

## Council meeting agenda

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Thursday, January 30, 2020

2:00 PM

Metro Regional Center, Council chamber

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**1. Call to Order and Roll Call**

**2. Public Communication**

**3. Consent Agenda**

- 3.1 Consideration of the Council Meeting Minutes for January 23, 2020 **20-5360**

**4. Presentations**

- 4.1 Hyatt Regency Final Project Report [18-5341](#)

Presenter(s): Scott Cruickshank, Metro  
Hillary Wilton, Metro  
Ashley McCarron, Metro

- 4.2 Employment Agreement Audit [18-5339](#)

Presenter(s): Brian Evans, Metro

Attachments: [Employment Agreement Audit Highlights](#)  
[Employment Agreements Audit Report](#)

**5. Resolutions**

- 5.1 Resolution No. 20-5073, For the Purpose of Adopting an Agenda for the 2020 Oregon Legislative Session [RES 20-5073](#)

Presenter(s): Andy Shaw, Metro

Attachments: [Resolution No. 20-5073](#)  
[Exhibit A to Resolution No. 20-5073](#)  
[Exhibit B to Resolution No. 20-5073](#)  
[Staff Report](#)

- 5.2 Resolution No. 20-5069, For the Purpose of Supporting [RES 20-5069](#)  
Statewide Product Stewardship Legislation for Mattresses

Presenter(s): Scott Klag, Metro  
Pam Peck, Metro

Attachments: [Resolution No. 20-5069](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)  
[Attachment 2 to Staff Report](#)

- 5.3 Resolution No. 20-5075, For the Purpose of Authorizing [RES 20-5075](#)  
an Exemption from Competitive Bidding and Procurement  
of Construction Manager General Contractor Services by  
Competitive Request for Proposals for the Oregon  
Convention Center VIP Suite B and Prefunction A & C  
Restrooms

Presenter(s): Gabriele Schuster, Metro  
Dan Hoskin, Metro

Attachments: [Resolution No. 20-5075](#)  
[Exhibit A to Resolution No. 20-5075](#)  
[Staff Report](#)

- 5.3.1 Public Hearing for Resolution No. 20-5075

6. **Chief Operating Officer Communication**  
7. **Councilor Communication**  
8. **Adjourn**

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Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmaha shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

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### សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬស្នើសុំទទួលបានកាតបណ្តឹងរើសអើងសូមចូលទស្សនាគេហទំព័រ [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក។

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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](http://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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Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev saww ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntawm lub rooj sib tham.

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**PLEASE NOTE:** Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times. Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities.

Agenda Item No. 4.1

**Hyatt Regency Final Project Report**

*Presentation*

Metro Council Meeting  
Thursday, January 30, 2020  
Metro Regional Center, Council Chamber

Agenda Item No. 4.2

**Employment Agreement Audit**

*Presentation*

Metro Council Meeting  
Thursday, January 30, 2020  
Metro Regional Center, Council Chamber



# Employment Agreements: Clarify approval authority to increase transparency and reduce risks

## Why this audit is important

Employment and separation agreements create a contract between an employee and Metro. These agreements can reduce risks when an employee departs, while recognizing the service and contributions the employee made on the agency's behalf.

Metro Code has different approval requirements for employment agreements and settlement agreements. Employment agreements require Council action, while separation agreements were considered part of the COO's authority to appoint and remove employees.

This audit was initiated based, in part, on a concern raised about the appropriateness of a payment made at the end of service. While researching the issue it became clear that similarities and differences between the two types of agreements caused confusion, which increased financial and compliance risks, and reduced transparency.



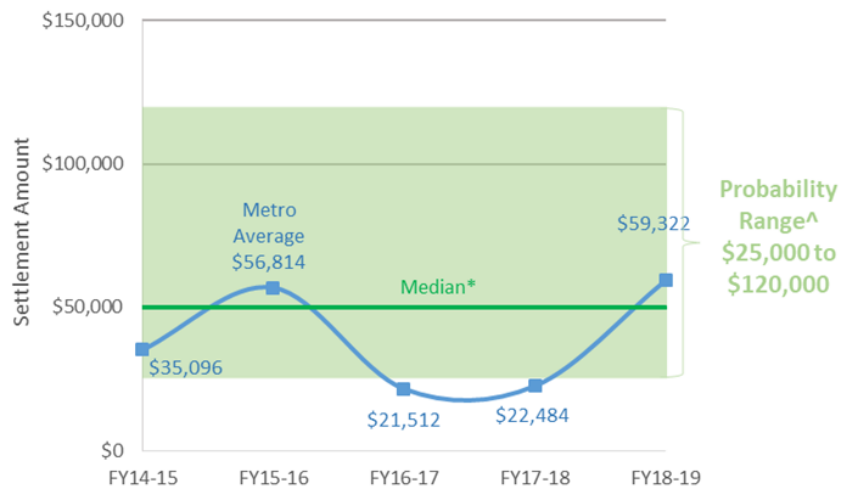
## What we found

In 2014, Metro Council approved an ordinance that delegated authority to the COO to approve employment agreements in certain circumstances. Some of the agreements approved by the COO did not appear to meet the criteria for delegation in Metro Code.

We also found a couple of examples that raised questions about which approval method was appropriate based on the provisions contained in each type of agreement. When similar provisions can be approved using either process, transparency and accountability can be compromised.

Metro's use of employment agreements has been inconsistent over time. Lack of employment agreements could increase the amount paid to some employees when they leave service. Conversely, depending on the provisions in the contract, an employment agreement could result in unknown financial impacts if certain provisions were not controlled.

We estimated the cost of the separation agreements Metro has reached with former employees and compared it with benchmark data. The analysis indicated Metro has managed employment separations well, on average, to keep the financial impact to the agency relatively low.



Source: Auditor's Office analysis of Metro's estimated separation amounts and settlement data from Thomson Reuters' *Employment Practice Liability: Jury Award Trends and Statistics*, 2018 Edition.

\*The median is the middle settlement value among all settlements from 2011-2017 listed in ascending order. This value provides the most accurate gauge for a specific sampling of settlement data.

^The probability range is defined as the middle 50 percent of all settlements arranged in ascending order in a sampling, 25 percent above and below the median award. Although settlements rarely produce a normal distribution, the probability range and the median settlement does aid in establishing parameters of where settlements tend to cluster.

## What we recommend

The audit contains five recommendations to clarify approval authority, and reduce financial and compliance risks.



## Employment Agreements:

*Clarify approval authority to increase transparency and reduce risks*

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January 2020

A Report by the Office of the Auditor

**Brian Evans**

*Metro Auditor*



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*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](http://www.metroaccountability.org)**



**Brian Evans**  
**Metro Auditor**

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

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## MEMORANDUM

January 22, 2020

To: Lynn Peterson, Council President  
Shirley Craddick, Councilor, District 1  
Christine Lewis, Councilor, District 2  
Craig Dirksen, Councilor, District 3  
Juan Carlos Gonzalez, Councilor, District 4  
Sam Chase, Councilor, District 5  
Bob Stacey, Councilor, District 6

From: Brian Evans, Metro Auditor

Re: Audit of Employment Agreements

This report covers the audit of employment agreements which included employment separation agreements within its scope. Metro Code has different approval requirements for each type of agreement. Employment agreements required Council approval. In contrast, separation agreements were considered part of the Chief Operating Officer's authority and did not require Council approval.

We found approval authority for some agreements and subsequent amendments was unclear, which reduced transparency and accountability. A 2014 ordinance that delegated Council's approval authority to the COO in certain situations caused confusion. We also found similar provisions in some employment and separation agreements that raised questions about the appropriate approval process. These issues increased financial and compliance risks.

As part of the audit, we estimated the cost of the separation agreements Metro has reached with employees over the last five fiscal years. We then compared Metro's annual average amount per agreement with benchmark data. The analysis indicated Metro had managed employment separations well, on average, to keep the financial impact to the agency relatively low.

We have discussed our findings and recommendations with Andrew Scott, Interim COO; Carrie MacLaren, Metro Attorney; and Nathan Sykes, Deputy Metro Attorney. A formal follow-up to this audit will be scheduled within five years. We would like to acknowledge and thank all of the employee who assisted us in completing this audit.

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## Summary

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Employment and separation agreements create a contract between an employee and Metro. These agreements can reduce risks when an employee departs, while recognizing the service and contributions the employee made on the agency's behalf.

Metro Code has different approval requirements for employment agreements and separation agreements. Employment agreements required Council action, while separation agreements were considered part of the Chief Operating Officer's (COO) authority to appoint and terminate employees. We found a couple of examples that raised questions about which approval method was appropriate based on the provisions contained in each type of agreement.

In 2014, Metro Council changed the Code to allow the COO to approve employment agreements under two conditions if the Council delegated their authority by resolution. Some of the agreements approved by the COO did not appear to meet the criteria for delegation in Metro Code.

Misalignments between Code requirements, delegation resolutions, and some employment agreements appeared to be caused by three factors:

- Mixing the criteria for case-by-case approvals and group approvals.
- Unclear review for compliance with Code.
- Lack of clarity about who had the authority to approve amendments.

Without more specificity in resolutions about who the delegation applies to and when its sunsets, it is possible the COO would never have to return to Council to get approval for any director level employment agreement in the future.

Metro's use of employment agreements has been inconsistent over time. The COO and Metro Attorney were the only positions required to have one per Code. Lack of employment agreements could increase the amount paid to some employees when they leave service. Conversely, depending on the provisions in the contract, an employment agreement could result in unknown financial impacts if certain provisions were not controlled.

We estimated the cost of the separation agreements Metro has reached with former employees over the last five fiscal years. We then compared Metro's annual average amount per agreement with benchmark data. The analysis indicated Metro has managed employment separations well, on average, to keep the financial impact to the agency relatively low.

We made five recommendations to clarify approval authority, and reduce financial and compliance risks.

