and penalties that Metro may levy pursuant to this section. [Ord. 89-319; Ord. 91-388, Sec. 6; Ord. 01-917, Sec. 12; Ord. 02-974; Ord. 03-992B, Sec. 2; Ord. 06-1104; Ord. 14-1337; Ord. 16-1389.]

5.05.260 [Repealed Ord. 19-1441; Effective February 19, 2020]

5.05.270 Contested Case Proceedings

Any person wishing to contest any decision made by the Chief Operating Officer under this chapter may commence a contested case proceeding pursuant to Chapter 2.05 of the Metro Code. [Ord. 89-319; Ord. 02-974; Ord. 14-1337; Ord. 16-1389.]

IN CONSIDERATION OF ORDINANCE NO. 23-1498, FOR THE PURPOSE OF
AMENDING CERTAIN METRO CODE CHAPTERS IN TITLE V (SOLID WASTE) FOR
HOUSEKEEPING UPDATES AND TO INCORPORATE PLAIN LANGUAGE BEST
PRACTICES

Date: September 22, 2023
Department: Office of Metro Attorney
Meeting Date: October 5, 2023

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 10 minutes

ISSUE STATEMENT

In December 2022, Metro Council adopted Resolution No. 22-5293, which requires staff to use inclusive and plain language best practices when drafting Metro Code language. The Resolution further recognizes that certain regulatory code chapters—primarily solid waste and income taxes—require “frequent housekeeping updates to reflect changes in state law and ongoing regulatory clarity,” with annual updates. Staff seeks to update two solid waste chapters (Flow Control and Facility Regulation) to incorporate plain language and correct errors in the code.

ACTION REQUESTED

The Office of Metro Attorney requests that Metro Council adopt Ordinance No. 23-1498.

IDENTIFIED POLICY OUTCOMES

- 1) Update Metro Code Chapters 5.01 (Facility Regulation) and 5.05 (Flow Control) to incorporate plain and inclusive language best practices;
- 2) Remove redundant and unnecessary words that do not otherwise change the meaning of the sentence or code section;
- 3) Correct code errors related to incorrect cross-references;
- 4) Update terms to be more precise regarding Metro’s jurisdictional boundary.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

This ordinance does not affect current Council policies. This ordinance merely updates two solid waste code chapters to incorporate plain and inclusive language best practices as required by Council and corrects certain code errors.

STAFF RECOMMENDATIONS

OMA recommend that Metro Council adopt Ordinance No. 23-1498 to amend Metro Code Chapters 5.01 (Facility Regulation) and 5.05 (Flow Control) in Title V.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This housekeeping code update has no applicable strategic context other than ensuring that Metro’s regulatory code chapters are “clear, accessible, and inclusive” for all

communities, businesses, and local government partners within the region as required by Metro Council Resolution No. 22-5293.

BACKGROUND

In December 2022 Metro Council adopted Resolution No. 22-5293, the “Plain Language” resolution. This required, among other things, that staff draft Metro Code language using plain and inclusive language best practices. Second, it required a scheduled review of Metro Code chapters over time. Finally, it recognized that the solid waste regulatory code chapters in Title V “require frequent housekeeping updates to reflect changes in state law and ongoing regulatory clarity.”

For the past several months, solid waste staff have compiled a list of future necessary code changes when they discovered errors in the code or examples of language that did not comply with Metro’s plain and inclusive language standards. This code housekeeping update corrects those errors, while also slightly modifying some sections to incorporate plain and inclusive language best practices. It does not change current policy, practice, or intent.

Attachment 1 summarizes the updates to both chapters.

Attachment 1
Staff Report for Ordinance No. 23-1498
Summary of Chapter Updates

I. Chapter 5.01 (Solid Waste Facility Regulation)

- Corrected certain cross-reference errors;
- Changed the term “citizens” to “residents;”
- Changed plural terms to singular to improve regulatory clarity;
- Removed the final zeros on dollar amounts for easier reading (e.g. \$300.00 to \$300);
- Changed the term “planning director” to “planning department” when local land use compatibility statements are required for new Metro-authorized facilities. (This codifies current practice in which Metro receives notification from cities and counties rather than individual planning directors);
- Removed redundant or unnecessary words without changing the underlying meaning.

II. Chapter 5.05 (Solid Waste Flow Control)

- Changed the term “citizens” to “residents;”
- Changed “regional” boundary to “jurisdictional” boundary to be more precise;
- Removed redundant or unnecessary words without changing the underlying meaning;
- Changed the phrase “generated within Metro” to “generated within the Metro jurisdictional boundary” to be more precise;
- Capitalized the terms “Regional System Fee” and “Excise Tax;”
- Changed the term “Administrative Procedure” to “Administrative Rule.”

Agenda Item No. 4.2

Ordinance No. 23-1499, For the Purpose of Repealing
Metro Code Chapter 2.05 (Procedure for Contested Cases)
and Replacing it with a New, Updated Metro Code Chapter
2.05 (Contested Cases Procedures)
Ordinance

Metro Council Meeting
Thursday, October 19, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING METRO	)	ORDINANCE NO. 23-1499
CODE CHAPTER 2.05 (PROCEDURE FOR)	
CONTESTED CASES) AND REPLACING IT	)	Introduced by Chief Operating Officer
WITH A NEW, UPDATED METRO CODE	)	Marissa Madrigal in concurrence with
CHAPTER 2.05 (CONTESTED CASES	)	Council President Lynn Peterson
PROCEDURES))	

WHEREAS, Metro Code Chapter 2.05 (Procedure for Contested Cases) prescribes the procedures and requirements for the notice and hearings when a party seeks a contested case hearing; and

WHEREAS, a contested case hearing opportunity exists when Metro makes a decision that affects individual legal rights, duties, or privileges of specific parties. This includes Metro decisions regarding licenses, franchises, permits, or the imposition of civil penalties; and

WHEREAS, several Metro code chapters authorize a person or entity to seek a “contested case” hearing based on a Metro decision that affects that person or entity’s rights; and

WHEREAS, although the availability to contest a Metro decision applies to a broad range of Metro decisions, it is rarely exercised and has primarily been used with respect to solid waste license and franchise decisions and enforcement of solid waste authorizations; and

WHEREAS, current Metro Code Chapter 2.05 (Contested Cases) was originally adopted in 1979 by the former Metropolitan Service District Board, with only limited change or updating since that original adoption nearly 45 years ago; and

WHEREAS, some Metro Code chapters and sections that were established in the 1970s and 1980s—before Metro had an independent charter and home rule authority—were modeled after existing state statutes involving similar circumstances; and

WHEREAS, Metro’s Procedures for Contested Cases Chapter 2.05 was modeled almost exclusively on the state of Oregon’s contested case procedures found in ORS Chapter 183; and

WHEREAS, procedures established for use by Oregon state government do not often easily transfer to local government practices, which can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement; and

WHEREAS, as but one example of this disconnect between state and local governments, Metro’s Contested Case chapter code language generally substitutes the term “Metro Council” for state “agency” (which is defined as a state board, commission, department or division thereof), even though “state agencies” and “Metro Council” serve different roles, with different responsibilities and considerations; and

WHEREAS, many of the procedures established in Metro Code Chapter 2.05 (Contested Case Procedures) are unclear, cumbersome, and difficult to implement. This makes it burdensome for Metro staff and hearings officers to effectuate, while also creating barriers and confusion for individuals and entities seeking a contested case hearing based on a Metro decision or imposition of civil penalty; and

WHEREAS, in December 2022 Metro Council adopted Resolution No. 22-5293, which among other things requires that Metro Code be written using plain and inclusive language best practices; and

WHEREAS, the newly proposed Chapter 2.05 incorporates plain and inclusive language best practices as required; and

WHEREAS, Metro Code Chapter 2.05 (Procedures for Contested Cases) should be repealed and replaced with a new Contested Case Procedures chapter that more closely aligns Metro's contested case hearing and appeal procedures with local government practices, and which also incorporates plain and inclusive language best practices; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.05 (Procedures for Contested Cases) is repealed in its entirety.
2. A new Metro Code Chapter 2.05 (Contested Cases Procedures) is established as set forth in the attached Exhibit A.
3. The Metro Attorney is authorized to take any action reasonably necessary to correct and update any code chapter or code section reference to implement this ordinance.
4. Any contested case hearing that is requested before the effective date of this ordinance will continue to be governed by the contested case procedures established at the party request a contested case, including any appeals related to that contested case hearing.

ADOPTED by the Metro Council this 19th day of October 2023.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

EXHIBIT A
Ordinance No. 23-1499

CHAPTER 2.05

CONTESTED CASES PROCEDURES

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2.05.190	Final Order; Notification; Review
2.05.200	Nature of Determination; Judicial Review
2.05.210	Authority to Adopt Administrative Rules

2.05.010 Purpose

The purposes of this chapter are to give clear guidelines to persons involved in a contested case, to provide an understanding of what participants can expect, and to provide for thorough, fair, and timely hearings.

2.05.020 Definitions

Ex Parte Communication means a direct or indirect communication about a contested case pending before the hearings officer, which is between the hearings officer and a party to the contested case or the party's representative, and which occurs outside of a public hearing.

Hearings Officer means a person appointed by the Chief Operating Officer to hear and determine a contested case.

In Camera Review means a review by the hearings officer of a document or exhibit that is not available for public review.

Party means:

- (a) Metro.
- (b) Any person requesting and entitled to a contested case hearing under Metro Code.
- (c) Any person requesting to participate at the hearing as a party or a limited party which the hearings officer determines (i) has an interest in the result of the proceeding or represents a public interest in the result, and (ii) that the identified interest is not already adequately represented by one of the current parties.

Received means the date and time Metro or the hearings officer records a document as received by the hearings officer or Metro, as applicable. A document delivered to the hearings officer or Metro after regularly scheduled business hours or on a Saturday, Sunday, or official Metro holiday or closure is deemed received on the next business day at the start of business hours.

2.05.030 Jurisdiction for Contested Cases

- (a) Whenever a person has the right to a contested case hearing from any Metro decision or determination as provided in Metro Code generally or Section 2.05.040(a) specifically, the contested case hearing will follow the procedures set forth in this chapter.
- (b) No person has the right to a contested case hearing unless that right is expressly provided for in Metro Code. If Metro Code does not expressly provide for a contested case hearing, then the appropriate review is a writ of review in Multnomah County Circuit Court as set forth in ORS Chapter 34.

2.05.040 Contested Case Applicability

- (a) A contested case is a quasi-judicial administrative action that exists when:

- (1) Individual legal rights or duties of specific parties are required by Metro Code, Oregon statute, the Oregon Constitution, or the United States Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard;
 - (2) Metro has discretion to suspend or revoke a right or duty of a person;
 - (3) Metro refuses to issue, renew, modify, or amend any license, franchise, or permit required to pursue any activity governed or regulated by Metro;
 - (4) There is a proceeding in which Metro has directed by ordinance, rule, or otherwise that the proceeding be conducted in accordance with contested case procedures;
 - (5) Metro imposes a civil penalty; or
 - (6) Metro issues an Illegal Disposal citation pursuant to Metro Code Chapter 5.09.
- (b) A contested case does not exist when:
- (1) Metro approves or denies a grant application or Metro amends or revokes a grant;
 - (2) Metro finds a breach of contract, including a designated facility agreement authorized under Metro Code Title V;
 - (3) Metro imposes a condition, law, rule, or requirement of general applicability on a class of facilities, licensees, franchisees, or permittees; or
 - (4) Metro Code specifically authorizes a department director or other Metro staff member to hear appeals regarding decisions affecting the rights or duties of a person or entity.

2.05.050 Notice of Opportunity for Hearing; Service of Notice

- (a) Metro must give notice to a party when that party has the right to seek a contested case hearing. The notice must include:
- (1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;
 - (2) A statement of the authority under which Metro will hold the hearing;
 - (3) A reference to the applicable Metro Code sections, ordinances, or rules involved;
 - (4) A short and plain statement of the matters asserted, charged, or proposed;
 - (5) A statement that an attorney may represent the party at the hearing; and

- (6) When applicable, a statement that if the party desires a hearing, the party must notify Metro in writing within 30 calendar days of receiving Metro's notice of right to a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the party of the hearing. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
 - (1) Personal delivery;
 - (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
 - (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
 - (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

2.05.060 Hearings Officer Appointment; Qualifications

- (a) The Chief Operating Officer appoints the hearings officer from a list of at least three prospective, qualified hearings officers recommended by the Metro Attorney. The Chief Operating Officer may appoint more than one hearings officer at any given time depending on the circumstances and frequency of contested case hearings. The Chief Operating Officer may appoint a hearings officer for a specific hearing (or hearings), or for a specific duration of time.
- (b) The hearings officer must be a member in good standing of the Oregon State Bar.
- (c) The hearings officer must be independent of all Metro departments. However, for administrative purposes, the officer may be established as part of the Finance and Regulatory Services Department or Office of the Metro Attorney.

2.05.070 Hearings Officer Duties

- (a) The hearings officer conducts impartial administrative hearings and renders decisions when a person or entity contests Metro's decision to:
 - (1) Suspend, fail to renew, or revoke a right or duty previously conferred by Metro as authorized under Metro Code, or
 - (2) Refuse to grant a franchise, license, or other regulatory instrument pursuant to Metro Code Title V.

- (b) The hearings officer will coordinate with applicable Metro staff on scheduling and other administrative matters related to the hearing.

2.05.080 Initiation of Hearing Request

- (a) Unless otherwise specified in Metro Code, a party must file a request for a contested case hearing within 30 days after the date of the Metro decision or determination. The party must direct the request to the Metro staff position identified on the relevant Metro determination or citation. If no staff position is identified, the party should direct the request to the Metro Attorney's Office.
- (b) The request must be in writing and contain a statement of grounds upon which the party contends that the decision or determination is invalid, unauthorized, or otherwise improper.
- (c) The request must include a current address and contact information for the requesting party, including a phone number and, if applicable, an electronic email address for future correspondence.

