

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

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ISSUE STATEMENT

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

ACTION REQUESTED

Adopt Resolution No. 21-5176.

IDENTIFIED POLICY OUTCOMES

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

POLICY QUESTION

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

POLICY OPTIONS FOR COUNCIL TO CONSIDER

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

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

STAFF RECOMMENDATIONS

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

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

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

KNOWN OPPOSITION

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

PUBLIC OUTREACH

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

LEGAL ANTECEDENTS

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

ANTICIPATED EFFECTS

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

BUDGET IMPACTS

None.

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENTS

None.