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## Background

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Employment and separation agreements create a contract between an employee and Metro. Most employees at Metro do not have these agreements. The conditions of their employment are based on personnel policies that apply to all employees, and collective bargaining agreements for those represented by a union.

For a variety of reasons, outlining the rights of the employee, and Metro as their employer, at the beginning of employment can be helpful to both parties. These agreements can reduce risks to Metro when a senior or executive employee departs, while recognizing the service and contributions the employee made on the agency's behalf.

Since 2003, at least 28 employment agreements were created. Most of these were for department director positions. They were also created for the Chief Operating Officer (COO), Metro Attorney, Deputy COO, General Manager of Visitor Venues, and the Council President's Chief of Staff. The COO and Metro Attorney are the only positions required to have an employment contract.

Metro Code 2.02 outlines the requirements for approving employment agreements. It requires Council approval in addition to a signature by the Council President or COO, and the employee. It states:

“No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the Council President or Chief Operating Officer and the employee, and subject to the approval of the Council.”

In 2014, Council approved a change to the Code that gave the COO the authority to approve employment agreements in some situations. We were told this was done to give the COO flexibility to negotiate employment terms with the top candidate for the position.

Employment separation agreements have also been created with some employees near the end of their time working at Metro. While these agreements were employment related, they were considered to be within the COO's authority to appoint and dismiss employees, and not subject to Council approval.

This audit was initiated based, in part, on a concern raised about the appropriateness of a payment made at the end of service. The payment resulted from a separation agreement. In the process of making that determination, it became clear that similarities and differences between the two types of agreements caused confusion, which increased financial and compliance risks, and reduced transparency.

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## Results

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Delegated authority  
to approve  
employment  
agreements  
reduced  
transparency and  
accountability

In 2014, Metro Council approved an ordinance amending the personnel code. The change allowed the COO to approve employment agreements under two conditions if the Council delegated their authority by resolution:

- On a case-by-case basis, or
- For a group of director level employees where all terms were identical except for salary.

Since the change, Council has passed at least five resolutions delegating authority to the COO. Four of the resolutions were for individual positions. The fifth resolution allowed the COO to approve agreements with Metro Department Directors. These resolutions resulted in at least nine employment agreements, including one amendment to an agreement.

**Exhibit 1 Council delegated approval authority to the COO five times, resulting in nine employment agreements**

Resolution # (date)	Position(s)	Employment Agreements (date)
15-4600 (1/15/15)	Interim Oregon Zoo Director	• Interim Oregon Zoo Director (1/21/15)
15-4627 (5/7/15)	General Manager of Visitor Venues	• Interim Oregon Zoo Director and General Manager of Visitor Venues (6/2/15)* • Interim Oregon Zoo Director and General Manager of Visitor Venues (12/28/15)*
16-4682 (1/12/16)	Oregon Zoo Director	Oregon Zoo Director (1/20/16)
17-4778 (3/2/17)	General Manager of Visitor Venues	General Manager of Visitor Venues (4/25/17)
17-4797 (5/25/17)	Metro Department Directors	• Parks and Nature Director (6/29/17) • Deputy COO (5/15/18) • Human Resources Director (3/29/19) • Chief Financial Officer (10/7/19)

*Source: Auditor's Office analysis and Office of Metro Attorney analysis of delegation resolutions and resulting employment agreements.*

*\*Employee was serving temporarily as the Interim Oregon Zoo Director while retaining their prior position as General Manager of Visitor Venues.*

Some of the agreements approved by the COO did not appear to meet the criteria for delegation in Metro Code. Approval for one of the agreements was delegated on a case-by-case basis, which indicated that one agreement would be approved. The COO later amended that agreement without additional Council action. In addition, the terms for three of the department director agreements that were delegated for approval as a group were not *identical except for salary* as required by Metro Code.

Another agreement was approved based on the resolution delegating authority to approve department director agreements, but the position was not a department director. Department Director is defined as "...a person designated by the Chief Operating Officer to be responsible for the administration of a department or his/her designee." Several department directors reported to the position, but it was not directly responsible for administering any department itself.

Misalignments between Code requirements, delegation resolutions, and some employment agreements appeared to be caused by three factors:

- Mixing the criteria for *case-by-case* approvals and *group* approvals.
- Unclear review for compliance with Code.
- Lack of clarity about who had the authority to approve amendments.

## Mixing criteria

The resolution delegating authority to approve department director positions (Resolution 17-4797) stated that it was for *case-by-case* approvals, even though the delegation was for a *group* of director level positions. None of the agreements approved using that delegation authority included all the same provisions except for salary. As a result, the requirement that a *group* of director level employees all have the same terms except salary was not met. This may have happened, in part, because the complete language from Code was not included in the staff report to the resolution.

## Exhibit 2 Staff reports did not include a key requirement from Metro Code

Metro Code	Staff Reports
Metro Council may delegate by resolution to the Chief Operating Officer the authority to execute written employment agreements on a case by case basis, or as a group for Director level employment agreements <b>where all terms in those employment agreements are identical except salary.</b>	...allowing the Metro Council to delegate authority to the Chief Operating Officer ("COO") by resolution to execute written employment agreements on a case by case basis, or as a group for Director level employment agreements.

Source: Auditor's Office analysis of delegation resolutions and Metro Code 2.02.010.

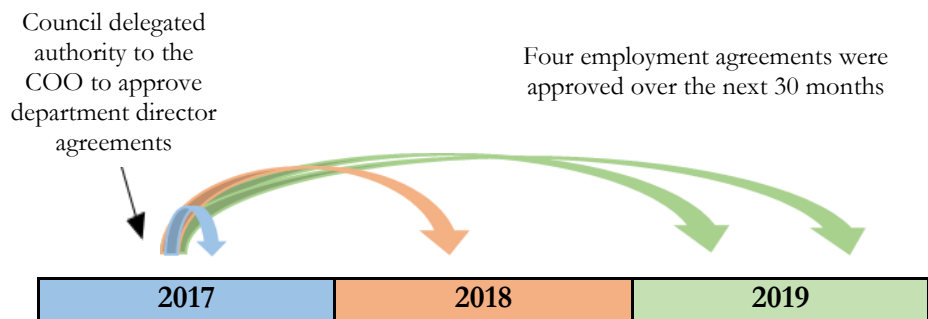
In addition to not meeting Code requirements, approving a group of agreements on a case-by-case basis reduced transparency and accountability. Transparency was reduced by not listing the specific positions that were delegated for approval in the resolution. This appears to have created an opportunity for the COO to approve an agreement with an employee who was not a Department Director without additional approval. It could also potentially be used to approve an unlimited number of agreements without additional Council action.

The other time Metro Council approved a group of department level employment agreements, the resolution included the specific position and employee in that position. This made it clear which positions were being approved and with whom those agreements were made. That specificity was not included in the 2017 group delegation resolution.

It was unclear if the authority delegated to the COO could be used to approve subsequent agreements with a different employee who later served in the same director level position. It was also unclear if Metro's venue directors would be considered part of this delegation authority. Without more specificity in resolutions about who the delegation applies to and when its sunsets, it is possible the COO would never have to return to Council to get approval for any director level employment agreement in the future.

While these potential scenarios are theoretical, there was some evidence that these risks were becoming reality. The delegation resolution for department directors was approved in May 2017, but only one agreement was approved by the COO that year. A year later in May 2018, another agreement was approved. In 2019, two additional department director agreements were approved.

### **Exhibit 3    Some employment agreements were approved a year or more after Council delegated their authority**



*Source: Auditor's Office analysis of employment agreements, delegation resolutions, and dates of changes to Council and key personnel.*



The time lag between Council delegation for department directors, and COO approvals in 2018 and 2019, raised questions about accountability. Three of the seven Metro Council representatives have changed since the 2017 resolution passed. The COO and Metro Attorney positions also changed during that time. All these changes increased the risk that key decision-makers may not have been fully informed about the delegation requirements, previous delegation resolutions, and timeline of approvals.

### Unclear review for compliance with Code

To its credit, Metro added an additional requirement that the Office of Metro Attorney (OMA) review the employment agreements that were delegated for approval to the COO. Having additional review can increase transparency and also reduce the chance that a provision in an agreement could be challenged. OMA signed these agreements “approved as to form.” That phrase was undefined, but appeared to mean the agreement used an appropriate template and some level of review was completed.

We found inconsistent information in some of the agreements about what OMA’s review and signature meant. Two agreements included statements that stated the COO was properly delegated the authority to enter into the agreement. Those statements also referenced the Code requirements for approving employment agreements. None of the other agreements included that statement or any references to Code. That may mean OMA’s signature was only related to the form of the agreement, without additional review to determine if the process to approve the agreement was done appropriately.

### Lack of clarity about amendment authority

Amendments to employment agreements raised more questions about the appropriate approval process. One employee’s agreement was amended twice after it was originally approved. The first amendment was about one year after Council approved the original agreement. The second amendment was seven years after the original agreement was approved.

We were told the employee’s performance review was the basis for the amendments and that Council signed the performance review. Both amendments were signed by the Council President, but not approved by Council through a resolution.

Another employee’s employment agreement was amended without approval by Council. The change was to the dates the employee would end their interim job and restart in their normal position. Changing the dates could be considered part of the COO’s authority to appoint and dismiss employees. However, it raised questions about how much flexibility the COO had to amend existing agreements.

Amendments to existing agreements reduced transparency and could create confusion about accountability. For example, it was unclear if the delegation authority approved by Council extended to subsequent amendments. If it did, the COO could amend existing agreements with little oversight, which could result in provisions that were substantially different from the original agreement.

**Inconsistent use of  
employment  
agreements created  
different  
relationships  
between Metro and  
its leadership  
positions**

Metro's use of employment agreements has been inconsistent over time. The COO and Metro Attorney were the only positions required to have one per Code. At least thirteen other positions have had one since 2003. We found no patterns to help determine why some positions had agreements and others did not.