2.05.090 Scheduling a Hearing; Notice

- (a) Upon Metro's receipt of a request for a contested case hearing, Metro will notify the hearings officer of the request to assist in scheduling the hearing.
- (b) The hearings officer, in coordination with applicable Metro staff, will specify a time, date, and place for a public hearing on the matters alleged in the request.
- (c) The date set for hearing may not be less than 30 days nor more than 180 days after the date that Metro receives the hearing request. However, the hearings officer may specify a date for hearing less than 30 days after the request is received if it appears there may exist an immediate and serious hazard to the public health, safety, or welfare or to the life, health, safety, welfare, or property of any person.
- (d) The hearings officer will give each party notice of the time, date, and location of the hearing in the same manner authorized for notice under 2.05.050(b).
- (e) The hearings officer may postpone, continue, set over, or reschedule any hearing with the consent of all parties; or, upon the hearings officer's discretion, on the motion of any party for good cause shown.
- (f) Notwithstanding an earlier request for an in-person hearing, the hearings officer may determine the matter without an in-person hearing upon consent of all parties and a review of written materials, if any, submitted by the parties. Any party seeking a determination without an in-person hearing must request this option at least five business days before the scheduled hearing.

2.05.100 Rights of Parties in Contested Cases

- (a) After the request for a hearing but at least 15 business days before the contested case hearing begins, Metro must provide the following information in writing to all parties:
 - (1) A general description of the hearing procedure, including the order of presentation of evidence and what kinds of evidence are admissible. Before the hearing begins, the hearings officer may provide further information regarding the officer's preferred hearing procedures, including the order of presentation of evidence.
 - (2) Whether Metro will record the proceeding, the manner of recording, and its availability to the parties.
 - (3) That an attorney may represent any party, including Metro.
 - (4) A description of the appeal process from the final order.
- (b) A failure to give notice of any item specified in subsection (a) does not invalidate any order unless upon an appeal from or review of the order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court will remand the matter to Metro for a reopening of the hearing and may direct Metro as to what steps Metro must take to remedy the prejudice to the rights of the complaining party.

2.05.110 Hearings Procedures

- (a) The hearings officer will conduct and control the hearing.
- (b) The hearings officer has authority to administer oaths and take testimony of witnesses.
- (c) By agreement of all parties, the hearing may be conducted using technology such as telephone or video conferencing equipment. If setting a hearing by telephone or video conference, the hearings officer will set the date and time by which the parties must exchange documents, exhibits, and witness lists.
- (d) Unless precluded by law, informal disposition of any proceeding may be made, with or without a hearing, by stipulation, consent order, agreed settlement, or default.
- (e) As set forth in subsection 2.05.090(f) and with the consent of all parties, the hearings officer may determine the matter without a hearing upon a review of written materials, if any, submitted by the parties.
- (f) Parties may elect to be represented by legal counsel and to respond to and present evidence and argument on all issues involved.
- (g) At the discretion of the hearings officer, the hearing will proceed as follows:
 - (1) Metro staff or case file report, if any.

- (2) Statement and evidence by Metro staff in support of Metro's action.
- (3) Statement and evidence of affected persons disputing Metro's action.
- (4) Rebuttal testimony.
- (h) The hearings officer, Metro's attorney of record or Metro staff as applicable, and the affected parties (or their attorneys if represented) have the right of direct examination of any witness. The hearings officer may ask follow-up questions of any witness as appropriate.
- (i) Each party may seek to cross-examine a witness by directing proposed cross-examination questions to the hearings officer. The hearings officer has discretion whether to allow any or all cross-examination questions.
- (j) Each party has the right to submit rebuttal evidence.
- (k) The hearings officer may continue the hearing for a reasonable period at the hearing officer's discretion.
- (l) The hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial testimony.
- (m) Parties must mark exhibits and the markings must identify the person offering the exhibits. Metro will preserve the exhibits as part of the record of the proceedings for a period of not less than five years.
- (n) A verbatim oral, written, or mechanical record must be made of all the proceedings. The verbatim record need not be transcribed unless necessary for judicial review.
- (o) After the hearing concludes, the hearings officer will close the record, and new evidence is not admissible thereafter.
- (p) Notwithstanding subsection (o), upon proper showing, the hearings officer may reopen the hearing to receive new evidence that a party could not have introduced earlier, and which is otherwise admissible under Section 2.05.160.

2.05.115 Subpoenas

- (a) In response to a request by a party, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or if not addressed in this section, with the Oregon Rules of Civil Procedure.
- (b) A party requesting a subpoena must demonstrate to the hearings officer that the potential witness has evidence of general relevance and probative value, that the evidence sought is reasonable in scope, and that it would otherwise be difficult or impossible to obtain the evidence sought by means other than a subpoena. The hearings officer may make available a form with the information required to make this showing.
- (c) Witnesses appearing pursuant to a subpoena, other than the parties or officers or employees of Metro, are eligible to receive fees and mileage as prescribed by law for

witnesses in civil actions. Unless a witness expressly declines payment for fees and mileage, the witness' obligation to appear is contingent on the payment of fees and mileage.

- (d) If a person fails to comply with an issued subpoena, or if any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, then the hearings officer or the party requesting the subpoena may apply to a Multnomah County Circuit Court judge to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court or a refusal to testify.

2.05.120 Burden of Proof

Metro has the burden of proving the alleged violation by a preponderance of the evidence.

2.05.130 Record of Hearing

The contested case hearing record consists of:

- (a) All pleadings, motions, and intermediate rulings;
- (b) Evidence received or considered;
- (c) Stipulations;
- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof, objections, and rulings thereon;
- (f) A statement of any ex parte communication on a fact in issue made to the hearings officer during the pendency of the proceedings;
- (g) Any proposed, intermediate, or final order prepared by the hearings officer.

2.05.140 Service of Documents on All Parties

- (a) A party must serve on all other parties all documents, written correspondence, or other material filed with or submitted to the hearings officer. Service is required within five days of when the materials are filed or submitted to the hearings officer, but not less than three days before a scheduled hearing.
- (b) Any document filed with or submitted to the hearings officer must contain a statement of proof of service on all parties.

2.05.150 Discovery

- (a) On petition of any party and a showing of the general relevance of the documents or things sought, the hearings officer has discretion to enter an order directing any party to produce and make available to the petitioning party to inspect and copy any document or to inspect and copy any things that are in the possession of a party.

- (b) The hearings officer may not enter an order requiring a party to produce any document or thing that is privileged under the rules of privilege recognized by law or which is exempt from disclosure under the Oregon Public Records Law. However, the hearings officer may request an in-camera review of the document.
- (c) The hearings officer may allow a party to take a deposition, but only upon a showing that relevant information cannot be obtained otherwise and that the requesting party would suffer extreme prejudice if not allowed to take a deposition before the hearing. If the hearings officer allows a deposition, the deposition must be in the manner prescribed by Oregon law for depositions in civil actions.

2.05.160 Evidentiary Rules During a Contested Case Hearing

- (a) The hearings officer may admit evidence of a type commonly relied upon by a reasonably prudent person in the conduct of that person's serious affairs.
- (b) Irrelevant, immaterial, or unduly repetitious evidence is not allowed.
- (c) The hearings officer will receive all offered evidence not objected to, subject to the hearing officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (d) The hearings officer may receive evidence objected to and then rule on its admissibility or exclusion at the time the hearings officer issues a final order.
- (e) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.
- (f) The hearings officer may not consider information or evidence not offered and made a part of the record. However, the hearings officer may take notice of judicially cognizable facts and may take official notice of general, technical, or scientific facts within the specialized knowledge of the hearings officer or Metro employees. The hearings officer must notify parties of officially noticed material and must afford the parties an opportunity to contest the officially noticed facts.

2.05.170 Ex Parte Communications to the Hearings Officer

The hearings officer must place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding. Upon request, a party must be given a reasonable opportunity to rebut any ex parte communications.

2.05.180 Orders When No Hearing Requested or For Failure to Appear

- (a) When a party has been given an opportunity to request a hearing and fails to do so within the specified time, no further action is required of Metro and Metro's action is upheld.

- (b) If a party that requested a hearing fails to appear at the specified time and place of the hearing, then the hearings officer may enter an order that upholds or denies Metro's action based on any written materials submitted at the time of the scheduled hearing. The hearings officer may allow Metro to submit further additional evidence at the scheduled hearing time to support a prima facie case.
- (c) The order supporting Metro action must set forth the material on which the hearings officer based the officer's action.

2.05.190 Final Order; Notification; Review

- (a) After due consideration of the evidence and arguments, the hearings officer will determine whether Metro has proven the violation alleged and enter an order as follows:
 - (1) If the hearings officer determines that Metro has not proven the violation, the hearings officer will enter a final order dismissing the action.
 - (2) If the hearings officer determines that Metro has proven the violation, the hearings officer will enter an appropriate final order.
- (b) A final order must be in writing.
- (c) A final order must include the following:
 - (1) Rulings on admissibility of offered evidence.
 - (2) Findings of fact. The findings of fact must consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact, each stipulated fact, and as to each ultimate fact required to support the hearings officer's order.
 - (3) Conclusions of law. The conclusions of law will apply the controlling law to the facts found and legal results arising from those facts.
 - (4) Civil Penalties. If applicable, the amount of any civil penalties and costs owed, and instructions regarding payment.
- (d) Within 30 calendar days of the hearing, the hearings officer must serve a copy of the final order on all parties to a contested case and their attorneys of record if any. The hearings officer may serve a copy by electronic mail, regular mail, or personal delivery.
- (e) The hearings officer must notify all parties of their right to judicial review of the final order as set forth in ORS Chapter 34 (Writ of Review).
- (f) Upon a showing of due diligence, the hearings officer may at any time set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by the order.

2.05.200 Nature of Determination; Judicial Review

- (a) The hearings officer's determination is a quasi-judicial decision and is not appealable to the Metro Council or any other Metro staff person.
- (b) Appeals from any hearings officer determination under this chapter is by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010—34.100.

2.05.210 Authority to Adopt Administrative Rules

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies.

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

Date: September 18, 2023
Department: Office of Metro Attorney
Meeting Date: October 5, 2023

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 20 minutes

[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]

ISSUE STATEMENT

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro's "Illegal Disposal" chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

ACTION REQUESTED

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

IDENTIFIED POLICY OUTCOMES

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Metro Council has several policy options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro's hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

STAFF RECOMMENDATIONS

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
 - Reducing the number of people that can understand the Code, and therefore follow it correctly.
 - Reducing Metro's efforts to be transparent.
 - Having code chapters that are inconsistent with one another.
 - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
-
- *Known Opposition/Support/Community Feedback*
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
 - *Legal Antecedents*
There are no specific legal antecedents other than current Metro Code language.
 - *Anticipated Effects*
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
 - *Financial Implications (current year and ongoing)*
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

BACKGROUND

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

ATTACHMENTS

Attachment 1 summarizes the proposed changes to Metro Code chapters 2.03 (Civil Penalties), 2.05 (Contested Case Procedures), and 5.09 (Illegal Disposal).

ATTACHMENT 1
Ordinance Nos. 23-1499, 23-1500, and 23-1501

Summary of Changes to Code Chapters at Issue

A. Contested Case Procedures (Chapter 2.05)

Metro's Contested Case Procedures Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Contested Case Procedures (ORS 183), but several procedures are not best practices (or even practical) for a local government. Following is a summary of the proposed changes to current code language.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
 - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an "agency" can review a proposed order. An "agency" is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term "agency" was just replaced with "Metro Council." However, "state agencies" and "Metro Council" serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
 - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
 - Current code language states that a hearings officer will send a "Proposed Order" to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
 - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
 - Breaches of contract
 - Denial of grant requests
 - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

B. Civil Penalties (Chapter 2.03)

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

C. Illegal Disposal (Chapter 5.09)

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
 - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.

Agenda Item No. 4.3

Ordinance No. 23-1500, For the Purpose of Repealing
Metro Code Chapter 2.03 (Civil Penalties) and Replacing it
with a new Metro Code Chapter 2.03 (Civil Penalties), and
Amending Certain Metro Code Chapters to Align with the
new Chapter 2.03
Ordinance

Metro Council Meeting
Thursday, October 19, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING METRO	)	ORDINANCE NO. 23-1500
CODE CHAPTER 2.03 (CIVIL PENALTIES))	
AND REPLACING IT WITH A NEW METRO	)	Introduced by Chief Operating Officer
CODE CHAPTER 2.03 (CIVIL PENALTIES),	)	Marissa Madrigal in concurrence with
AND AMENDING CERTAIN METRO CODE	)	Council President Lynn Peterson
CHAPTERS TO ALIGN WITH THE NEW)	
CHAPTER 2.03)	

WHEREAS, Metro Code Chapter 2.03 prescribes “the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties” by Metro; and

WHEREAS, several Metro code chapters authorize the imposition of civil penalties for violating Metro code, regulations, orders, or rules, including violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste; and

WHEREAS, although Metro is authorized to impose civil penalties for violations of many code chapters, Metro primarily imposes civil penalties for illegal solid waste disposal violations and violations related to solid waste franchises and licenses; and

WHEREAS, current Metro Code Chapter 2.03 (Civil Penalties) was originally adopted in 1977 by the former Metropolitan Service District Board, with little change or updating since that original adoption nearly 50 years ago; and

WHEREAS, some Metro Code chapters and sections established in the 1970s and 1980s—before Metro had an independent charter and home rule authority—were modeled after existing state statutes involving similar circumstances and procedures. This includes, for example, the *Civil Penalties* Code Chapter 2.03 and the *Procedure for Contested Cases* Code Chapter 2.05; and

WHEREAS, procedures established for use by Oregon state government do not often easily transfer to local government practices, which can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement; and

WHEREAS, many of the procedures established in Metro Code Chapters 2.03 (Civil Penalties) are unclear, cumbersome, and difficult to implement. This makes it burdensome for Metro staff and hearings officers to effectuate, while also creating barriers and confusion for individuals and entities facing a violation or civil penalty; and

WHEREAS, in December 2022 the Metro Council adopted Resolution No. 22-5293, which among other things requires that Metro Code be written using plain and inclusive language best practices; and

WHEREAS, the proposed updated Chapter 2.03 incorporates plain language best practices as required; and

WHEREAS, Metro Code Chapter 2.03 (Civil Penalties) should be repealed and replaced with a new civil penalties chapter setting forth procedures that align more closely with local government procedures and which also incorporates plain and inclusive language best practices; and

WHEREAS, two sections of the current Chapter 2.03 establishing penalty amounts for violations related to the Zoo and Parks and Nature should be moved to the code chapters that establish those rules and regulations (Chapter 4.01 for the Zoo and Chapter 10.02 for Metro Parks and Natural Areas) rather than being embedded in the civil penalties code chapter; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.03 (Civil Penalties) is repealed in its entirety.
2. A new Metro Code Chapter 2.03 (Civil Penalties) is established as set forth in the attached Exhibit A.
3. Metro Code Chapter 4.01 (Oregon Zoo Regulations) is amended as set forth in attached Exhibit B.
4. Metro Code Chapter 10.02 (Permits, Enforcement and Appeals) is amended as set forth in attached Exhibit C.
5. The Metro Attorney is authorized to take any action reasonably necessary to correct and update any code chapter or code section reference to implement this ordinance.
6. Any civil penalty imposed before the effective date of this ordinance will continue to be governed by the procedures established at the time Metro imposed the civil penalty, including any appeals or contested case hearings related to that civil penalty imposition.

ADOPTED by the Metro Council this 19th day of October 2023.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

EXHIBIT A
Ordinance No. 23-1500

CHAPTER 2.03

CIVIL PENALTIES

2.03.010	Purpose
2.03.020	Definitions
2.03.030	Each Violation Separate and Distinct
2.03.040	Consolidation of Proceedings
2.03.050	Notice of Civil Penalty Assessment; Service of Notice
2.03.060	Mitigating and Aggravating Factors for Civil Penalties
2.03.070	Amount of Financial Civil Penalties
2.03.080	When Civil Penalty is Due
2.03.090	Appeals
2.03.100	Compromise or Settlement of Civil Penalty
2.03.110	Judgment
2.03.120	Authority to Adopt Administrative Rules

2.03.010 Purpose

The purpose of this chapter is to proscribe the procedures and requirements to notice, assess, collect, and enforce civil penalties.

2.03.020 Definitions

Unless otherwise required by context, as used in this chapter:

Civil Penalty means a non-criminal remedy for any violation of a Metro regulation, order, code section, law, administrative rule, permit, franchise, license or any other similar regulatory requirement.

Director means “Department Director” as defined in Metro Code Chapter 2.17.

Hearings Officer means a person appointed by the Chief Operating Officer to hear and determine a contested case.

Respondent means the person against whom Metro has assessed a civil penalty.

2.03.030 Each Violation Separate and Distinct

Each violation is a separate and distinct offense. In cases of continuing violation, each days' continuance is a separate and distinct violation.

2.03.040 Consolidation of Proceedings

Notwithstanding subsection 2.03.030, proceedings to assess multiple civil penalties for multiple violations may be consolidated into a single proceeding.

2.03.050 Notice of Civil Penalty Assessment; Service of Notice

- (a) Metro must give notice in writing to a respondent when Metro assesses a civil penalty. The notice must include:
 - (1) A reference to the particular Metro Code section, ordinance, order, permit, regulation, or rule involved;
 - (2) A short and plain statement of the matters asserted or charged;
 - (3) A statement of the amount of the penalty or penalties imposed; and
 - (4) A statement of the respondent's right to request a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the respondent of the civil penalty assessment. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
 - (1) Personal delivery;

- (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
- (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
- (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

2.03.060 Mitigating and Aggravating Factors for Civil Penalties

- (a) In establishing the amount of a civil penalty to be assessed, Metro may consider the following factors:
 - (1) Whether the respondent has committed any prior violation, regardless of whether any administrative, civil, or criminal proceeding was commenced as a result;
 - (2) The history of the respondent in taking all feasible actions necessary or appropriate to correct any violation; or
 - (3) The respondent's economic and financial condition.
- (b) In establishing whether Metro should mitigate a civil penalty, Metro may consider the following factors:
 - (1) The gravity and magnitude of the violation;
 - (2) Whether the violation was repeated or continuous;
 - (3) Whether a cause of the violation was a negligent or an intentional act of the respondent;
 - (4) The opportunity and degree of difficulty to correct the violation;
 - (5) The respondent's cooperativeness and efforts to correct the violation for which Metro may assess the penalty;
 - (6) The cost to Metro to investigate or correct the cited violation; or
 - (7) Any other relevant factor.

2.03.070 Amount of Financial Civil Penalties

Unless specified otherwise in Metro Code, no financial civil penalty may exceed \$500 per day per violation.

2.03.080 When Civil Penalty is Due

Unless otherwise stated in the written notice of civil penalty assessment, a civil penalty is due and payable when Metro serves the respondent with the written notice of civil penalty assessment.

2.03.090 Appeals

- (a) The respondent has 30 calendar days from Metro's notice of civil penalty assessment to request a contested case hearing regarding the validity or amount of the civil penalty.
- (b) All hearings will be conducted as set forth in Metro Code Chapter 2.05 ("Contested Case Procedures").

2.03.100 Compromise or Settlement of Civil Penalty

At any time after Metro serves the written notice of assessment of civil penalty, the appropriate Director is authorized to compromise or settle any unpaid civil penalty that the Director deems appropriate.

2.03.110 Judgment

Unless the respondent pays the amount of the penalty within 10 days after a contested case order becomes final, the order constitutes a judgment and Metro may file it in accordance with the provisions of Oregon Law. Metro may execute upon the order in the same manner as execution upon a judgment of a court of record.

2.03.120 Authority to Adopt Administrative Rules

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies.

EXHIBIT B
Ordinance No. 23-1500

1. Metro Code Section 4.01.100 (Penalties) is amended as set forth with underlined text inserted and ~~strikethrough~~ text deleted:

4.01.100 Penalties

(a) Each violation of these rules and regulations ~~is~~ shall be punishable by a fine set by the schedule of civil penalties set forth in Section ~~2-03-060~~ 4.01.110.

2. A new Metro Code Section 4.01.110 (Civil Penalty Schedule) is added as set forth:

4.01.110 Civil Penalty Schedule

In addition to any liability, duty, or other penalty provided by law, the Zoo Director may assess a civil penalty for any violation pertaining to the Zoo in the manner set forth in Metro Code Chapter 2.03 (Civil Penalties). The amount of the civil penalty must be consistent with the following schedule:

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

EXHIBIT C
Ordinance No. 23-1500

1. Metro Code Section 10.02.110 (Citation, Ejectment and Exclusion, Hearing) is amended as set forth with underlined text inserted and ~~striketrough~~ text deleted:

10.02.110 Citation, Ejectment and Exclusion, Hearing

(a) The Director and the Director's authorized enforcement personnel have the authority to: cite for civil penalties in the manner set forth in Metro Code Chapter 2.03 for any violation pertaining to its parks, cemeteries, and natural areas; or eject from any Property any person acting in violation of Title X, any Rules, or the laws of the State of Oregon. A civil penalty issued under the authority of this section may not be less than \$25 nor more than \$500.

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

Date: September 18, 2023
Department: Office of Metro Attorney
Meeting Date: October 5, 2023

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 20 minutes

[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]

ISSUE STATEMENT

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro's "Illegal Disposal" chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

ACTION REQUESTED

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

IDENTIFIED POLICY OUTCOMES

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Metro Council has several policy options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro's hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

STAFF RECOMMENDATIONS

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
 - Reducing the number of people that can understand the Code, and therefore follow it correctly.
 - Reducing Metro's efforts to be transparent.
 - Having code chapters that are inconsistent with one another.
 - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
- *Known Opposition/Support/Community Feedback*
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
 - *Legal Antecedents*
There are no specific legal antecedents other than current Metro Code language.
 - *Anticipated Effects*
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
 - *Financial Implications (current year and ongoing)*
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

BACKGROUND

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

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Summary of Changes to Code Chapters at Issue

A. Contested Case Procedures (Chapter 2.05)

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- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
 - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an "agency" can review a proposed order. An "agency" is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term "agency" was just replaced with "Metro Council." However, "state agencies" and "Metro Council" serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
 - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
 - Current code language states that a hearings officer will send a "Proposed Order" to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
 - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
 - Breaches of contract
 - Denial of grant requests
 - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

B. Civil Penalties (Chapter 2.03)

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

C. Illegal Disposal (Chapter 5.09)

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
 - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.

Agenda Item No. 4.4

Ordinance No. 23-1501, For the Purpose of Amending
Metro Code Chapter 5.09 (Illegal Disposal) to Align it with
the new Metro Code Chapter 2.05 (Contested Cases) and
Incorporate Plain Language Best Practices
Ordinance

Metro Council Meeting
Thursday, October 19, 2023

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 23-1501
CODE CHAPTER 5.09 (ILLEGAL DISPOSAL))	
TO ALIGN IT WITH THE NEW METRO CODE	)	Introduced by Chief Operating Officer
CHAPTER 2.05 (CONTESTED CASES) AND	)	Marissa Madrigal in concurrence with
INCORPORATE PLAIN LANGUAGE BEST	)	Council President Lynn Peterson
PRACTICES)	

WHEREAS, Metro Code Chapter 5.09 (Illegal Disposal) governs illegal disposal prohibitions in the Metro Area, sometimes colloquially referred to as “illegal dumping”; and

WHEREAS, Chapter 5.09 includes sections regarding enforcement of illegal disposal prohibitions, issuance of civil penalties for illegal disposal, and hearings procedures for individuals and entities that wish to contest illegal disposal citations; and

WHEREAS, Metro has observed a significant increase in illegal disposal activities within the region. This has led to heightened environmental concerns, public safety issues, and increased workload for Metro staff; and

WHEREAS, the rise in illegal disposal incidents has resulted in an increasing number of citations issued by Metro, along with a subsequent increase in requests for hearings to contest these citations, which strains the resources and efficiency of the citation enforcement process; and

WHEREAS, the proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro's regulatory illegal disposal code chapter and the process for parties to challenge Metro's enforcement actions; and

WHEREAS, current Chapter 5.09 language has references to certain criminal state statutes regarding discovery and proceedings for illegal disposal hearings that are not applicable to a local government civil administrative hearing, and, at worst, practically impossible to implement; and

WHEREAS, although staff and hearings officers have worked diligently to apply current code procedures whenever possible, these procedures are confusing and proving unworkable and, with an increase in citations, will only cause further administrative difficulties if current code language is not updated; and

WHEREAS, staff anticipates that Metro Council will, in companion with this Ordinance, adopt ordinances that likewise update Metro's Contested Case Procedures and Civil Penalties code chapters to address similar state-law modeled shortcomings; and

WHEREAS, the proposed updates to Chapter 5.09 Illegal Disposal will now align with the expected updates to the Contested Case Procedures and Civil Penalties chapters, which includes incorporating the hearings procedures and civil penalty issuance procedures in those newly updated code chapters; and

WHEREAS, in December 2022 Council adopted Resolution No. 22-5293, which, among other things, required that Metro code chapters use plain and inclusive language best practices to improve readability, transparency, and understanding of Metro's requirements and procedures; and

WHEREAS, Resolution No. 22-5293 also recognized that Metro's regulatory code chapters demand a more frequent housekeeping update schedule to keep abreast of changes in state and federal law and to more quickly address Metro Code sections that are unclear or confusing to regulated individuals and entities; and

WHEREAS, in addition to removing unworkable references to state law and procedures and better aligning with Metro's new Contested Case Procedures and Civil Penalties code chapters, the updated Chapter 5.09 also incorporates plain and inclusive language best practices as required; and

WHEREAS, section 5.09.040(g) from the current Chapter 5.09 (regarding material sorting) should be moved to Chapter 5.05 (Solid Waste Flow Control) in a new section 5.05.040(d); and

WHEREAS, Metro is dedicated to upholding its role as a responsible and accountable local government agency by updating its code for increased clarity and alignment; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.09 (Illegal Disposal) is amended as set forth in Exhibit A, with inserted text underlined and deleted text in strikethrough.
2. Chapter 5.05 (Solid Waste Flow Control) is amended to add a new section 5.05.040(d) as set forth in Exhibit B.
3. Any illegal disposal citation issued before this ordinance takes effect will be governed by the code language in Chapter 5.09 that existed at the time Metro issued the citation.

ADOPTED by the Metro Council this 19th day of October 2023.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

EXHIBIT A
Ordinance No. 23-1501

CHAPTER 5.09
ILLEGAL DISPOSAL

5.09.005	Title
5.09.010	Purpose
5.09.020	Jurisdiction
5.09.030	Prohibition on Illegal Disposal of Solid Waste
5.09.040	Prohibition on Illegal Household Hazardous Waste Disposal
5.09.050	Exemption from Illegal Disposal Prohibitions
5.09.060	Illegal Disposal Declared a Nuisance
5.09.070	Civil Penalties and Costs
5.09.080	Persons Authorized to Issue a Citation
5.09.090	Procedure for Service of Citation
5.09.100	Citation Content
5.09.110	Citation Error
5.09.120	Appearance by Cited Person; Request for Hearing
5.09.130	Prehearing Discovery
5.09.140	Procedures Before Hearings Officer
5.09.150	Burden of Proof
5.09.160	Evidentiary Rules During a Hearing
5.09.170	Representation at Hearing
5.09.180	Failure to Appear by Cited Person; Entry of Final Order
5.09.190	Failure to Pay Civil Penalties; Consequences
5.09.200	Collection of Civil Penalties and Costs; Other Legal Actions
5.09.210	Severability
5.09.220	Authority to Settle

Repealed

5.09.020	Definitions
	[Repealed Ord. 14-1331]
5.09.170	Administrative Policies and Procedures
	[Repealed Ord. 19-1441]

5.09.005 Title

This chapter may be cited as the "Metro Illegal Disposal Ordinance." [Ord. 94-557.]