As of October 2019, eight positions had employment agreements in place. Seven department director or venue director positions did not have an agreement. Two positions were vacant. Management stated that they planned to create employment agreements with all director level positions. Inconsistent use of employment agreements created different relationships between Metro and employees in leadership positions. These differences can impact the financial risks Metro has to manage at the end of an employee's service to the organization.

Lack of employment agreements could increase the amount paid to some employees when they leave service. If there was no agreement, employers may have fewer options to limit end of service payments related to vacation payouts, insurance coverage and other potential separation provisions. At least three employees who did not have an employment agreements received several settlement agreements as they approached the end of their time working at Metro.

Conversely, depending on the provisions in the contract, an employment agreement could result in unknown financial impacts if certain provisions were not controlled. For example, one employment agreement resulted in a significant payout at the end of service because vacation accrual was not capped. This resulted in a large lump sum payment by Metro (\$230,000), and a significant increase in retirement payments (\$37,000 annually) to the employee by the Public Employee Retirement System (PERS).

While neither agreement type was guaranteed to result in a better financial situation for Metro, committing to one strategy - either all senior positions have employment agreements, or none do - can make it easier to evaluate tradeoffs and provide consistent treatment of employees across leadership positions, and over time for the same position.

Employment agreements have the added benefit of providing more transparency. This is because the approval process for employment agreements requires Council approval and the agreements themselves are public records. In contrast, separation agreements did not require Council approval and some of them included confidentiality provisions, which may prevent them from being released through a public records request.

## Similar provisions in employment and separation agreements raised questions about the appropriate method of approval

Metro Code has different approval requirements for employment agreements and separation agreements. Employment agreements require Council action, while separation agreements were considered part of the COO's authority to appoint and terminate employees. However, we found a couple of examples that raised questions about which approval method was appropriate based on the provisions contained in each type of agreement.

Some separation agreements included provisions that were similar to employment agreements, and vice versa. For example, one separation agreement included additional financial benefits for staying in the position past certain dates. That provision was similar to some employment agreements, but it was an outlier for separation agreements. Conversely, one employment agreement included a resignation date for the position. That provision was common in separation agreements, but an outlier for employment agreements.

When similar provisions can be approved using either process, transparency and accountability can be compromised. These risks could be reduced by effective controls to ensure the type of agreement and method of approval were appropriate. Greater transparency through public records like Council resolutions can help for some types of agreements. But, for more sensitive agreements, like separation agreements, OMA was uniquely positioned to reduce these risks. That was because they advised on legal risks, interpreted Metro Code and ordinances, and were required in some cases to sign the agreements.

One of the benefits of employment agreements was that they set expectations between the employee and the employer about how they will handle the end of employment. All the employment agreements reviewed in this audit, other than those for interim appointments, included termination provisions that outlined the financial and other considerations that would be made under various scenarios. If no employment agreement was in place, costs may vary more widely.

To manage the risk of increasing costs to address claims, separation agreements were created in some circumstances. The agreements typically required the employee to waive all claims against the employer in exchange for financial benefits or other considerations. The agreements were intended to reduce the potential for larger impacts that could result from claims against Metro.

There were examples of more than one separation agreement for the same employee. This indicated that Metro was willing to provide additional considerations to some employees even after they had agreed to waive any potential claims. In some situations multiple agreements with the same employee were reached within two or three months of each other, while agreements with another employee were spaced out over almost a year. Multiple separation agreements may be needed if the employee's last date of

employment changed after the initial agreement was signed. However, this was only the case for one of the four subsequent separation agreements.

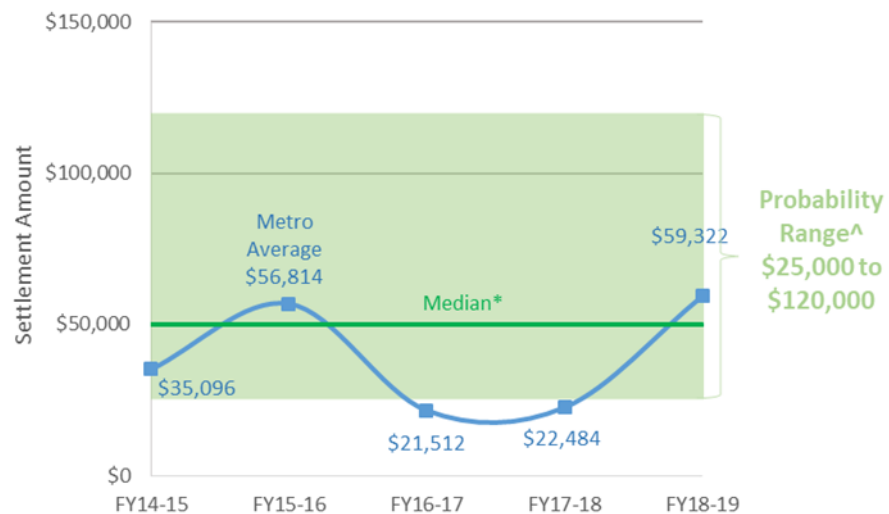
We also identified another weakness that could increase financial and compliance risks. In some cases the COO's authority to approve separation agreements appeared to have been delegated to other positions. For example, about half of the separation agreements were not signed by the COO, which indicated the COO may have delegated their authority to other positions. We did not attempt to locate documentation of the COO delegating their approval authority for each agreement. However, a delegation memo from the COO in January 2019 did not appear to include separation agreements within its scope.

Separation  
payments were  
consistent with  
benchmark amounts

We estimated the cost of the separation agreements Metro reached with former employees over the last five fiscal years. The costs associated with individual agreements ranged from zero to several hundred thousand dollars. We did not review the details of each separation agreement, but the variation in amounts was likely the result of the unique circumstances of each employee, their position, and the duration of their time at Metro.

We then compared Metro's annual average amount per agreement with benchmark data. The analysis showed Metro's average settlement amount was consistent with benchmarks.

#### Exhibit 4 Metro's average settlement amount was within or below the expected range during each of the last five years



Source: Auditor's Office analysis of Metro's estimated separation amounts and settlement data from Thomson Reuters' *Employment Practice Liability: Jury Award Trends and Statistics*, 2018 Edition. Metro averages were not adjusted for inflation.

\*The median is the middle settlement value among all settlements from 2011-2017 listed in ascending order. This value provides the most accurate gauge of the norm for a specific sampling of settlement data.

^The probability range is defined as the middle 50 percent of all settlements arranged in ascending order in a sampling, 25 percent above and below the median award. Although settlements rarely produce a normal distribution, the probability range and the median settlement does aid in establishing parameters of where settlements tend to cluster.

As the graph shows, in two of the last five years Metro's average was slightly more than the median amount, but still within the expected (probability) range of outcomes. In three of the years, Metro's average was below the median, and below even the low end of the expected range in two years. The Metro Auditor conducted a similar analysis in 2005 and found the average at that time was about \$38,000 in today's dollars, which was similar to Metro's most recent five-year annual average (\$41,000).

The analysis indicated Metro has managed employment separations well, on average, to keep the financial impact to the agency relatively low. Because of the sensitive, and in some cases confidential, nature of separation agreement provisions, we did not seek to determine how settlement amounts were reached. The trend analysis compared to the benchmark amounts indicated Metro had made sound financial decisions, on average, to limit costs that can rise rapidly through additional legal proceedings.

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## Recommendations

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To increase transparency and clarify approval authority for employment agreements, Metro Council should:

1. Amend Metro Code to remove the COO's delegation authority for groups of director level positions.

To reduce financial and compliance risks, the COO or their designee should:

2. Specify in approval resolutions, or delegation resolutions, if the approval was one-time or for future employees in the same position.
3. Specify in approval resolutions, or delegation resolutions, if approval has been delegated for subsequent amendments.
4. Analyze separation amounts periodically and compare them to appropriate benchmarks.

To reduce compliance risks, OMA should:

5. Create and utilize a consistent process to review employment agreements and separation agreements for compliance with Metro Code and related delegated authority approvals.

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## Scope and methodology

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The objective of this audit was to determine if controls were in place to ensure compliance with Metro Code requirements related to employment and separation agreements. The scope of the review for employment agreements was January 6, 2003, the date Metro switched to the Council President structure, through October 2019. The change to the Council President structure changed the relationship between the legislative branch (Council) and the executive branch (originally led by the Executive Officer). The scope of the review of separation agreements was July 1, 2014 to June 30, 2019.

To achieve the audit objective, we reviewed employment agreements and separation agreements to determine how they were approved. We then compared the results to the requirements outlined in Metro Code 2.02.010 (Personnel). We researched the causes for those misalignments by talking with the COO and Office of Metro Attorney.

We also obtained and compared Metro's data to jury award and settlement agreement data from Thompson Reuters. We used the settlement probability range and median settlement amounts in our analysis. The publisher of the data noted that the size of the sample from which their settlement figures are drawn is difficult to gauge. While some caution is warranted, we believe it represents the best available data to evaluate Metro's separation amounts.

The audit was included in the FY 2019-20 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.



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# Management response

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## Memo



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

Date: Friday, January 17, 2020  
To: Brian Evans, Metro Auditor  
From: Andrew Scott, Interim Chief Operating Officer  
Subject: Employment Agreements Audit Response

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Thank you for your recent audit of Metro's employment agreements. Below you will find a written response to each of the five recommendations. Overall, management agrees that Metro should be clear and transparent with regards to the approval authority for employment agreements. And we were pleased to find that Metro's separation payments were consistent with benchmark amounts.

In 2014 Council approved a code change that gives the COO authority to approve employment agreements in some situations. This practice allows flexibility when negotiating employment terms for executive positions at Metro. In 2017 Council passed a resolution delegating authority to the COO to approve employment agreements for department directors, further enhancing the COO's flexibility to hire directors without having to return to Council for a separate resolution or approval of each employment agreement.

The 2014 code change provides that for a group of director-level employment agreements, all terms of the employment agreement needed to be identical except for salary. However, the 2017 Council resolution also included a template with blanks for both salary and other forms of compensation (e.g., vacation accrual), and provided that the terms be substantially similar rather than identical. As a result, management interpreted that authority had been delegated for salary and other compensation. Management agrees with the Auditor that we should seek additional clarity from Council on this point.

Similarly, when Council delegated authority to approve employment agreements for department directors, management interpreted this to include the Deputy Chief Operating Officer and General Manager of Visitor Venues. We agree with the Auditor that we should seek additional clarity on this point as well.

While we agree with the need to clarify the extent and scope of the delegated authority, management disagrees with the Auditor's recommendation to remove the COO's authority to approve employment agreements. The COO is responsible for managing Metro operations, which includes hiring senior executives to lead the organization. Once Council has established the parameters for employment agreements, management believes the COO should have the flexibility to operate within those parameters without having to return to Council for each individual position. The COO should seek Council approval only if a particular negotiation requires provisions outside those authorized by Council.

As a result, we will recommend to Council that they delegate authority to the COO to approve all employment agreements for director-level positions and above, and any subsequent amendments, while at the same time clarifying the parameters for those employment agreements.

Once again, we want to thank the Auditor for diving into this issue and providing us with an opportunity to clarify the code and have a conversation with Council.

**Recommendation 1:** To increase transparency and clarify approval authority for employment agreements, Metro Council should amend Metro Code to remove the COO's delegation authority for groups of Director level positions.

- **Response:** This recommendation is directed to the Metro Council. As discussed above, management disagrees with the recommendation and will seek additional guidance from Metro Council.

**Recommendation 2:** To reduce financial and compliance risks, the COO or their designee should specify in approval resolutions, or delegation resolutions, if the approval was one-time or for future employees in the same position.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** We will discuss with Council their preferred level of delegation and will specify that in future code changes and resolutions. -
- **Timeline:** February 2020

**Recommendation 3:** To reduce financial and compliance risks, the COO or their designee should specify in approval resolutions, or delegation resolutions, if approval has been delegated for subsequent amendments.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** We will discuss with Council their preferred level of delegation for subsequent amendments and will specify that in future code changes and resolutions. -
- **Timeline:** February 2020

**Recommendation 4:** To reduce financial and compliance risks, the COO or their designee should analyze separation amounts periodically and compare them to appropriate benchmarks.

- **Response:** Management agrees with the recommendation -
- **Proposed plan:** HR will analyze separation amounts on an annual basis and compare them to benchmarks. -
- **Timeline:** Beginning in 2021

**Recommendation 5:** To reduce compliance risks, OMA should create and utilize a consistent process to review employment agreements and separation agreements for compliance with Metro Code and related delegated authority approvals.

- **Response:** The Office of Metro Attorney provides review and advice to the Chief Operating Officer for employment agreements and separation agreements, and amendments thereto. OMA review and advice includes compliance with Metro Code, Metro policy, and employment law. Both the COO and OMA agree with the recommendation, which reflects OMA's role and current practice.

Agenda Item No. 5.1

**Resolution No. 20-5073**, For the Purpose of Adopting an Agenda for the 2020 Oregon Legislative Session

*Resolutions*

Metro Council Meeting  
Thursday, January 30, 2020  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING AN	)	RESOLUTION NO. 20-5073
AGENDA FOR THE 2020 OREGON	)	
LEGISLATIVE SESSION	)	Introduced by Council President Lynn
	)	Peterson
	)	

WHEREAS, Metro has an interest in bills before the 2020 Oregon Legislature; and

WHEREAS, the Metro Council and Metro staff will represent Metro's interest during the upcoming legislative session; and

WHEREAS, the Metro Council wishes to establish a united position on important legislative proposals and provide direction to its staff in order to represent the will of the agency; and

WHEREAS, the attached Exhibit "A" of this resolution lists specific expected and potential 2020 issues that are of concern to Metro and the metropolitan region and gives guidance to staff on the Metro Council's position on these issues; and

WHEREAS, the attached Exhibit "B" states the Metro Council's principles regarding categories of potential legislation in order to provide guidance to staff in representing Metro; now therefore

BE IT RESOLVED that the Metro Council hereby directs the Metro Chief Operating Officer, the Metro Attorney, and Metro staff to communicate the agency's position on a variety of legislative proposals to the 2020 Oregon Legislature consistent with Exhibits "A" and "B" attached hereto.

ADOPTED by the Metro Council this \_\_\_\_\_ day of January, 2020.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie Maclaren, Metro Attorney

**METRO COUNCIL LEGISLATIVE PRIORITIES**  
**2020 Legislative Session**



**TOP PRIORITY ITEMS**

- **Climate:** Support legislation to create a “cap and invest” system to reduce greenhouse gas emissions and incentivize investment in clean energy. Seek specific provisions that directly allocate funds to the Portland region for implementation of the Climate Smart Strategy to reduce transportation-related greenhouse gas emissions. Seek opportunities to support other climate-related investments related to Metro’s other areas of responsibility.
- **Product stewardship for mattresses:** Support legislation based on producer responsibility and product stewardship principles to create a program for managing discarded mattresses.
- **Willamette Falls Locks:** Support legislation to establish a public corporation to take ownership of the Locks and provide the funding necessary to repair and reopen them.
- **Affordable housing:** Support legislation providing policy and funding tools to address housing affordability. Collaborate on potential opportunities for technical amendments to housing legislation passed in 2019.
- **Urban growth management:** Ensure that the Legislature establishes the policy framework and process for local land use decisions and respects the authority of local governments, including Metro, to make specific decisions on local land use matters. Oppose efforts to legislatively determine specific land use designations in the region.
- **Transportation:** Seek opportunities to enhance revenue authority related to potential 2020 regional transportation funding ballot measure. Pursue funding and/or policy, as appropriate, to support development and eventual construction of Southwest Corridor and I-205 projects.
- **Jurisdictional transfer:** Advance efforts to identify candidate highways for jurisdictional transfer and provide funds to facilitate transfers.

**OTHER ITEMS**

- **Emerging transportation technologies:** Ensure that any legislation establishing statewide policy frameworks for ride-hailing companies, automated vehicles and other technology-driven transportation innovations does not unreasonably limit local government authority or access to data needed for sound transportation management and planning.
- **Geographic data:** Support legislation to create and fund a central state repository for standardized geographic “framework” data.

## METRO COUNCIL 2020 LEGISLATIVE PRINCIPLES<sup>1</sup>

### LOCAL AUTHORITY

1. **Pre-emption:** With respect to issues related to solid waste management, land use, transportation and other matters of regional concern, Metro's authority should not be pre-empted or eroded.
2. **Funding:** To ensure a prosperous economy, a clean and healthy environment, and a high quality of life for all of their citizens, Metro and the region's counties, cities, and other service providers must have the financial resources to provide sustainable, quality public services. Accordingly, the Legislature should remove existing restrictions on local and regional revenue-raising authority and avoid enacting new limitations or pre-emptions, and all state mandates should be accompanied by funding.

### EQUITY

3. **Racial Diversity, Equity and Inclusion:** Metro envisions a region and state where a person's race, ethnicity or zip code does not predict their future prospects and where all residents can enjoy economic opportunity and quality of life. Metro therefore supports legislation that acknowledges past discrimination, addresses current disparities and promotes inclusion in public programs, services, facilities and policies.

### HOUSING:

4. **Affordable Housing:** Metro supports efforts to ensure that housing choices are available to people of all incomes in every community in our region, and to reduce the number of households that are burdened by the combined costs of housing and transportation.<sup>2</sup> To achieve these outcomes, Metro supports legislative actions consistent with Oregon's land use laws that increase the supply of both regulated affordable housing and market-rate housing; provide funding for both housing development and services that support lower-income renters; and provide reasonable protections for renters against arbitrary and unfair actions.

### LAND USE AND URBAN GROWTH MANAGEMENT:

5. **Local Authority:** The Legislature should take no actions that reduce or compromise Metro's land use and urban growth management authority.
6. **Oregon's Land Use System:** Oregon's land use planning system provides an important foundation for the prosperity, sustainability and livability of our region; this system reflects the values of Oregonians and enjoys strong public support.<sup>3</sup> The Legislature should exercise restraint and care when considering changes to Oregon's land use system.
7. **Successful Communities:** Metro supports legislation that facilitates the achievement of the six desired outcomes for successful communities that have been agreed upon by the region: vibrant, walkable communities; economic competitiveness and prosperity; safe and reliable transportation choices; leadership in minimizing contributions to global warming; clean air, clean water and healthy ecosystems; and equitable distribution of the burdens and benefits of growth and change.<sup>4</sup>
8. **Local Land Use Decisions:** Management of the urban growth boundary is a complex undertaking that involves extensive analysis, public input, and a balancing of many factors. Urban growth management decisions have profound impacts not just on land at the

boundary, but on communities within the boundary and on farms and other rural lands outside the boundary. For these reasons, the Legislature should establish the process and policy framework for local land use decisions and should affirm the authority of local governments, including Metro, to make specific decisions on local land use matters.

9. **Efficiency:** Land within the urban growth boundary should be used efficiently before the boundary is expanded.<sup>5</sup>
10. **Need:** The UGB should not be expanded in the absence of demonstrated need.<sup>6</sup>
11. **Integration of Land Use and Transportation:** Land use and transportation planning should be coordinated so land uses do not undermine the efficiency and reliability of the transportation system and transportation investments do not lead to unintended or inefficient land uses.<sup>7</sup>
12. **Annexation:** Cities are the preferred governing structure for providing public services to urban areas, and Metro supports reforms that will facilitate, or reduce barriers to, orderly annexation and incorporation.
13. **Rules/Statutes:** Administrative rules should not be adopted into statute.
14. **Non-Regulatory Tools:** State efforts at regulatory streamlining should include funding to support development of non-regulatory tools for achieving desired land use outcomes.<sup>8</sup>
15. **Fiscal Responsibility:** Funding to support urban development should be generated at least in part by fees on those who directly benefit from that development.