5.09.010 Purpose

The purposes of this chapter are:

- (a) To ~~carry out~~effectuate Metro's responsibility to manage the flow of solid waste in the ~~Metro Area~~ Portland metropolitan area;
- (b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro ~~region~~Area;
- (c) To ~~carry out~~effectuate the provisions related to illegal disposal in the Regional Waste Plan; and
- (d) To prevent fraudulent and unauthorized deliveries of ~~hazardous~~ waste to Metro transfer stations and Metro household hazardous waste facilities. [Ord. 94-557; Ord. 06-1107; Ord. 13-1311; Ord. 14-1331, Sec. 6; Ord. 19-1432.]

5.09.~~030~~ 020 Jurisdiction

This chapter ~~shall apply~~applies to all territory within the jurisdictional boundaries of Metro, ~~as well as any additional area as may be established through an intergovernmental agreement.~~ [Ord. 94-557.]

5.09.~~040~~ 030 Prohibitions on Illegal Disposal of Solid Waste

- (a) No person ~~shall~~may transport or carry, or direct another person to transport or carry, any solid waste, ~~including rubbish, trash, garbage, debris or other refuse, or recyclable material~~, in or on a motor vehicle or trailer, upon a public road right-of-way within the Metro Area, unless ~~such the~~ solid waste ~~or recyclable material~~ is:
 - (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer; and
 - (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste ~~or recyclable material~~ from being deposited upon any private or public property, road, right-of-way or driveway within Metro.
- (b) No person ~~shall~~may throw or place any solid waste, or direct another person to throw or place any solid waste, upon the private land or waters of another person, into a solid waste receptacle of another person without the owner's permission ~~of the owner~~, upon public lands or waters, or upon any public place other than at a solid waste facility authorized to accept such waste by Oregon law and the Metro Code.

- (c) No person who has generated or otherwise has possession or control of solid waste ~~shall may~~ direct or permit another person to dispose of ~~such the~~ solid waste if the person who has generated or otherwise has possession or control of ~~such the~~ solid waste knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of ~~such the~~ solid waste in compliance with all applicable local, state, and federal laws and regulations. ~~No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this chapter for illegal disposal of such waste.~~

5.09.040 Prohibition on Illegal Household Hazardous Waste Disposal

- (a) ~~Other than hazardous waste delivered to a Metro household hazardous waste facility, no~~ No person ~~shall may~~ deliver to a Metro transfer station any hazardous waste, ~~other than hazardous waste delivered to a Metro household hazardous waste facility,~~ that is household hazardous waste or hazardous waste generated by a ~~very small quantity conditionally exempt~~ generator.
- (b) No person ~~shall may~~ deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than household hazardous waste or hazardous waste generated by a ~~conditionally exempt very small quantity~~ generator.
- (c) No person ~~shall may~~ make a false statement to Metro certifying that hazardous waste ~~the person has they have~~ delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is household hazardous waste or hazardous waste generated by a ~~conditionally exempt very small quantity~~ generator.
- ~~No person shall deliver non-putrescible solid waste generated within Metro that has not undergone material recovery, or direct another person to deliver such solid waste, to any facility other than a Metro-authorized material recovery facility.~~[Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107.]

5.09.050 Exemption from Illegal Disposal Prohibitions

~~A person does not violate the solid waste illegal disposal provisions of this chapter if a hauler that is franchised or otherwise authorized by a local government to collect solid waste collected the solid waste at issue.~~

5.09.060 Illegal Disposal Declared a Nuisance

~~A violation of Section 5.09.030 or Section 5.09.040 is a nuisance and is subject to abatement or injunction as any other nuisance, in addition to other penalties as described in this chapter.~~

5.09.050-070 Civil Fines Penalties and Costs

- (a) ~~Any A~~ person ~~violating that violates~~ any provision of this chapter ~~is shall be~~ subject to:

- (1) A civil ~~fine-penalty~~ of not more than \$500 for each violation; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
 - (A) administrative costs of investigation and collection; and
 - (B) cleanup, management, and disposal costs incurred.

~~The fines and costs shall be included in the citation and a hearings officer shall not assess additional fines or costs except the hearings officer may assess an additional fee, not to exceed \$50, if a party fails to appear at a hearing that he or she requested, unless for good cause shown.~~

- (b) ~~An illegal disposal violator is not relieved of responsibility to remedy the violation by virtue of paying~~ Payment of a civil ~~fine-penalty~~ imposed by a citation issued under this chapter ~~does not relieve a violator of responsibility to remedy the violation.~~
- ~~(c) — Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance. [Ord. 94-557; Ord. 94-581, Sec. 1; Ord. 06-1107; and Ord. 13-1311.]~~

5.09.~~060-080~~ Persons Authorized to Issue a Citations

The following persons are authorized to issue a citations under this chapter:

- (a) The Chief Operating Officer or designee; and
- (b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]

5.09.~~070-090~~ Procedure for Service of Citation

- (a) An authorized official ~~shall~~may serve a citation on a cited person by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the alleged violator of the citation. The following notice methods satisfy the notice requirements of this section in at least one of the following ways:
 - (1) Personal delivery;
 - (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
 - (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or

~~(1)(4)~~ Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

~~(1)~~ Personally;

~~(2)~~ By delivery to a person over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;

~~(3)~~ If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or

~~(4)~~ By certified or registered mail, return receipt requested. If the cited person is an individual, then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.

- (b) An authorized official may not arrest any person for violation of this chapter. An authorized official may detain any person reasonably believed to have committed a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state. [Ord. 94-557; and Ord. 06-1107.]

~~5.09.080~~ Issuance of Warnings

~~(a)~~ A person authorized to issue a citation under this chapter may issue a warning of an alleged violation under this chapter.

~~(b)~~ If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the violation in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail. [Ord. 94-557; Ord. 94-581, Sec. 2; Ord. 06-1107; and Ord. 13-1311.]

~~5.09.090~~ 100 Citation Content

For all violations enforceable under this chapter, Metro will use a A-citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all violations enforceable under this chapter. Each A citation shall must contain the following information:

(1) Identification of Metro, as the public body in whose name the action is brought;

~~(2)~~ Hearings officer file number;

~~(3)~~(2) Name of the cited person;

~~(4)~~(3) The Metro Code section violated;

~~(5)~~(4) The date and time at which the violation is alleged to have occurred, or the date that a complainant or the authorized official issuing the citation first observed the violation ~~was first observed by the authorized official issuing the citation or a complainant;~~

~~(6)~~(5) A short and plain statement of the violation of which the person is charged;

~~(7)~~(6) The place at which the violation is alleged to have occurred;

~~(8)~~(7) The date on which the citation was issued;

~~(9)~~(8) The name of the authorized official issuing the citation;

~~(10)~~(9) _____
The ~~amount of the~~ civil finest-penalties and costs imposed for the violation;

~~(11)~~(10) _____ A
~~n explanation statement informing the cited person~~ that paying the civil fine penalty assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;

~~(12)~~(11) _____ T
he time by which the cited person must respond to the citation by either:
(a) requesting a hearing, (b) admitting responsibility and paying the civil fine penalty and costs, or (c) ~~paying the civil fine and costs and~~ submitting a written explanation of why Metro should not find the cited person ~~should not be found~~ in violation of the Metro Code or of any mitigating circumstances related to the violation, ~~and requesting that a hearings officer reduce and refund all or part of the civil fine and costs paid;~~

~~(13)~~(12) _____ T
he place where the cited person must direct the person'shis or her response;

~~(14)~~(13) _____ A
notice statement informing the cited person that failure to respond to the citation could result in the entry of a default order against the cited person, including the imposition of a civil fine penalty of up to \$500 per violation plus additional costs ~~(incurred to investigate costs; the violation; costs to cleanup, manage, and dispose of solid waste that is at issue the subject of the violation; and collection to collect all civil fines and costs)~~. The notice ~~shall~~ must further inform the cited person that the failure to pay civil finest penalties and costs imposed by order of a hearings officer could result in (i) entry of a judgment against the cited person for the unpaid civil finest penalties and costs, (ii) the county clerk recording the person's name and the amount of the finest-penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law; and

~~(15)~~(14) _____ A
certification by the authorized official issuing the citation, under penalty of perjury ~~ORS 153.990~~, that the authorized official issuing the citation has

reasonable grounds to believe, and does believe, that the cited person committed a violation enforceable under this chapter. A certificate conforming to this subsection ~~shall be~~ is deemed equivalent to a sworn citation. ~~;~~ and

~~(16) — The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the citation and the required certification of service may be made upon receipt of the "return receipt." Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).~~

5.09.110 Citation Error

- (a) ~~If an~~ An error in transcribing information into a citation, ~~when determined by the hearings officer to be~~ is non-prejudicial to the defense of the cited person, Metro or the hearings officer may correct the error ~~may be corrected at the time of hearing or prior to time of~~ before the hearing with notice to the cited person, or it may be corrected at the time of the hearing if allowed by the hearings officer.
- (b) Except as provided in this subsection, the hearings officer must set aside a citation that does not conform to the requirements of ~~this S~~ section 5.09.100 shall be set aside by the hearings officer upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation ~~shall not be~~ are not a basis for setting aside a citation.
- (c) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion. [Ord. 94-557; Ord. 94-581, Sec. 3; Ord. 06-1107; Ord. 13-1311.]

5.09.100 Representation at Hearing

- ~~(a) — A cited person may retain an attorney, at the person's own expense, for representation at the hearing provided that written notice of such representation is received by the Metro Attorney five working days in advance of the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.~~
- ~~(b) — When a cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case, be present at the hearing for the purpose of consulting with and advising Metro staff, and answer procedural questions posed by the hearings officer. Nothing prevents the unrepresented party from consenting to legal counsel representing Metro at the hearing. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

5.09.110-120 Appearance by Cited Person; Request for Hearing

(a) The cited person ~~shall must~~ either (i) appear as specified in the citation by admitting responsibility on or before the close of business on the date indicated in the citation, or ~~prior to (ii) before~~ such time deliver to the address noted in the citation:

- (1) A request for a hearing;
- (2) A statement of responsibility and ~~a check, cash or money order payment~~ in the amount of the civil ~~fine penalty~~ set forth in the citation; or
- (3) ~~A statement of An~~ explanation in mitigation of the ~~violation offense charged~~ with a request ~~that Metro reduce the for a reduction in fines penalties~~ and costs, ~~and a check, cash, or money order in the amount of the civil fine set forth in the citation, which~~ The explanation and payment combined ~~shall~~ constitutes a waiver of hearing and consent to judgment by the hearings officer. The hearings officer will base judgment upon the explanation provided by the cited person and the citation case information provided by Metro.

(b) If the cited person requests a hearing, the request must be in writing and contain a statement of grounds upon which the party contends that citation is invalid, unauthorized, or otherwise improper. The request must include a current address and contact information for the requesting party, including a phone number and, if applicable, an electronic email address for future correspondence.

~~(b)(c)~~ The hearings officer ~~will set shall fix~~ a date and time for a hearing ~~and. Unless notice is waived, the hearings officer shall notify mail to~~ the cited person ~~a notice~~ of the ~~date and time of the~~ hearing schedule at least 30 five working business days ~~prior to before~~ the hearing. The notice ~~shall must~~:

- (1) Be in the form of a "Notice to Appear" and contain a warning that if the cited person fails to appear, the hearings officer will enter a finding of responsibility ~~will be entered~~ against that person; and
- (2) Be sent to the cited person at the person's last known address by regular mail or such other communication means as requested by the cited person or which, under the circumstances, is reasonably likely to apprise the cited person of the hearing schedule.

~~By agreement of all parties, the hearing may be conducted using technology such as the telephone or video conferencing equipment. If setting a hearing by telephone or video conference, the hearings officer shall set the date and time by which the parties must exchange documents, exhibits, and witness lists.~~ [Ord. 94-557; Ord. 94-581, Sec. 4; Ord. 06-1107; and Ord. 13-1311.]

5.09.120-130 Prehearing Discovery

Metro must provide the following prehearing discovery to the cited person at least 30 days before the scheduled hearing:

- (a) Issued citation or enforcement action;

- (b) Solid waste enforcement incident report;
- (c) Initial complainant report to Metro of illegally disposed waste (if any);
- (d) Copies of any correspondence between Metro staff and the cited person.