#### **SOLID WASTE:**

16. **Life cycle approach:** Metro supports efforts to minimize the health, safety, environmental, economic and social impacts associated with consumer products and packaging throughout all stages of a product's life cycle, beginning with resource extraction and continuing through design, manufacturing, consumption and disposal.<sup>9</sup>
17. **Product Stewardship/Producer Responsibility:** Metro supports legislation providing that whoever designs, produces, sells or uses a product bears responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle. Under this market-based approach, the life-cycle costs of a product are internalized into its price rather than being forced onto the general public. This approach also provides an incentive for manufacturers to design and produce their goods in a way that minimizes waste, environmental impact and management costs.

#### **TRANSPORTATION:**

17. **Transportation Governance:** The Legislature should take no actions that reduce or compromise Metro's or JPACT's authority in the areas of transportation policy and funding.
18. **Transportation Funding:** Providing adequate funding for all transportation modes that move people and freight supports economic prosperity, community livability, public health and environmental quality. For these reasons, Metro supports an increase in overall transportation funding, investments in a safe and balanced multimodal transportation system that addresses the needs of all users, and flexibility in the system to provide for local solutions to transportation problems.

#### **PARKS AND NATURAL AREAS:**

19. **Parks and Natural Areas:** Our region has invested heavily in protecting water quality and wildlife habitat and providing residents with access to nature and outdoor activity. Parks and



natural areas are regional assets that support public health, environmental quality, strong property values and economic prosperity. For these reasons, Metro supports measures to increase local and regional authority to raise revenues to support parks and natural areas and to increase the level of state funding distributed to local governments for acquisition, capital improvements, and park operations.

**SUSTAINABILITY:**

- 20. Climate Change:** Metro supports efforts to combat and adapt to climate change and to meet the state's goals for reducing greenhouse gas emissions. Metro and its regional partners are committed to the Climate Smart Strategy, which includes actions needed to achieve state targets for reducing greenhouse gas emissions from transportation. The state should provide financial support for implementation of the Climate Smart Strategy.
- 21. Species Conservation:** Metro supports efforts to protect and restore wildlife habitat, to recover threatened and endangered species, and to create a better future for wildlife, both in Oregon and globally.
- 22. Conservation Education:** Metro supports efforts to provide stable and reliable funding to conservation education.

**ECONOMIC PROSPERITY:**

- 23. Infrastructure Finance:** Metro supports measures, including funding or revenue measures, which facilitate state, regional or local investments in the public structures needed to accommodate population and economic growth in a way that helps the region achieve its six desired outcomes for successful communities.
- 24. Metro Venues:** Because the Oregon Convention Center, Expo Center, Portland's Centers for the Arts and Oregon Zoo are assets that contribute millions of dollars to the state and regional economies, Metro supports legislative measures that facilitate the success of these venues in attracting visitors and enhancing the quality of their experiences.

**AGENCY OPERATIONS:**

- 25. Firearms and Public Facilities:** Metro supports legislation that increases Metro's authority to regulate the carrying of firearms on Metro properties and public venues, and opposes legislation that limits or reduces that authority.
- 26. Disaster Preparedness:** Metro supports legislative efforts to improve community disaster preparedness and resilience, with the goal of enabling the Portland region to provide for the immediate needs of its residents and businesses after a catastrophic event and facilitating the region's short- and long-term recovery.

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<sup>1</sup> Unless otherwise noted, endnotes refer to applicable policy statements in Metro's Regional Framework Plan (RFP).

<sup>2</sup> RFP Policy 1.3 (Housing Choices and Opportunities).

<sup>3</sup> See <http://oregonvaluesproject.org/findings/top-findings/> (specifically item 5, Natural Resource Protections for Future Generations)

<sup>4</sup> RFP Chapter 1 (Land Use).

<sup>5</sup> RFP Policy 1.1 (Compact Urban Form).

<sup>6</sup> RFP Policy 1.9 (Urban Growth Boundary).

<sup>7</sup> RFP Policy 1.3.13 (Housing Choices and Opportunities); Transportation Goal 1 (Foster Vibrant Communities and Efficient Urban Form).

<sup>8</sup> RFP Policy 1.1 (Compact Urban Form); Policy 1.2 (Centers, Corridors, Station Communities and Main Streets).

<sup>9</sup> Draft 2030 Regional Waste Plan, page 11.

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 20-5073, FOR THE PURPOSE OF ADOPTING AN AGENDA FOR THE 2020 OREGON LEGISLATIVE SESSION**

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Date: January 17, 2020  
Department: GAPD  
Meeting Date: January 30, 2020

Prepared by: Randy Tucker, x1512,  
randy.tucker@oregonmetro.gov

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## **ISSUE STATEMENT**

This resolution articulates the Metro Council's agenda for the 2020 Oregon legislative session and directs staff to pursue legislative outcomes consistent with the Council's policy priorities and principles.

## **ACTION REQUESTED**

Staff recommends approval of Resolution 20-5073.

## **IDENTIFIED POLICY OUTCOMES**

See Exhibits A and B.

## **POLICY QUESTION(S)**

See Exhibits A and B.

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

N/A. (Note: staff will continue to seek policy direction from the Council throughout the legislative session as issues change and new issues arise.)

## **STAFF RECOMMENDATIONS**

Specific recommendations on policy direction are included in Exhibits A and B.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

- **How does this advance Metro's racial equity goals?** Several items in the proposed agenda support outcomes that will advance Metro's racial equity goals, including but not limited to support for both funding and policy related to affordable housing and support for climate legislation that addresses the needs of impacted communities. However, the legislative agenda is limited since the 2020 session is the biennial "short session" that happens in even-numbered years. The Metro Council's legislative principle

on Racial Diversity, Equity and Inclusion will guide staff's responses to other legislation that arises during the course of the session.

- **How does this advance Metro's climate action goals?** The agenda directs staff to seek specific provisions in climate "cap and invest" legislation that supports implementation of the Climate Smart Strategy. Metro's legislative principles support efficient land uses which reduce the need to drive, thereby reducing per capita greenhouse gas emissions.
- **Known Opposition:** None.
- **Legal Antecedents:** None applicable.
- **Anticipated Effects:** Provides direction to Metro staff with respect to issues before the 2020 Oregon Legislature.
- **Financial Implications (current year and ongoing):** Funding for Metro's legislative advocacy is included in the budget for Government Affairs and Policy Development and is supported by Metro's general fund. Certain substantive elements of the legislative agenda have financial implications for Metro, its regional partners, and the larger regional economy (e.g., personnel or public contracting requirements or the availability of funds to support regional projects and programs), but those implications cannot be known at this time with any specificity.

## BACKGROUND

The Metro Council has taken formal positions on legislation since its inception. The first such action was in Resolution No. 79-23 whereby the Council took a position on Senate Bill 66, which dealt with economic development. Since that time, the Metro Council has taken formal and informal positions on legislation that impacts the agency and the region.

The priorities and principles described in Exhibits A and B were developed by Metro's legislative affairs manager, Randy Tucker, in consultation with the Metro Council and Metro staff. Most of the specific legislative issues described in Exhibit A have benefited from consultation with legislative liaisons and other staff in Metro departments. The priorities and principles were discussed with the Metro Council in work sessions that occurred on December 3, 2019 and January 21, 2020.

Where applicable, the legislative principles described in Exhibit B also reflect previously adopted Metro policy as embodied in the Regional Framework Plan, the Regional Waste Plan and other documents.

As issues arise and develop during the 2020 session, the Council will have the opportunity to take positions on specific pieces of legislation and to modify its agenda as it sees fit.

**ATTACHMENTS**

Exhibit A, Metro Council Legislative Priorities, 2020 Legislative Session

Exhibit B, Metro Council 2020 Legislative Principles

Agenda Item No. 5.2

**Resolution No. 20-5069**, For the Purpose of Supporting Statewide Product Stewardship  
Legislation for Mattresses

*Resolutions*

Metro Council Meeting  
Thursday, January 30, 2020  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF SUPPORTING ) RESOLUTION NO. 20-5069  
STATEWIDE PRODUCT STEWARDSHIP )  
LEGISLATION FOR MATTRESSES ) Introduced by Councilor Craddick

WHEREAS, Metro is the solid waste system planning authority for the greater Portland metropolitan region and acts pursuant to its constitutional, statutory, and charter authority; and

WHEREAS, in Ordinance No. 19-1431 Metro adopted the 2030 Regional Waste Plan, which serves as the greater Portland area's blueprint for investing in our garbage and recycling system, reducing the environmental and health impacts of products that end up in this system, and advancing progress toward Metro's racial equity objectives; and

WHEREAS, mattresses are present in the waste stream in significant numbers and pose a challenge for residents needing to manage their discarded mattresses, including those living in multi-family residences; and

WHEREAS, a goal of the 2030 Regional Waste Plan is to reduce the environmental impact of products disposed in Oregon, and advocate for product stewardship legislation that reduces those impacts; and

WHEREAS, a mattress stewardship program will conserve resources and can create permanent employment and training opportunities for populations that face significant barriers to employment, including a history of incarceration or homelessness; and

WHEREAS, the Metro Council in 2019 adopted legislative principles in support of product stewardship legislation and directed Metro staff to support legislation creating programs for managing discarded mattresses based on producer responsibility and product stewardship principles; and

WHEREAS, in 2020 the Oregon Legislature will consider legislation establishing a product stewardship program for mattresses; now therefore,

BE IT RESOLVED that the Metro Council supports statewide product stewardship legislation for mattresses, and directs staff to pursue passage of mattress stewardship legislation consistent with the Council's policy priorities and principles.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



IN CONSIDERATION OF RESOLUTION NO. 20-5069 FOR THE PURPOSE OF  
SUPPORTING STATEWIDE PRODUCT STEWARDSHIP LEGISLATION FOR  
MATTRESSES

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Date: January 14, 2020

Department: Waste Prevention and  
Environmental Services

Meeting Date: January 30, 2020

Prepared by: Scott Klag x1665,  
scott.klag@oregonmetro.gov

Presenters: Scott Klag; Pam Peck  
Length: 10 minutes

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## **ISSUE STATEMENT**

This resolution articulates the Metro Council's support for a statewide product stewardship bill for mattresses to be introduced at the 2020 Oregon legislative session and directs staff to pursue passage of legislation consistent with the Council's policy priorities and principles.

## **ACTION REQUESTED**

Approval of Resolution 20-5069.

## **IDENTIFIED POLICY OUTCOMES**

The Metro Council's Legislative Principles support product stewardship legislation that requires that whoever designs, produces, sells or uses a product bear responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle.

A goal of the 2030 Regional Waste Plan (Ordinance No. 19-1431) is to reduce the environmental impact of products disposed in Oregon, and advocate for product stewardship legislation that reduces those impacts.

Resolution 19-4954 supported state legislation on product stewardship legislation for mattresses during the 2019 session.

## **POLICY QUESTION(S)**

Does the Metro Council want to continue supporting statewide product stewardship legislation for mattresses at the 2020 state legislative session?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

The statewide 2020 mattress legislation is expected to be substantially the same as the bill supported by the Metro Council in 2019. Staff will continue to seek policy direction from the Council throughout the legislative session if significant changes are proposed for the bill.

## **STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 20-5069.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

At its Dec. 3, 2019 work session, Council discussed specific actions that Metro could take to make the region's recycling system stronger and more resilient in the future. Those actions addressed both the "curbside" recycling system (for materials collected at residences and businesses) and special materials of interest to Council, including mattresses. At the conclusion of that discussion, Council directed staff to implement the comprehensive work plan that was discussed, including formally expressing its support for state legislation to enact producer responsibility requirements for mattresses in the Oregon Legislature's 2020 session. Council further indicated that if the Legislature did not pass such legislation in 2020, then the Council would consider a region-specific ordinance later in the year.

A product stewardship program for mattresses aligns with multiple goals and actions within the 2030 Regional Waste Plan.

*Goal 5:* Reduce the environmental and human health impacts of products and packaging that are made, sold, used or disposed in Oregon.

*Action 5.4* Advocate for product stewardship legislation and other policy approaches that can achieve the greatest reduction in environmental and human health impacts from products and packaging made, used or disposed in the region.

*Goal 8:* Increase the reuse, repair and donation of materials and consumer products.

*Goal 10:* Provide regionally consistent services for garbage, recyclables and other priority materials that meet the needs of all users.

*Action 10.8* Advocate for statewide legislation or implement regional policies to increase the types of products and packaging for which manufacturers and retailers provide environmentally sound, convenient and accessible take-back programs.

*Goal 11:* Address and resolve community concerns and service issues.

*Action 11.4* Provide services to clean up illegal dumps on public property, prioritizing communities with greatest need.

*Action 11.5* Research the root causes that contribute to illegal dumping and how they can be addressed.

*Goal 12:* Manage all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public.

A statewide mattress stewardship program will support achievement of (a) Goal 5 by diverting mattresses that can be refurbished for reuse; (b) Goal 8 by increasing the availability of services to residents who have mattresses to discard, including low income and multifamily residents; (c) Goal 11 by assisting Metro in addressing the illegal dumping of mattresses; and (d) Goal 12 by diverting mattresses from solid waste facilities where they are difficult and dangerous to manage.

- **How does this advance Metro's equity goals?**

The legislation requires provision of free, convenient and accessible collection opportunities for any person in the state. The legislation will increase collection from multifamily residences, low income communities and communities of color.

Mattress recycling facilities that will be supported by this legislation can create permanent employment and training opportunities for populations that face significant barriers to employment, including a history of incarceration or homelessness.

- **How does this advance Metro's climate action goals?**

Once disassembled, up to 85 percent of a typical mattress is recyclable. Materials such as metal, foam, cotton and wood can be used to make new products. Significant reductions in greenhouse gases and energy use have been shown to result from reuse and recycling of mattress components<sup>1</sup>.

- **Known Opposition/Support/Community Feedback**

The mattress industry helped develop the bill last session, although the session adjourned before final language in some areas could be agreed upon. The Association of Oregon Recyclers (AOR) (composed of among others - solid waste and recycling companies and local and state governments) supported the bill. BRING, a Eugene based reuse and recycling non-profit was strongly supportive.

- **Explicit list of stakeholder groups and individuals who have been involved in policy development.**

The National Sleep Products Association (an industry trade organization) and its stewardship agency (MRC – the Mattress Recycling Council), the Oregon Department of

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<sup>1</sup> [Mattress and Box Spring Case Study: The Potential Impacts of Extended Producer Responsibility in California on Global Greenhouse Gas \(GHG\) Emissions](#)

Environmental Quality and Metro staff are among those involved in developing the bill's approach. St. Vincent DePaul, which has active mattress recycling programs in the state also supported and commented on the bill's development. The national Product Stewardship Institute, which has experience with mattress legislation in other states, also provided technical assistance.

- **Legal Antecedents:**

Oregon has legislated statewide product stewardship programs for electronics (2007); paint (2009); and pharmaceuticals (2019). The Oregon Bottle Bill (1971, 2011) is also a type of product stewardship. The proposed statewide legislation under consideration would add mattresses to the type of products covered by this policy approach.

There are similar legislated mattress stewardship programs, operated by the industry's stewardship entity MRC, in three other states: Connecticut, Rhode Island and California.

- **Anticipated Effects:** The program would ensure the availability of mattress recycling opportunities for residents in the Metro region and across the state. The increased services will reduce the number of mattresses in the waste stream and improve safety conditions for workers at our and other transfer stations. More convenient disposal options should also reduce illegal dumping of mattresses.
- **Financial Implications (current year and ongoing):** A portion of Metro's costs for managing illegally dumped mattresses should be mitigated by the program.

## **BACKGROUND**

Over the past several years, Metro Councilors and staff have discussed the need for more mattress reuse and recycling in the Portland metropolitan region. Staff has been following other states' development of product stewardship laws for mattresses as a potential solution.

In 2018, state Senator James Manning from the Eugene area expressed interest in sponsoring a bill to promote mattress recycling. Persons promoting the idea to him were familiar with the California stewardship legislation. With assistance from others, including the Oregon DEQ and Metro staff, the Senator introduced SB 276 in the 2019 session. The bill was amended and passed out of its policy committee, but died in Ways and Means. There were additional amendments related to DEQ oversight and antitrust that were close to being finalized when time ran out. Discussions on the 2020 bill will start from that point.

The bill would establish a statewide product stewardship system for the collection and proper management of mattresses. The bill will require manufacturers to take responsibility for establishing a stewardship organization that will develop, finance and implement the program. The program will support local private and non-profit entities already at work recycling mattresses across the state.

The mattress stewardship program will address a challenging item for Metro-area residents to manage, create jobs, recover materials that can be recycled into new products and divert mattresses from solid waste facilities where they are difficult and dangerous to manage.

## **ATTACHMENTS**

**Attachment 1 to Staff Report: Exhibit A to Resolution 19-4954**, Metro Council  
Legislative Priorities, 2019 Legislative Session

**Attachment 2 to Staff Report: Exhibit B to Resolution 19-4954**, Metro Council  
Legislative Principles, 2019 Legislation Session

**METRO COUNCIL LEGISLATIVE PRIORITIES**  
**2019 Legislative Session**



**TOP PRIORITY ITEMS**

- **Climate:** Support legislation to create a “cap and invest” system to reduce greenhouse gas emissions and incentivize investment in clean energy. Seek specific provisions that support implementation of the Portland region’s Climate Smart Strategy to reduce transportation-related greenhouse gas emissions. Seek opportunities to support other climate-related investments related to Metro’s other areas of responsibility.
- **Household hazardous waste:** Establish a program based on producer responsibility and product stewardship principles to manage household hazardous waste.
- **Affordable housing:** Support legislation increasing state housing funding, improving tenant protections, and providing additional tools and authority to local governments to address housing supply and affordability.
- **Urban growth management:** Ensure that the Legislature establishes the policy framework and process for local land use decisions and respects the authority of local governments, including Metro, to make specific decisions on local land use matters. Oppose efforts to legislatively determine specific land use designations in the region.
- **Transportation projects:** Provide funding to support project development and eventual construction of Southwest Corridor and I-205 projects.
- **Brownfield cleanup and redevelopment:** Establish a state brownfield cleanup tax credit and support recapitalization of the state’s Brownfields Redevelopment Fund.

**OTHER ITEMS**

- **Columbia River levees:** Support legislation to consolidate drainage districts and provide funding to support recertification of Columbia River levees.
- **Plastics:** Support a statewide ban on single-use plastics, including plastic bags, that does not pre-empt local authority or create an undue burden on low-income consumers.
- **Paid parental and family leave:** Support legislation to establish a statewide program and policy for paid parental and family leave.
- **Industrial site readiness:** Provide funding to implement statute authorizing loans to make land inside urban growth boundaries available for industrial development and job creation through infrastructure investment, brownfield cleanup, land aggregation, and other means. Support statutory changes to make statute clearer and easier to implement.
- **Product stewardship:** Support legislation creating programs for managing discarded pharmaceutical drugs and mattresses based on producer responsibility and product stewardship principles.