~~The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to violation cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a cited person under this chapter. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

5.09.~~130~~ 140 Procedures Before Hearings Officer

~~Any hearing requested under this chapter will be conducted as set forth in Metro Code Section 2.05.110 (Contested Case Procedures).~~

- ~~(a) An allegation of violation of any provision of this chapter shall, if not admitted by the cited person or settled by the department prior to or during the hearing, be resolved by a hearings officer.~~
- ~~(b) The hearings officer shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the Finance and Regulatory Services Department, Office of the Metro Attorney, or Office of the Auditor.~~
- ~~(c) Metro shall have the burden of proving the alleged violation by a preponderance of the evidence.~~
- ~~(d) The hearings officer shall apply the following rules of evidence:~~
 - ~~(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible.~~
 - ~~(2) Evidence objected to may be admitted at the hearing officer's discretion and all evidence offered but not objected to shall be received. All evidence is subject to the hearings officer's discretion to exclude irrelevant, prejudicial, untimely or unduly repetitious evidence and to weigh all evidence received.~~
 - ~~(A) Relevant evidence. Relevant evidence means evidence having any tendency to make the existence of any material fact more or less probable than it would be without the evidence.—~~
 - ~~(B) Prejudicial evidence. Prejudicial evidence means evidence whose probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time or needless presentation of cumulative evidence.~~

- ~~(3) — Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.~~
- ~~(4) — Upon reconsideration of an evidentiary ruling, a hearings officer shall preclude action only if the ruling was both erroneous and substantially prejudicial to the rights of a party.~~
- ~~(5) — The hearings officer shall give effect to the rules of privilege recognized by law.~~
- ~~(e) — A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code 5.09.040(b) or 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and shall so notify the cited person following presentation of Metro's case.~~
- ~~(f) — The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication. The hearings officer shall have the authority to administer oaths and take testimony of witnesses. In response to a request by Metro or the cited person, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or if not addressed herein, with the Oregon Rules of Civil Procedure:~~
 - ~~(1) — Metro or the cited person shall request that the hearings officer order witnesses to appear by subpoena in writing at any time at least five days prior to the scheduled hearing.~~
 - ~~(2) — A \$15 deposit for each witness shall accompany each request for a subpoena by a cited person. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.~~
 - ~~(3) — Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.~~
 - ~~(4) — If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.~~
- ~~(g) — The parties shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.~~
- ~~(h) — The cited person may not be required to be a witness in the hearing of any violation under this chapter.~~

~~(i) — Proof of a culpable mental state is not an element of a violation under this chapter.~~

~~(j) — After due consideration of the evidence and arguments, the hearings officer shall determine whether the violation alleged in the citation has been proven and enter an order as follows:~~

~~(1) — (1) If the hearings officer determines that the violation has not been proven, a final order dismissing the citation shall be entered.~~

~~(2) — If the hearings officer determines that the violation has been proven, the hearings officer shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.~~

~~(3) — A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, by regular mail with certificate of service from the hearings officer.~~

~~An audio recording shall be made of the hearing unless waived by both parties. The recording or a written transcript shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later. [Ord. 94-557; Ord. 94-581, Sec. 5; Ord. 02-974, Sec. 1; Ord. 06-1107; and Ord. 13-131]~~

5.09.150 Burden of Proof

Metro has the burden of proving the alleged violation by a preponderance of the evidence.

5.09.160 Evidentiary Rules During a Hearing

(a) The evidentiary rules established in Chapter 2.05 (Contested Case Procedures) apply to any hearing conducted under this chapter.

(b) Notwithstanding subsection (a) above, proof of a culpable mental state is not an element of a violation under this chapter.

(c) A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code 5.09.040(b) or 5.09.040(c). The hearings officer will determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and will so notify the cited person following presentation of Metro's case.

5.09.170 Representation at Hearing

A cited person may, at the person's own expense, be represented by an attorney at the hearing provided that Metro receives written notice of the representation at least 10

business days before the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

5.09.140-180 Failure to Appear by Cited Person; Entry of Final Order

- (a) A cited person fails to appear if ~~that person~~~~he or she~~ does not respond by the time specified on the citation or if ~~that person~~~~he or she~~ requests a hearing and does not appear at the time scheduled by the hearings officer.
- (b) If the cited person fails to appear, the hearings officer ~~shall~~will review any evidence submitted to determine if Metro has established the violation by a preponderance of the evidence, ~~and The hearings officer shall~~will enter an appropriate final order that includes instructions regarding payment and the process to appeal the decision.
~~Where a cited person requests a hearing and fails to appear, the hearings officer may assess an additional fee not to exceed \$50. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in Metro Code 5.09.070. [Ord. 94-557; Ord. 94-581, Sec. 6; Ord. 06-1107; and Ord. 13-1~~

5.09.190 Failure to Pay Civil Penalties; Consequences

A failure to pay civil penalties imposed by order of a hearings officer may result in (i) entry of a judgment against the cited person for the unpaid civil penalties, (ii) a county clerk recording the person's name and the amount of the penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law.

5.09.150 Review of Hearings Officer Decisions

- ~~(a) — A motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.~~
- ~~(b) — A cited person may appeal a final order by Writ of Review as provided in ORS 34.010 through 34.100. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311.]~~

5.09.160-200 Collection of Civil ~~Fines-Penalties~~ and Costs; Other Legal Actions

- (a) ~~Fines-Civil penalties~~ and costs are payable upon receipt of citation or an invoice from Metro pursuant to a written settlement or final order imposing ~~fin~~es civil penalties and costs. ~~Fines-Civil penalties~~ and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.
- (b) ~~The Chief Operating Officer or designee~~Metro may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

- (c) ~~In addition to other remedies available in law or equity, when~~When an order assessing civil ~~fin~~es ~~penalties~~ and costs under this chapter becomes final by operation of law or on appeal and the ~~violater has not paid the penalties~~amount of the fines or costs ~~is not paid~~ within 10 days after the order becomes final, Metro may record and enforce the order ~~may be recorded and enforced~~ as provided in ORS 268.360~~(5)~~. [Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107; and Ord. 13-1311.]
- (d) Nothing in this chapter prevents other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether Metro has commenced an action under this chapter.

~~5.09.170 [Repealed Ord. 19-1441; Effective February 19, 2020]~~

5.09.~~180-210~~ Severability

If a court of competent jurisdiction finds any ~~section, subsection, paragraph, sentence, clause, phrase, or other~~ portion of this chapter ~~is found to be~~ invalid or unconstitutional ~~by a court of competent jurisdiction~~, that portion of the chapter ~~is~~shall be deemed separate and distinct, and the remainder of this chapter ~~shall~~continues in full force and effect. [Ord. 94-557.]

5.09.~~190-220~~ Authority to Settle

The Chief Operating Officer or designee may negotiate a settlement ~~is authorized to enter into negotiations with the parties or their legal representatives~~ involving any provision of this chapter for the collection of fines civil penalties and costs, ~~to negotiate a settlement, or both~~. [Ord. 13-1311.]

EXHIBIT B
Ordinance No. 23-1501

A new section 5.05.040(d) (Prohibited Activities) is added to Metro Code Chapter 5.05 as follows:

5.05.040 Prohibited Activities

(d) No person may transport or direct another person to transport non-putrescible solid waste generated within the Metro jurisdictional boundary that has not undergone material recovery to any facility other than a Metro-authorized material recovery facility as provided in this chapter.

IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

Date: September 18, 2023
Department: Office of Metro Attorney
Meeting Date: October 5, 2023

Prepared by: Shane Abma
Presented by: Shane Abma
Length: 20 minutes

[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]

ISSUE STATEMENT

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro's "Illegal Disposal" chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

ACTION REQUESTED

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

IDENTIFIED POLICY OUTCOMES

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Metro Council has several policy options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro's hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

STAFF RECOMMENDATIONS

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
 - Reducing the number of people that can understand the Code, and therefore follow it correctly.
 - Reducing Metro's efforts to be transparent.
 - Having code chapters that are inconsistent with one another.
 - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
-
- *Known Opposition/Support/Community Feedback*
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
 - *Legal Antecedents*
There are no specific legal antecedents other than current Metro Code language.
 - *Anticipated Effects*
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
 - *Financial Implications (current year and ongoing)*
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

BACKGROUND

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

ATTACHMENTS

Attachment 1 summarizes the proposed changes to Metro Code chapters 2.03 (Civil Penalties), 2.05 (Contested Case Procedures), and 5.09 (Illegal Disposal).

ATTACHMENT 1
Ordinance Nos. 23-1499, 23-1500, and 23-1501

Summary of Changes to Code Chapters at Issue

A. Contested Case Procedures (Chapter 2.05)

Metro's Contested Case Procedures Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Contested Case Procedures (ORS 183), but several procedures are not best practices (or even practical) for a local government. Following is a summary of the proposed changes to current code language.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
 - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an "agency" can review a proposed order. An "agency" is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term "agency" was just replaced with "Metro Council." However, "state agencies" and "Metro Council" serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
 - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
 - Current code language states that a hearings officer will send a "Proposed Order" to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
 - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
 - Breaches of contract
 - Denial of grant requests
 - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

B. Civil Penalties (Chapter 2.03)

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

C. Illegal Disposal (Chapter 5.09)

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
 - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.

- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.

Agenda Item No. 6

Strategic Targets Discussion

Metro Council Meeting
Thursday, October 19, 2023

DRAFT - BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING METRO'S STRATEGIC TARGETS) RESOLUTION NO. 23-5362
)
) Introduced by Chief Operating Officer
Marissa Madrigal in concurrence with
Council President Lynn Peterson

WHEREAS, the Metro Council directed staff to develop five-year strategic targets in the areas of economy, environment, and housing; and

WHEREAS, the Metro Council directed staff to work with partners and stakeholders from around the region to develop these targets; and

WHEREAS, these strategic targets will act as a regional north star to guide Metro's work; and

WHEREAS, staff developed and executed an expedited but robust engagement process in the development of these targets; and

WHEREAS, staff engaged a variety of stakeholders from different areas including business and industry, community-based organizations, local government administration and elected offices, environmental advocacy organizations, and labor and workforce groups; and

WHEREAS, Metro staff with expertise in the three target areas worked cross-departmentally to ground the draft targets with metrics supported by existing data to measure performance over the five years; and

WHEREAS, the Metro Council received an update and reviewed the progress of the strategic targets project at the October 3rd 2023 work session; and

WHEREAS, the Metro Council held a public town hall to get input from members of the public on the draft targets at an October 12th 2023 meeting; and

WHEREAS, the Metro Council held a second work session on the strategic targets project at the October 19th 2023 Council meeting; now therefore,

BE IT RESOLVED that the Metro Council adopts the strategic target "Meeting our Climate and Resilience Goals", in the area of environment, with the following description: "In the face of a changing climate, we must reduce greenhouse gas emissions, be more sustainable, and build resilience to safeguard nature and people."

BE IT RESOLVED that the Metro Council adopts the strategic target "A Resilient Economy for All", in the area of economy, with the following description: "Position the Metro region to take advantage of future growth opportunities, by helping both people and businesses thrive."

BE IT RESOLVED that the Metro Council adopts the strategic target “Housing for All”, in the area of housing, with the following description: “The market provides ample housing at all income levels and everyone in the region can access services that meet their needs.”

BE IT RESOLVED that the Metro Council adopts these strategic targets consistent with Exhibit “A” attached hereto.

ADOPTED by the Metro Council this [insert date] day of [insert month] [insert year].

Lynn Peterson, Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney



STRATEGIC TARGET

Meeting our Climate and Resilience Goals

DESCRIPTION

In the face of a changing climate, we must reduce GHG emissions, be more sustainable, and build resilience to safeguard nature and people.

STRATEGIES & METRICS

STRATEGY 1: Reduce Emissions

Key Regional Metric:
Reduced **Regional Greenhouse Gas** Emissions

STRATEGY 2: Sustainable Communities

Key Regional Metric:
Reduced **Waste Generated** per capita (lbs per person)

STRATEGY 3: Regional Resilience

Key Regional Metric:
Reduced **Climate Related Deaths and Illness**



STRATEGIC TARGET

A Resilient Economy for All

DESCRIPTION

Position the Metro Region to take advantage of future growth opportunities, by helping both people and businesses thrive.

STRATEGIES & METRICS

STRATEGY 1:

Attract, Retain, and Support Business Growth

Key Regional Metric:

Add **Quality Jobs**

STRATEGY 2:

Development Ready Communities

Key Regional Metric:

Increased Land Readiness -
Number of **Shovel Ready Sites**

STRATEGY 3:

Workforce Training and Development

Key Regional Metric:

Regional **Labor Force Participation**



STRATEGIC TARGET

Housing For All

DESCRIPTION

Housing market provides ample housing at all levels and everyone in the region can access services that meet their needs.

STRATEGIES & METRICS

STRATEGY 1:**Housing Production and Affordability****Key Regional Metric:**

Increase Housing **Production Rate at All Levels**

STRATEGY 2:**Safe and Stable Housing****Key Regional Metric:**

Reduction in **Chronically Homeless Population**

METRO STRATEGIC TARGETS IN THE AREAS OF ECONOMY, ENVIRONMENT, AND HOUSING: SECOND WORK SESSION

Date: 10/12/2034
Department: Council/COO
Meeting Date: 10/19/2023

Length: 45 mins

Prepared by: Cathy Love, Ina Zucker, 971-500-0726, cathy.love@oregonmetro.gov

Presenters:
Andrea Celentano, Policy Advisor (she/her)
Val Galstad, Program Director (they/them)
Ina Zucker, Program Director (she/her)

****UPDATED POST TOWN HALL ON 10/12/23 AND WORK SESSION ON 10/3/23****

At the work session on October 19, staff will review feedback and polling from the town hall, respond to Council questions and input from the first strategic targets work session, and present a draft resolution adopting the strategic targets for Council to review. Most of the information in this worksheet has not changed between work sessions.

ISSUE STATEMENT

In a November 2022 budget meeting, Council gave direction that Metro as an organization needed a set of region-wide strategic targets to guide our work for the next five years. At that meeting and again in February 2023, Council directed staff to engage stakeholders and develop strategic targets in the areas of environment, economy, and housing, by which we can measure the region's progress toward these targets and develop a shared vision for the future of greater Portland.

Since April 2023, staff have been working to implement this direction by engaging stakeholders and partners, consulting subject matter experts both internally and externally, and getting additional feedback and direction from Metro Council through briefings. Staff incorporated stakeholder feedback and Council direction in the development of the draft strategic targets.

This item is coming to Council for additional guidance on the development of the strategic targets, key regional metrics, and the next steps toward completion of this work.

ACTION REQUESTED

Update the Council on the development of the strategic targets, share draft targets and strategies and receive Council's direction on key policy questions. The direction provided by Council in this work session will assist staff in interpreting feedback from the recent

town hall, and in the development of final targets to be adopted by Council by resolution later this year.

IDENTIFIED OUTCOMES

- Council will have a better understanding of the process and progress in the development of the Strategic Targets Project.
- Councilors will have the opportunity to:
 - o Discuss policy questions with their colleagues.
 - o Give staff additional direction on further development of the strategic targets and in preparing the resolution for Council
 - o Guide staff in the next steps of the project as they work to fully implement Council's vision.

POLICY QUESTION(S)

- Do the proposed draft strategic targets and the key metrics represent Council's vision of a north star for Metro's work over the next five years?
- What additional information does Council need from staff prior to adoption of the strategic targets?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

The Council may provide staff direction on:

- The recommended targets, strategies, and key regional metrics
- The draft resolution adopting strategic targets
- Future engagement with stakeholders and partners

STAFF RECOMMENDATIONS

Proposed Draft Targets – See Appendix A

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Metro's 2021 Strategic Framework affirmed a commitment to public service, safety and resilience. Metro embodies those values through organization-wide guiding principles that define the meaning and scope of those values: Racial Justice, Climate Justice and Resilience, and Shared Prosperity. The strategic targets developed in the areas of environment, economy, and housing specifically speak to these values and will help further Metro's goals.

This work builds on critical plans and priority setting tools previously developed, including: the Strategic Framework, the Strategic Plan to Advance Racial Equity, Diversity and Inclusion, and the racial equity framework. The Strategic Targets Project gives Metro a north star which can guide our progress towards a shared regional vision. This project marks further progress in Metro's strategic planning efforts and will guide the organization towards achieving critical goals in priority focus areas.

Based on Council direction, these targets have been developed to be high impact, composite and multivariate in nature. These targets are also designed to have a Metro-specific component but to be bigger than Metro alone to help inspire regionwide efforts and promote collaboration with our regional partners. Metro can and will work towards each of these targets as an organization, but more progress will be made if we can work with our partners from across the region towards a common goal. More work, engagement and collaboration will be needed with stakeholders and partners once the targets are adopted to establish specific goals for each of the chosen key regional metrics.

With the final adoption of these strategic targets, Metro will have specific, measurable outcomes to guide and support each department's work and future planning. Council will have additional opportunities to decide future policy and give additional direction in the implementation of the strategic targets throughout the budget process.

BACKGROUND

In budget meetings in late 2022 and early 2023, Council directed staff to develop strategic targets in the areas of environment, economy and housing to guide future budgeting and policymaking. To implement this direction, a task force of Metro staff members was formed. Metro also hired the Drawbridge Innovations consulting firm to assist with the development of the targets. Metro staff worked with Drawbridge to develop the project's design and a project plan to achieve Council's vision.

Metro staff, with the help of Drawbridge, first engaged external stakeholders and partners in "blue sky" visioning sessions to solicit ideas in the three target areas. Participants were asked, "What is your vivid 5-year vision for the Metro region – especially focused on strategic outcomes under Housing, Environment and the Economy?" Participants included labor and workforce trades, equity leaders, community-based organizations, environmental advocates, conservation organizations, elected officials, local government leaders, business interests and economic development stakeholders.

Following the visioning sessions, Metro assembled groups of internal subject matter experts from across the agency into "Tiger Teams". These teams met several times and worked to take the feedback from the visioning sessions and translate these big ideas into strategic targets with measurable metrics that would support the outcomes identified by our stakeholders and partners. Stakeholders and partners were then re-convened for additional input and feedback in a series of workshops.

Councilors received regular status updates on this project and offered direction and feedback throughout the development of the strategic targets. The internal Tiger Teams and Metro task force incorporated feedback from stakeholders and partners and direction from Council into the current staff recommended draft targets.

ATTACHMENTS

Staff Recommendation – Draft resolution with exhibit A

[For work session:]

- Is legislation required for Council action? No
- What other materials are you presenting today? PowerPoint

Materials following this page were distributed at the meeting.



Metro



Strategic Targets Project

Council Work Session | October 19, 2023

Developing Metro Strategic Targets

April – May 2023

June – October 2023

Phase 1 DISCOVERY

Project planning:

- Task force development
- Hiring consultants
- Council feedback
- Research and project refinement

Phase 2 VISIONING

Stakeholder visioning sessions:

- Labor and workforce groups
- Community based organizations
- Environmental advocates
- Elected officials and government leadership
- Business leaders

Phase 3 OUTCOMES DEFINITION

Target development:

- Internal expert teams
- Draft targets
- Council and external SME feedback
- Council Work Session

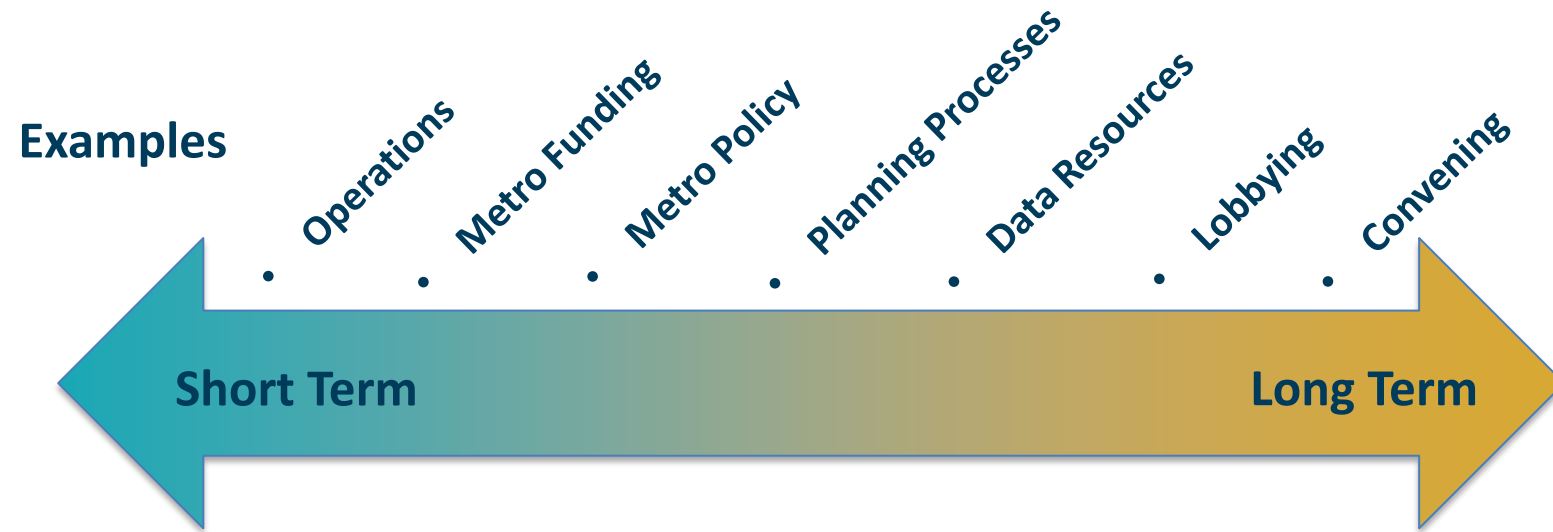
Phase 4 WORK-PLANNING

Target refinement and adoption:

- Public town hall
- 2nd Work Session
- Target refinement
- Council adoption
- Stakeholder engagement
- Implementation planning

October 3rd Work Session Summary

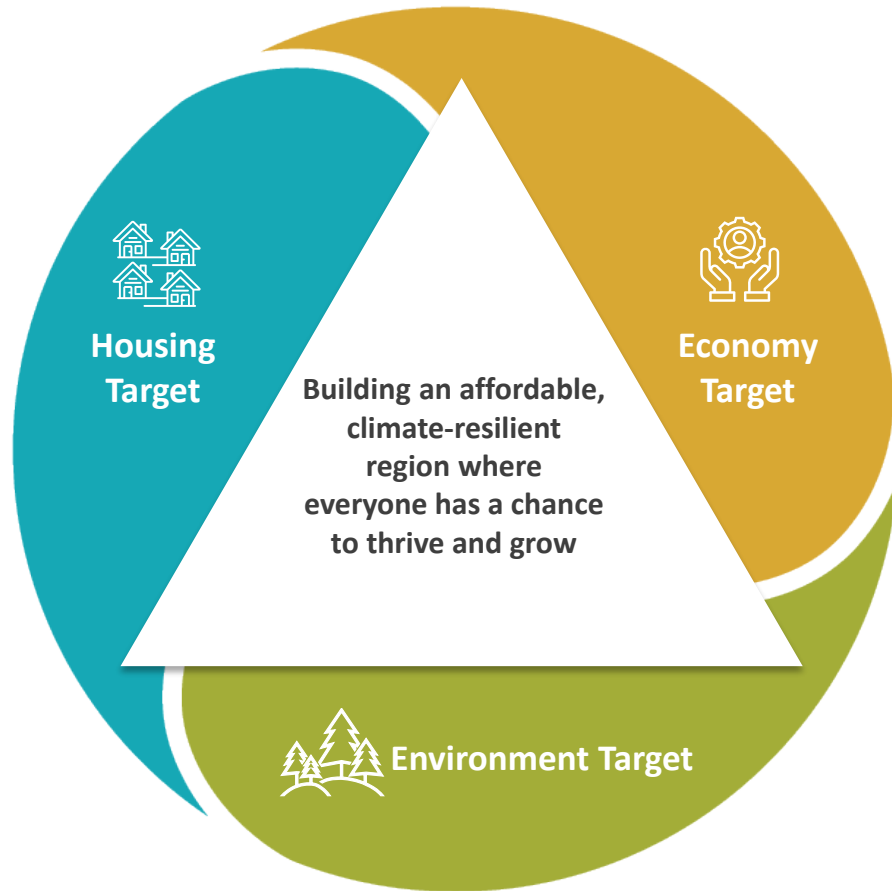
- Develop a communications strategy
- Engage with partners to plan implementation
- Balance direct and indirect influence
- Use polling at the town hall to get broader feedback on content



- Facility operations
- Wildfire mitigation plans for Metro facilities and properties
- Internal purchasing and procurement policies
- Workforce and apprenticeship opportunities
- Metro 2018 Affordable Housing Bond

- Pursue 'Right to Repair' policies
- Protecting and growing healthy urban ecosystems
- Support business growth through existing efforts
- Secure additional funding and resources for affordable housing

Strategic Targets



Housing Target

Housing For All

Market provides ample housing at all levels and everyone in the region can access services that meet their needs.



Environment Target

Meeting our Climate and Resilience Goals

In the face of a changing climate, we must reduce GHG emissions, be more sustainable, and build resilience to safeguard nature and people.



Economy Target

A Resilient Economy for All

Position the Metro Region to take advantage of future growth opportunities, by helping both people and businesses thrive.

October 12 Town Hall Feedback

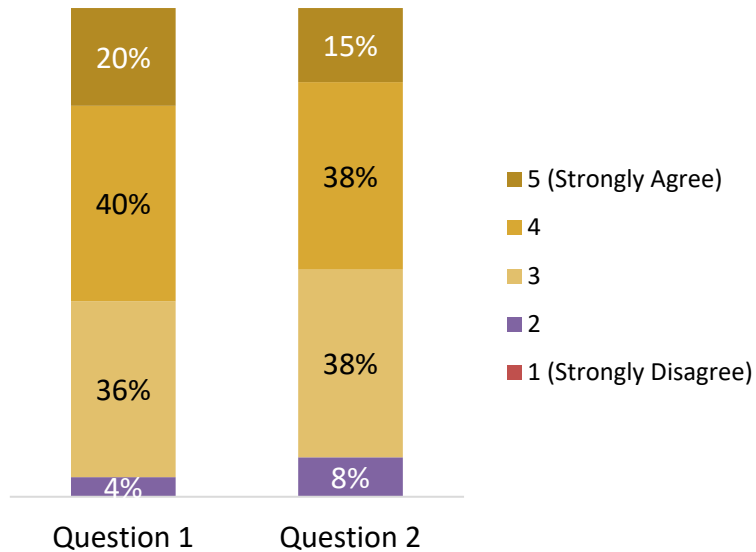
- Over 40 external participants in the Town Hall plus written comments
- Continue focus on climate change
- Support more housing inventory across affordability spectrum
- Be mindful of trade unions in setting economic goals
- Retain focus on natural areas as core to Metro mission, regional livability
- Consider emphasis on areas Metro can control and continue partnering with others

Town Hall Polling Results



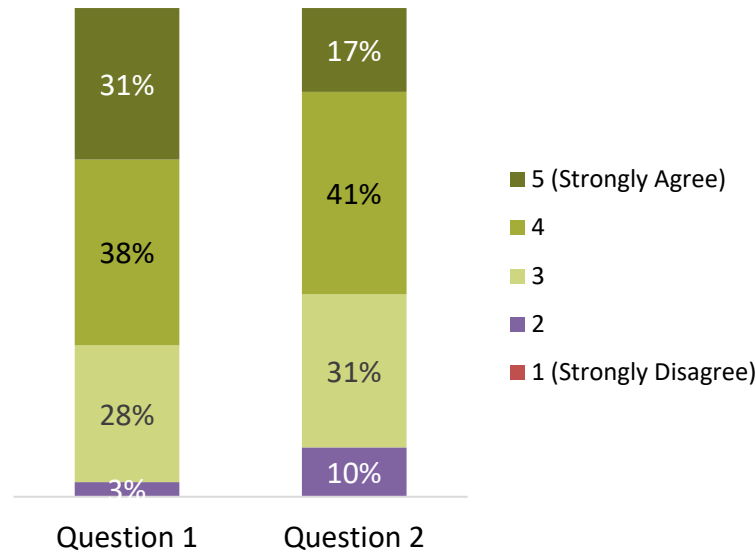
Economy Target

A Resilient Economy for All



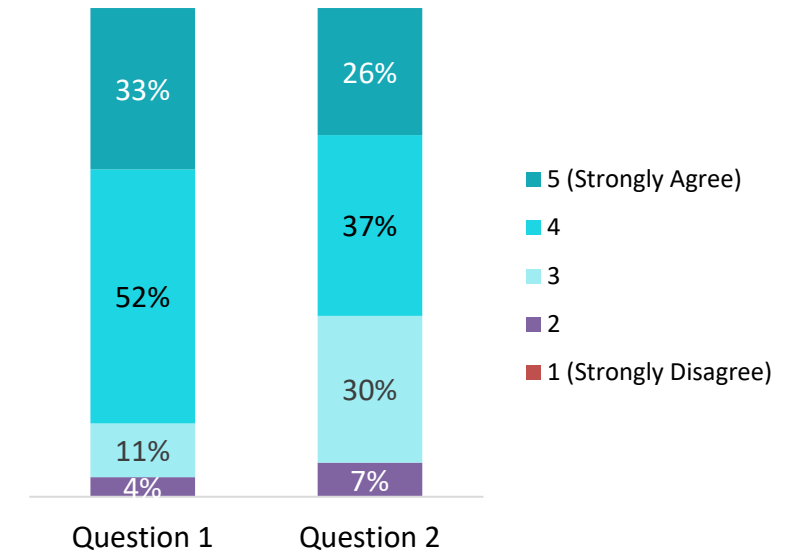
Environment Target

Meeting our Climate and Resilience Goals



Housing Target

Housing For All



Question 1: The proposed target address the most pressing issues in the focus area.