- **Jurisdictional transfer:** Advance efforts to identify candidate highways for jurisdictional transfer and provide funds to facilitate transfers.
- **Emerging transportation technologies:** Ensure that legislation establishing statewide policy frameworks for ride-hailing companies, automated vehicles and other technology-driven transportation innovations do not unreasonably limit local government authority or access to data needed for sound transportation management and planning.
- **Geographic data:** Support legislation to create and fund central state repository for standardized geographic “framework” data.
- **Oregon Conservation Strategy:** Support creation of an Oregon Conservation and Recreation Fund dedicated to the conservation and management of Oregon’s non-game fish and wildlife and their habitats.
- **Willamette Falls Locks:** Support funding to repair and reopen the Locks and transfer ownership to the Department of State Lands.
- **Air quality:** Establish requirements and incentives to reduce diesel particulate emissions, increase the use of clean diesel engines, and reduce diesel engine idling.
- **Tax Supervising and Conservation Commission:** Increase the cap and growth factor for the TSCC’s budget.
- **Qualification-based selection:** Establish an alternative approach to contracting for certain categories of professional services that enables a contracting agency to consider price as a factor before selecting a contractor.

## METRO COUNCIL 2019 LEGISLATIVE PRINCIPLES<sup>1</sup>

### LOCAL AUTHORITY

1. **Pre-emption:** With respect to issues related to solid waste management, land use, transportation and other matters of regional concern, Metro's authority should not be pre-empted or eroded.
2. **Funding:** To ensure a prosperous economy, a clean and healthy environment, and a high quality of life for all of their citizens, Metro and the region's counties, cities, and other service providers must have the financial resources to provide sustainable, quality public services. Accordingly, the Legislature should remove existing restrictions on local and regional revenue-raising authority and avoid enacting new limitations or pre-emptions, and all state mandates should be accompanied by funding.

### EQUITY

3. **Racial Diversity, Equity and Inclusion:** Metro envisions a region and state where a person's race, ethnicity or zip code does not predict their future prospects and where all residents can enjoy economic opportunity and quality of life. Metro therefore supports legislation that acknowledges past discrimination, addresses current disparities and promotes inclusion in public programs, services, facilities and policies.

### HOUSING:

4. **Affordable Housing:** Metro supports efforts to ensure that housing choices are available to people of all incomes in every community in our region, and to reduce the number of households that are burdened by the combined costs of housing and transportation.<sup>2</sup> To achieve these outcomes, Metro supports legislative actions consistent with Oregon's land use laws that increase the supply of both regulated affordable housing and market-rate housing; provide funding for both housing development and services that support lower-income renters; and provide reasonable protections for renters against arbitrary and unfair actions.

### LAND USE AND URBAN GROWTH MANAGEMENT:

5. **Local Authority:** The Legislature should take no actions that reduce or compromise Metro's land use and urban growth management authority.
6. **Oregon's Land Use System:** Oregon's land use planning system provides an important foundation for the prosperity, sustainability and livability of our region; this system reflects the values of Oregonians and enjoys strong public support.<sup>3</sup> The Legislature should exercise restraint and care when considering changes to Oregon's land use system.
7. **Successful Communities:** Metro supports legislation that facilitates the achievement of the six desired outcomes for successful communities that have been agreed upon by the region: vibrant, walkable communities; economic competitiveness and prosperity; safe and reliable transportation choices; leadership in minimizing contributions to global warming; clean air, clean water and healthy ecosystems; and equitable distribution of the burdens and benefits of growth and change.<sup>4</sup>
8. **Local Land Use Decisions:** Management of the urban growth boundary is a complex undertaking that involves extensive analysis, public input, and a balancing of many factors. Urban growth management decisions have profound impacts not just on land at the



boundary, but on communities within the boundary and on farms and other rural lands outside the boundary. For these reasons, the Legislature should establish the process and policy framework for local land use decisions and should affirm the authority of local governments, including Metro, to make specific decisions on local land use matters.

9. **Efficiency:** Land within the urban growth boundary should be used efficiently before the boundary is expanded.<sup>5</sup>
10. **Need:** The UGB should not be expanded in the absence of demonstrated need.<sup>6</sup>
11. **Integration of Land Use and Transportation:** Land use and transportation planning should be coordinated so land uses do not undermine the efficiency and reliability of the transportation system and transportation investments do not lead to unintended or inefficient land uses.<sup>7</sup>
12. **Annexation:** Cities are the preferred governing structure for providing public services to urban areas, and Metro supports reforms that will facilitate, or reduce barriers to, orderly annexation and incorporation.
13. **Rules/Statutes:** Administrative rules should not be adopted into statute.
14. **Non-Regulatory Tools:** State efforts at regulatory streamlining should include funding to support development of non-regulatory tools for achieving desired land use outcomes.<sup>8</sup>
15. **Fiscal Responsibility:** Funding to support urban development should be generated at least in part by fees on those who directly benefit from that development.

#### **SOLID WASTE:**

16. **Life cycle approach:** Metro supports efforts to minimize the health, safety, environmental, economic and social impacts associated with consumer products and packaging throughout all stages of a product's life cycle, beginning with resource extraction and continuing through design, manufacturing, consumption and disposal.<sup>9</sup>
17. **Product Stewardship/Producer Responsibility:** Metro supports legislation providing that whoever designs, produces, sells or uses a product bears responsibility for minimizing the product's environmental impact throughout all stages of the product's life cycle. Under this market-based approach, the life-cycle costs of a product are internalized into its price rather than being forced onto the general public. This approach also provides an incentive for manufacturers to design and produce their goods in a way that minimizes waste, environmental impact and management costs.

#### **TRANSPORTATION:**

17. **Transportation Governance:** The Legislature should take no actions that reduce or compromise Metro's or JPACT's authority in the areas of transportation policy and funding.
18. **Transportation Funding:** Providing adequate funding for all transportation modes that move people and freight supports economic prosperity, community livability, public health and environmental quality. For these reasons, Metro supports an increase in overall transportation funding, investments in a safe and balanced multimodal transportation system that addresses the needs of all users, and flexibility in the system to provide for local solutions to transportation problems.

#### **PARKS AND NATURAL AREAS:**

19. **Parks and Natural Areas:** Our region has invested heavily in protecting water quality and wildlife habitat and providing residents with access to nature and outdoor activity. Parks and

natural areas are regional assets that support public health, environmental quality, strong property values and economic prosperity. For these reasons, Metro supports measures to increase local and regional authority to raise revenues to support parks and natural areas and to increase the level of state funding distributed to local governments for acquisition, capital improvements, and park operations.

**SUSTAINABILITY:**

- 20. Climate Change:** Metro supports efforts to combat and adapt to climate change and to meet the state's goals for reducing greenhouse gas emissions. Metro and its regional partners are committed to the Climate Smart Strategy, which includes actions needed to achieve state targets for reducing greenhouse gas emissions from transportation. The state should provide financial support for implementation of the Climate Smart Strategy.
- 21. Species Conservation:** Metro supports efforts to protect and restore wildlife habitat, to recover threatened and endangered species, and to create a better future for wildlife, both in Oregon and globally.
- 22. Conservation Education:** Metro supports efforts to provide stable and reliable funding to conservation education.

**ECONOMIC PROSPERITY:**

- 23. Infrastructure Finance:** Metro supports measures, including funding or revenue measures, which facilitate state, regional or local investments in the public structures needed to accommodate population and economic growth in a way that helps the region achieve its six desired outcomes for successful communities.
- 24. Metro Venues:** Because the Oregon Convention Center, Expo Center, Portland's Centers for the Arts and Oregon Zoo are assets that contribute millions of dollars to the state and regional economies, Metro supports legislative measures that facilitate the success of these venues in attracting visitors and enhancing the quality of their experiences.

**AGENCY OPERATIONS:**

- 25. Firearms and Public Facilities:** Metro supports legislation that increases Metro's authority to regulate the carrying of firearms on Metro properties and public venues, and opposes legislation that limits or reduces that authority.
- 26. Disaster Preparedness:** Metro supports legislative efforts to improve community disaster preparedness and resilience, with the goal of enabling the Portland region to provide for the immediate needs of its residents and businesses after a catastrophic event and facilitating the region's short- and long-term recovery.

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<sup>1</sup> Unless otherwise noted, endnotes refer to applicable policy statements in Metro's Regional Framework Plan (RFP).

<sup>2</sup> RFP Policy 1.3 (Housing Choices and Opportunities).

<sup>3</sup> See <http://oregonvaluesproject.org/findings/top-findings/> (specifically item 5, Natural Resource Protections for Future Generations)

<sup>4</sup> RFP Chapter 1 (Land Use).

<sup>5</sup> RFP Policy 1.1 (Compact Urban Form).

<sup>6</sup> RFP Policy 1.9 (Urban Growth Boundary).

<sup>7</sup> RFP Policy 1.3.13 (Housing Choices and Opportunities); Transportation Goal 1 (Foster Vibrant Communities and Efficient Urban Form).

<sup>8</sup> RFP Policy 1.1 (Compact Urban Form); Policy 1.2 (Centers, Corridors, Station Communities and Main Streets).

<sup>9</sup> Draft 2030 Regional Waste Plan, page 11.