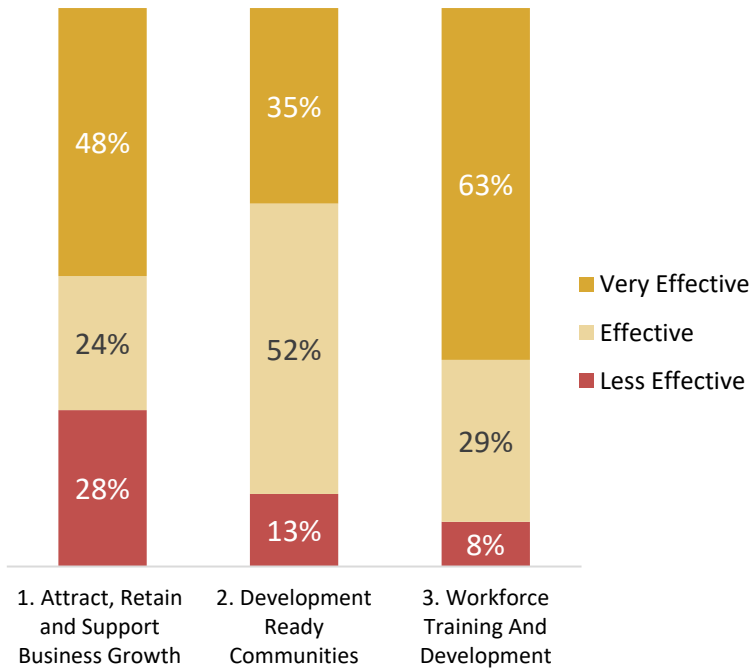
Question 2: These strategies are an effective way to move the needle on the target.

Town Hall Polling Results



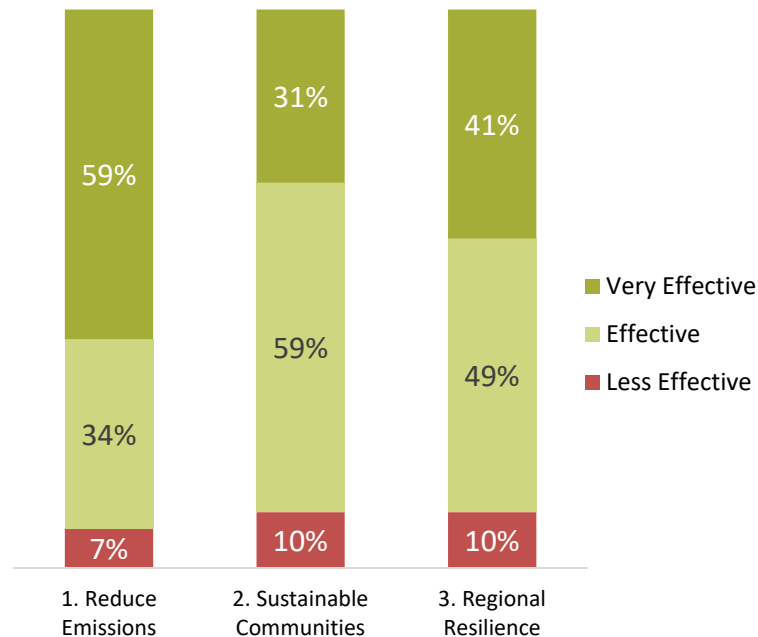
Economy Target

A Resilient Economy for All



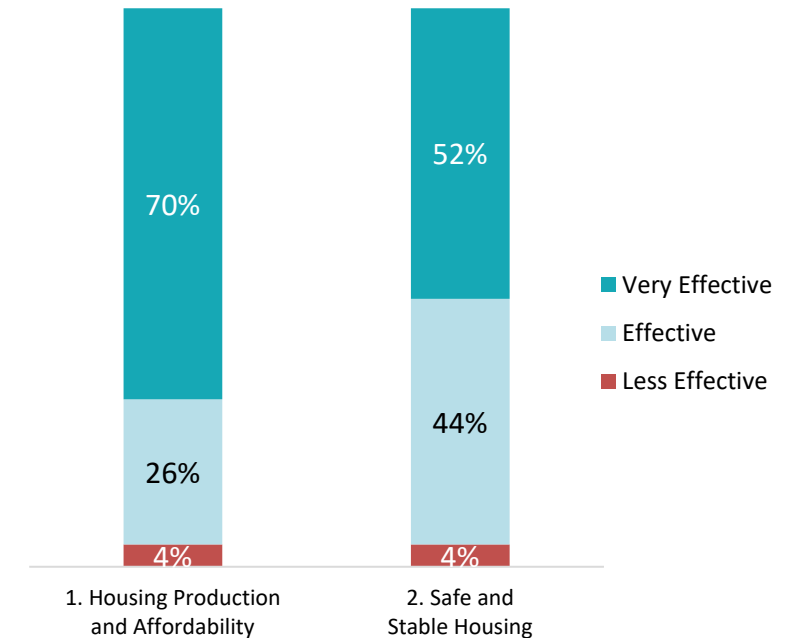
Environment Target

Meeting our Climate and Resilience Goals



Housing Target

Housing For All



Question: How effective are these strategies in meeting their target?

Questions

- Do you want to make any changes to the targets based on discussion at the last work session and feedback from the town hall?
- Does the balanced approach to Metro's direct and indirect influence reflect your feedback?
- Do you have any feedback on the draft resolution?

Name *	Ben Miles
Email *	bmiles@andersen-const.com
Address	<input type="checkbox"/> 10783 SW Sunnyhill Ln Beaverton, OR 97005 United States

Your testimony

Regarding the 2023 Regional Transportation Plan, I have heard concern from others in the community and will reiterate my own concern about safety and cleanliness as relates to existing transportation. I'll assume these are top of mind for the Council.

While I do not use public transportation daily, my family would use the MAX for access to events or destinations. As part of our weekend, we would park at the Sunset transit center and take the MAX into downtown Portland to show my four young kids the beautiful City of Portland, ride across the river, transfer at the Lloyd center and head back into downtown to enjoy the Saturday market (now James Beard public Market).

With traces of drugs found on surfaces and in the air, with the homelessness and drug use, with the fear of assault, my wife and I no longer bring our kids on public transportation.

We no longer take public transit to the airport or to the Moda center.

Separate from public transportation, I would suggest not converting any more roads from travel lanes into bike lanes.

Street maintenance and upkeep also remains important.

Thank you for your time.

Is your testimony related to an item on an upcoming agenda? *	Yes
---	-----

Name *	Rachel and Timothy Janzen
Email *	rjanzen@comcast.net
Address	<input type="checkbox"/> 12367 S.E Ridgecrest Rd., Happy Valley Happy Valley, OR 97086 United States

Your testimony

I have lived in the Portland Area for over 50 years. I have lived in Clackamas County for 32 years. Congestion Pricing PUNISHES people who have 9–5 jobs. It Punishes people who are working and paying taxes. It primarily will punish Clackamas County residents regardless of color or ethnic background. My husband and family are Native American, they have jobs requiring them to use I 205 to get to work. Thes tolls will directly impact us and our ability to get to work. WE HAVE ALREADY PAID FOR these ROADS. TOLLS are for NEW ROADS NOT existing ROADS.

Thes plans are unreasonable, add more pollution to the roads and neighborhoods because it will force people to drive in neighborhoods who DO NOT want to pay the tolls.

PLEASE GIVE the PEOPLE OF our County a chance to VOTE ON TOLLS. YOU have consistently avoided bringing these plans to a VOTE of the people. OUR Clackamas County Commissioners oppose these tolls. And SO does everyone of my neighbors. Clackamas County has A VERY DIVERSE population and WE NEED OUR JOBS to survive and pay our taxes, bills, and help our children in the schools. WE already have some of the highest gas taxes in our state. WHERE IS ALL OF THIS money going?

We would like more accountability.

Respectfully,

Rachel Janzen

Is your testimony related to an item on an upcoming agenda? *	Yes
---	-----

(Oct.) 10. 02.23

To: Tootie Smith, Commissioner Chair
PO Box 672
Oregon City, OR 97045

Subject: UGB expansion/Stafford Hamlet (West Linn), Oregon City - Willamette Falls Improvements

The Oregon State, 4 nearby Cities, The Corp of engineer's, DEQ, Hwy Dept. and many local agencies are involved in this UGB expansion. Not to mention the private Org's & NGO's pushing their agenda.

The main interest I have is Local and Community input **before any UGB adopted**. We do not need the participants pounding on the door now to slide it under the rug - so called approved plans..

Right now – I love driving thru the Stafford Hamlet – seeing the natural beauty, fir trees and farms. We are exceptionally blessed to live in this area. Resident address: 710 Rosemont Road, West Linn, Oregon.

I went to many mtgs re: The Stafford Hamlet 2015-2016; And Clackamas Commissioner John Ludlow stated that “all hi-Density development would occur along Borland Road-Not on the upper farm area's along Rosemont”. Is his word no longer valid ? Just wondering how many developers, real estate persons, sub-dividers already have purchased or at least put down earnest money on large plots of land in the area?

Before any UGB adopted I suggest those doing the planning consider These Important issues:

Water Service: Landowners in the area now have to consider how much land they possess to avoid high State and Local Taxes via the Farm ownership Tax exemption. If less than 5 acres they loose their tax qualification. Water Wells are the primary source of water for most in the Hamlet area. Retail or HI Density use for same will run the aquifer dry. The most obvious source today is Bull Run (good luck); or Clackamas River (clarified and cleaned water, or pumping water along the Tualatin River to Stafford Road area. This is not a minor item !

Sewage: Either take it to the West Linn or Tualatin Water clarification plant. (Expanded of course) Tualatin is better because it is down hill for most part. Less pumping required.

Traffic Improvements: The most serious problem with Traffic today occurs at the area surrounding The Abernathy Bridge/ Willamette River crossing. Even when the 2023 and 2024 improvements are completed - It will not solve the traffic bottlenecks on Hwy 43, Willamette drive, Oregon City 2 lane bridge to 99E, Rosemont morning and eve. work traffic, Salamo Road & Blankenship Road bypass when I - 205 gets a crash or some obstacle stops traffic. The Oregon Hwy Dept has Bureau of Engineers that need to be planning 5-10-15 years out for reduced Hwy loads. And I am not talking about electric vehicles, multi capacity car riders or some other “Woke Program”; like every one lives within a Hi Density bldg's and walks/or rides a bike to work or retail shopping. Attached – my suggestion sketch of a new East side bypass to relieve traffic on I 205. Start putting away bond money now for future road and bridges. I would also recommend a Borland Road Ingress on 2 sides of I 205 if a Hi density patern is adopted. The present Intersections to I 205 are already at capacity.

Also recommend a widening of Stafford Road south off I 205 to allow greater access to a new bridge at the Canby ferry crossing. This would divert some of the 99 E traffic out of the Oregon City downtown area.

Now to the 'Nitty Gritty" of my letter: The UGB adoption via the Stafford Hamlet Area (right now is a mess) 3 local city jurisdictions are trying to sneak their wonderful plans under the rug. They are trying to rush it thru w/o proper local/community input. Go back to stage one and survey the diff. options w/ public comment on file. And approval of the estimated new taxes to accomplish same.
Any IGA's need to go thru metro & Not submit to Metro as approved planning?

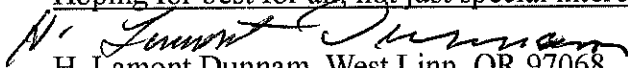
Resolve the infrastructure and many publicly paid construction projects required before adoption.

This process now is the horse before the cart!

Note to Metro and Clackamas Co. Commissioner's – get citizen approval and several Metro public open air* meetings out of the way; Then we can talk about developing Hi Density local city plans.

*No secret under the table meetings wherein someone gets a bribe or special perk campaign donations in particular. Get the Abernathy Bridge improvements out of the way !

Hoping for best for all; not just special interest groups.


H. Lamont Dunnam, West Linn, OR 97068

PS as far as the Willamette Falls Area development – Let PGE, The Corp of Engineers, and local area participation. Inputs decide it's future .(not out of the area and – for instance – River Keepers and Indian Rights) Let PGE . Corp of Enginners/ work on a Bonneville Dam Visitor's Ctr approach.

Attached Excerpt from West Linn Tidings Sept 20, 23

<u>"</u>	<u>"</u>	<u>"</u>	<u>West Linn Owl Oct 23 From West Linn City Council Re: Waterfront Project</u>
<u>"</u>	<u>"</u>	<u>"</u>	<u>West Linn Tidings by H. Bartholomew Sept. 27 23</u>

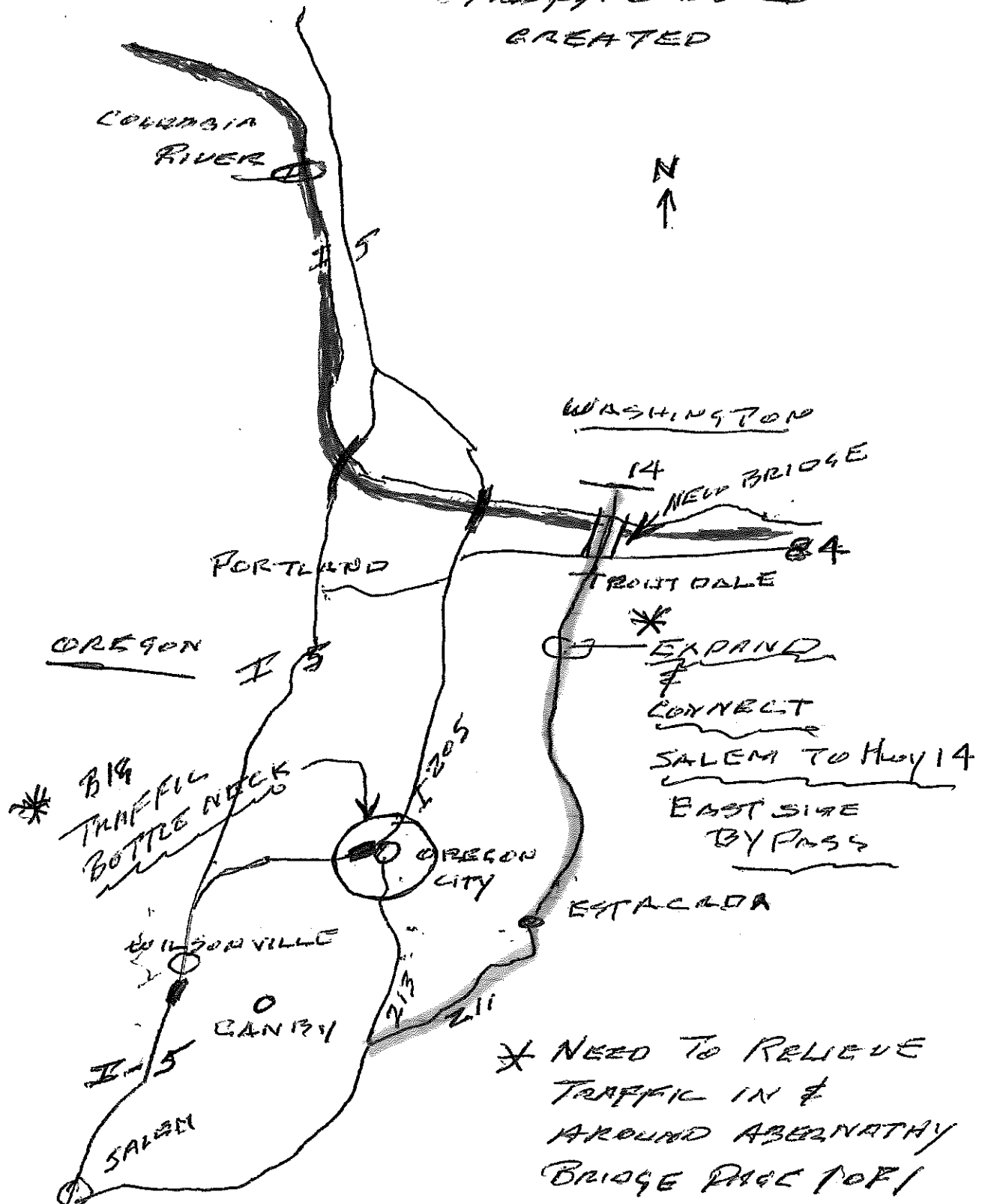
Note all these above people are planning ahead. How is this UGB going to alter or affect their plans ?

cc: Stafford Hamlet – Chair, Bill Markt, PO Box 382, West Linn, OR 97068
Metro Regional Center, Council/Lynn Peterson, 600 NE Grand Ave Portland, OR 97232
Oregon Transportation Dept. 355 Capitol St. NE , MS 11, Salem OR 97301-3871, OTC
COORDINATOR Sabrina Foward
Rep. DeRemer, PO Box 96867, Washington, DC 20090-6867

10/01/23

STAFFORD HAMLET
WEST LIMA, OR 97068

TRAFFIC ISSUES
CREATED

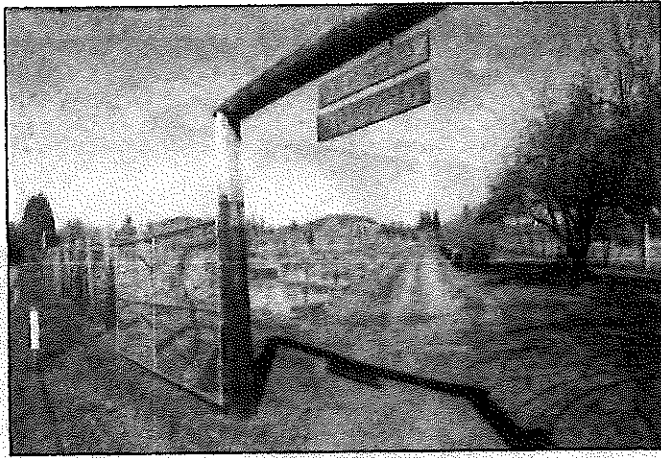


Stafford

■ From Page A1

The court of appeals opinion reads: "Put simply, the difficulty with LCDC's analysis is that even if Metro is able to add parts of Stafford to the UGB without concept plans under MC 3.07.1110(e) and without the Cities' support if needed to comply with its obligations under state law, in determining where to expand the UGB, Metro prioritizes land that has been concept planned."

The question of urban development in the Stafford Hamlet area has been ongoing at least since the area was first classified as an urban reserve (meaning it was pegged for development in the next 50 years) in 1997. The cities have tried to stall Stafford urbanization in large part because they assert that the area doesn't have adequate public infrastructure to account for it, while leaders in Stafford



PMB FILE PHOTO

Fiala Farms is located within the Stafford area, which has been a source of disputes over urbanization for decades.

Hamlet have voiced a desire to keep Stafford as primarily rural and agricultural.

On the other hand, the state has said there is a dearth of housing in Oregon and Stafford is one of the largest urban reserve areas near Metro's urban growth boundary.

The court of appeals

referenced an LCDC hearings officer's opinion about the importance of Stafford and the impact that preventing urbanization may have — including that the failure to concept plan this area could have "cascading effects" in housing availability and other areas under consideration for development.

"The Stafford Area is a very large area. The Stafford Area contains over 25% of the current urban reserves. If the Stafford Area is not added to the UGB then other areas will have to be added. There are no other urban reserves near the Cities, so if the Stafford Area is not urbanized there would likely be little to no urbanization near the Cities," the hearings officer's opinion reads.

Lake Oswego Mayor Joe Buck declined to comment on the court of appeals decision because he hadn't been briefed on it yet. City Attorney Ellen Osoinach simply said the city is reviewing the opinion to determine next steps.

With potentially several steps to go until the court fully settles the matter, West Linn Mayor Rory Bialostosky said at this time he is not worried the decision will spell quicker development of Stafford.

"We'll evaluate the decision and meet with our attorneys and chat with the other parties to the case on the cities' side and

determine how we want to move forward," he said.

Rich Fiala, vice chair of the Stafford Hamlet organization said the hamlet has been in conversation with the board of the city of Clackamas that he was disappointed in the ruling. He further said the hamlet would continue to work with government to find a solution to the issue of urbanization.

"The hamlet is disappointed with the appellate court's decision and the decision with that. I was appreciative of the effort put forth by Clackamas Metro and the three cities we supported those environmental agreements," he said. "We don't have a course of action that we do believe those IGAs are an opportunity to find a better course for the hamlet other than urbanization pavement."

Pamplin Media Group reaches Marks for comment

**Oregon Court
of Appeals
says Stafford
land use case
needs to be
reevaluated**

*Landowner pushing
to nullify agreements
limiting development*

By COREY BUCHANAN
Pamplin Media Group

The Oregon Court of Appeals has issued a decision that may help a

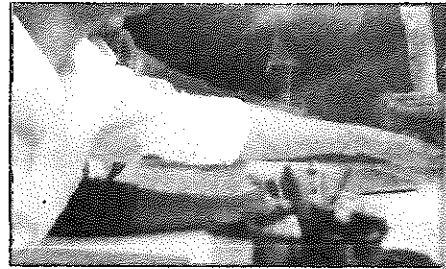


Owner & Neighbor
Dr. Robert B. Pamplin, Jr.

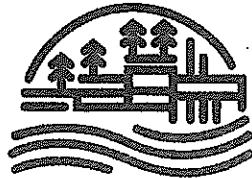
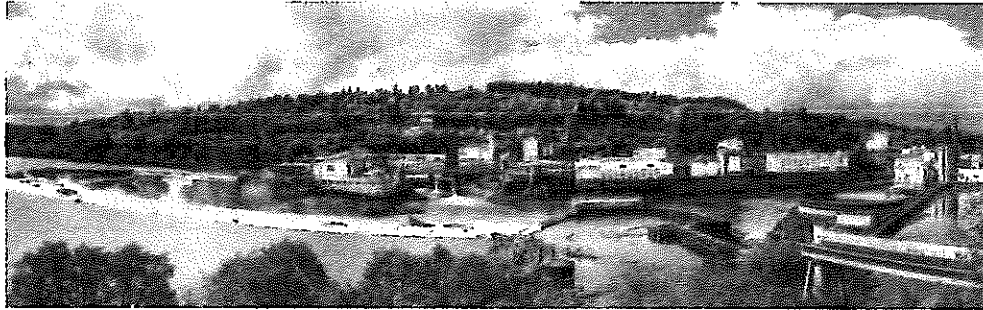


CITY OF
West
Linn

WHAT'S AHEAD



Planning purposeful projects that grow, sustain, and support our community.



WEST LINN WATERFRONT PROJECT

City Council wants to hear from you! We're asking residents to collaborate in the development of a community-driven plan for the Willamette River waterfront area (stretching from the Arch Bridge to the Willamette Neighborhood). Ultimately, the plan will create a vision for future land uses and activities based on current community values and aspirations. It will help shape how West Linn would like to use and interact with this underutilized area for future generations.

The Plan's public process includes:

A COMMUNITY-DRIVEN VISION FOR THE WATERFRONT AREA

Establishing the community vision for the Waterfront Area and each development district will inform the rest of the project, and this is where we need your help! What do YOU want to see here? The community visioning efforts will shape the project using four guiding principles: improved river access, preservation of historic character, increased reinvestment opportunities, and transportation improvements. These guiding principles were developed from previous outreach and planning efforts, particularly around the history of the site, and from tribal engagement conducted as part of the Willamette Falls stakeholder engagement process. We're planning to connect with you through an extensive, long-haul out-

reach campaign featuring tabling events around town, surveys, town halls, youth involvement, and more.

GET INVOLVED

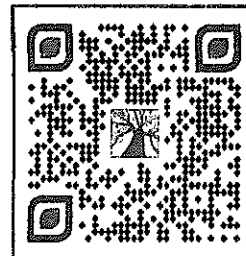
Sign up for news, updates, surveys, and more at <https://westlinnoregon.gov/waterfront>, or look for us at your favorite community hubs around town! Reach out to planning@westlinnoregon.gov with your ideas and feedback any time, and especially your outreach event suggestions.

FUTURE STEPS

Consultants will develop action plans for each district that identify where early momentum can be created to support the rest of the Plan. The action plan will identify emerging issues that could impact the project and develop creative ways that the redevelopment plan could respond to these issues or future issues.

Based on this public input process, the City will develop a proposed zoning and redevelopment plan for the different project districts that meets community intent. Feedback from all stakeholders and property owners is essential to determine future opportunities in the Historic City Hall District and Industrial Heritage Districts. Consultants will then develop action plans for each district that identify where early momentum can be created to support the rest of the community's plan. These will identify emerging issues that could impact the project and develop creative ways that the plan could respond to these issues or future issues.

Once vetted by the public and approved by City Council, the Waterfront community plan will kick into action to make your visions a reality! Sign up for more using this QR code.



ings



Owner & Neighbor
Dr. Robert B. Pamplin, Jr.

headlines, visit westlinntidings.com

ASIVES



PMG FILE PHOTO

to trees.

Trees may be region should be concerned about this issue and the potential for further spreading.

"Everyone should be concerned about it because the handful of trees that we confirmed in Wilsonville declined very rapidly. They are big, old, important trees that declined rapidly because of this insect," Holen said.

Both the Oregon Department of

West Linn preparing to rezone properties to allow for future development of denser housing

Changes meant to comply with state laws

By HOLLY BARTHOLOMEW
Pamplin Media Group

To meet housing needs over the coming decades, the city of West Linn needs to rezone about 5 acres of land currently zoned for low-density residential housing to middle-to-high density housing, and the city now has a plan in place to do just that.

The West Linn City Council heard about its housing needs from city planner Darren Wyss at a meeting Monday, Sept. 18, as part of an update on the city's compliance with House Bill 2003.

HB 2003, also known as the housing needs and production bill, was passed by the Oregon Legislature in 2019 and aimed to prompt cities to examine their housing needs and update their goals and policies to accommodate future growth.

West Linn's recently-completed housing analysis shows that the city's current housing stock is 84% single-family homes, 8% middle housing (townhomes, duplexes, triplexes, cottage clusters) and 8% multifamily (apartments, condos) dwellings.

In the next 20 years, those proportions

SEPT. 27, 23