**Resolution No. 20-5075**, For the Purpose of Seeking an Exemption from Competitive Bidding and Procurement of Construction Manager General Contractor Services by Competitive Request for Proposals for the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms

*Resolutions*

Metro Council Meeting  
Thursday, January 30, 2020  
Metro Regional Center, Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING )  
AN EXEMPTION FROM COMPETITIVE ) RESOLUTION NO. 20-5075  
BIDDING AND PROCUREMENT OF )  
CONSTRUCTION MANAGER ) Introduced by Interim Chief Operating  
GENERAL CONTRACTOR SERVICES ) Officer Andrew Scott in concurrence with  
BY COMPETITIVE REQUEST FOR ) Council President Lynn Peterson  
PROPOSALS FOR THE OREGON )  
CONVENTION CENTER VIP SUITE B )  
AND PREFUNCTION A & C )  
RESTROOMS )

WHEREAS, the Metro Oregon Convention Center (OCC) intends to renovate the VIP Suite B and Prefunction A & C Restrooms located at 777 NE Martin Luther King Jr Blvd, Portland, OR 97232 during Metro fiscal years 2020 and 2021; and

WHEREAS, ORS 279C.335 and Metro Local Contract Review Board Administrative Rule ("LCRB Rule") 49-0130 require that all Metro public improvement contracts shall be procured based on competitive bids, unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS, Metro LCRB Rule 49-0620(1) authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and direct the appropriate use of alternative contracting methods that take account of market realities and modern innovative contracting and purchasing methods, so long as they are consistent with the public policy of encouraging competition, subject to the requirements of ORS 279C.335; and

WHEREAS, ORS 279C.335(4)(c) and ORS 279C.337 require that Construction Manager – General Contractor ("CM/GC") services be procured in accordance with the administrative rules adopted by the Oregon State Attorney General and further set forth in LCRB Rule 49-0690; and

WHEREAS, said statute and rule require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism in the awarding of public improvement contracts; said exemption is unlikely to substantially diminish competition for public improvement contracts; and that said exemption will likely result in substantial cost savings to Metro; now therefore

BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a CM/GC public improvement contract for the renovation of the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms.
2. Adopts as its findings in support of such exemption the justification, information and reasoning set forth on the attached Exhibit A, which is incorporated herein by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to:
  - 3.1 Prepare a form of Request for Proposals for CM/GC services that includes as evaluation criteria for contractor selection: the contractor's proposed contract management fees for pre-construction services, contractor's proposed overhead and profit costs for construction services, contractor's demonstrated complex public improvement project experience and expertise, the contractor's demonstrated CM/GC project experience, the contractor's record of completion of projects of similar type, scale and complexity, the contractor's demonstrated quality and schedule control, the contractor's experience in incorporating sustainability construction practices and design into projects, and the contractor's demonstrated commitment to workforce diversity and record of use of subcontractor businesses Certified by the Office of Business Inclusion and Diversity (COBID) and any other criteria to ensure a successful, timely, and quality project, in the best interest of Metro and in accord with ORS 279C.335(4)(c) and LCRB Rule 49-0690; and
  - 3.2 Following the approval of said form of Request for Proposals and Contract by the Office of the Metro Attorney, to issue such approved form, and thereafter to receive responsive proposals for evaluation; and
  - 3.3 Following evaluation of the responses in the Request for Proposals, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer to renovate the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms.

ADOPTED by the Metro Council this \_\_\_\_\_ day of January, 2020.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney

## OCC VIP Suite B and Prefunction A&C Restrooms Exhibit A

### **Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Proposals of Construction Manager General Construction Services for Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects**

The Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects from competitive bidding, and authorizing use of an Request for Proposal (RFP) for a Construction Manager General Contractor (CM/GC) public improvement construction contract:

#### **A. The exemption is unlikely to encourage favoritism or substantially diminish competition.**

The Metro Contract Review Board finds that exempting the procurement of the construction of the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the alternative contracting method and will be made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the objective selection criteria set forth in the Metro Contract Review Board resolution will be sought, and the contract will be awarded to the most advantageous proposer. Competition for the RFP will be encouraged by: Posting on ORPIN (Oregon Procurement Information Network), public advertisements placed in the Portland Business Tribune and other minority business publications; performing outreach to local business groups representing minorities, women, and emerging small businesses and by contacting contractors known to Metro to potentially satisfy the RFP criteria. The subcontractor selection process will be a low bid competitive method for contracts by requiring a minimum of three bids per scope, unless there is an approved exception. Competition among subcontractors will be encouraged by contacting local sub-contractors, including COBID firms and notifying them of any opportunities within their area of expertise and by performing outreach to local business groups representing minorities, women, and emerging small businesses.

#### **B. The exemption will likely result in substantial cost savings to Metro.**

The Metro Contract Review Board finds that exempting the procurement of the construction of the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects from competitive bidding will likely result in substantial costs savings to Metro, considering the “type, cost and amount of the Contract,” the 14 factors required by ORS 279C.335(2)(b), and the “additional findings” per Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630(3)(B) as follows:

**Type, Cost and Amount of the Contract:** (type of project, budgeted/expected overall cost (of project), budgeted/expected contract amount)

The CM/GC method is a common procurement practice. Area agencies such as City of Portland, Tri-Met, and Port of Portland utilize the CM/GC process for their large, complex projects. The General Contractor is brought on board earlier in the design process in order to provide constructability and logistics expertise to the construction documentation process. CM/GC offers a distinct advantage over traditional design-bid-build (low bid) method to enhance participation by COBID contractors. The current rough-order-of-magnitude estimate for the entire project is \$4 million.

### **13 Statutory Factors**

## OCC VIP Suite B and Prefunction A&C Restrooms Exhibit A

1. **Number of entities available to bid:** The complex site logistics and seasonal timeline are likely to discourage bidders from participating in a traditional design-bid-build process. This is in part due to large school bond construction work so we've set the construction schedule from January thru June 2021. The opportunity to partner with the architecture and engineering team and perform investigative early work is likely to encourage more bidders.
2. **Construction budget and future operating costs:** Utilizing an RFP to select a General Contractor will allow Metro to obtain cost reductions through pre-construction services by the contractor during the design phase, including a constructability review, value engineering, and other services. Involving the contractor early in the design process fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. The ability to have the General Contractor do early work prior to completion of design shortens the overall duration of construction, resulting in less disruption and risk to revenue generation to Oregon Convention Center. Faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs. Contractor constructability review also allows for an ongoing review of the long term operating costs of design options, allowing for midcourse design choices leading to a project having lower long term operating maintenance and repair costs.
3. **Public Benefits:** The procurement of a CM/GC construction contract through the RFP process will help realize Metro's goal of obtaining COBID participation by enabling a qualitative review of proposers' approach to COBID outreach and mentoring partnerships.
4. **Value Engineering:** The process will enable the contractor to work with the project architect and Oregon Convention Center staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesign and change orders, and providing opportunities for the architects and contractor to work together on both practical and innovative solutions to complex design issues. This type of contract will allow the designers to more easily explore with the contractor the feasibility of innovative design solutions and incorporate ongoing value engineering.
5. **Specialized Expertise Required:** The contractor and subcontractors must be able to demonstrate in their proposal that they have experience working on public events projects, understand the logistics of general public and staff traffic control, access, removing demolished materials, etc. The selection of a contractor with such specialized expertise to construct the project will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to the community. The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.
6. **Reduces risk to Metro and the public.** The risks to Oregon Convention Center's ongoing operations and contracting posed by the inability of the contractor to meet the schedule deadlines will be reduced by the selection of the contractor based on the demonstrated ability to perform the work as specified, rather than awarding the project to the low bidder.
7. **Exemption's effect on funding:** Does not apply.
8. **Better Control of Impact of Market Conditions on Cost and Time to Complete:** Does not apply.



## OCC VIP Suite B and Prefunction A&C Restrooms Exhibit A

9. **Technical complexity:** The exemption will allow the Contractor to pre-qualify/select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a public events site, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing similar projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs and increased benefit to the community. The RFP process will take into account each contractor's past performance and technical knowledge. Based on the necessary quality of the finished project, and the technical complexity of the undertaking, the Procurement Manager believes an alternative contracting process to be necessary and in the best interest of the agency.
10. **New construction, renovation or remodel:** Both the Prefunction A&C Restrooms and VIP Suite B are considered renovation projects. VIP Suite B has a hard start and stop date due to previously booked events (January 12<sup>th</sup>, 2021 thru June 3<sup>rd</sup>, 2021). Bringing a contractor on board sooner will ensure the project is completed within the specified time frame thus reducing the schedule impact risk to Metro.
11. **Occupancy during construction:** The building will remain occupied during the construction period.
12. **Phased Construction Work:** Prefunction A & C Restrooms will be completed in 2 phases to ensure the general public have use of working restrooms on the main floor.
13. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Architect have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of Metro's CM/GC public improvement contract, including prior experience governing large CM/GC projects and managing them to a successful completion.

### Additional Findings:

1. **Industry practices, surveys, trends.** The industry-accepted benefits of the CM/GC method include:
  - Results in a better design that meets the owner's objectives
  - Encourages competition, especially for COBID subcontractors
  - May be completed in a faster time frame
  - When skillfully managed, costs less than a design-bid-build project that is designed and constructed in the traditional manner, due to opportunities for value engineering early in the design process.
  - Reduces the risks of delays, cost overruns, and disputes
  - Limits the number of change orders for unforeseen conditions
2. **Past experience and evaluation of Metro CM/GC projects.**

The \$40 million OCC Plaza & Renovation project was substantially complete in October 2019. The benefits to the OCC Plaza & Renovation Project achieved through the CM/GC process include:

  - Cost reductions through pre-construction services by the contractor during the design phase, including a constructability review (e.g., materials, phasing, layout and design) and value engineering.

## **OCC VIP Suite B and Prefunction A&C Restrooms Exhibit A**

- Phased construction was able to start while integrated delivery planning for future phases was still being developed. This kept the project on schedule and allowed for ongoing construction activities during daily OCC business operations.
- Six percent of GMP in change orders. On a project of this size and complexity, one would ordinarily expect a ratio of at least ten percent or greater in change orders increasing the cost of construction.
- The project exceeded 50 percent COBID subcontractor participation. This unprecedented achievement accounts for approximately \$16 million going to the local COBID subcontractor community.
- With pre-construction time to develop community partnerships and leverage relationships with subcontractors, the project met workforce diversity goals achieving 35 percent of project work hours attributed to non-white workers.
- Partnering with the OCC through preconstruction planning and ongoing coordination the OCC was able to safely maintain normal business operations. Validated by this fact: during 14 months of Plaza & Renovation Project construction the OCC achieved record event sales and attendance.

### **3. Benefits and drawbacks of CM/GC to the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects.** The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

- Facility must remain open and operational, the restrooms will be phased to ensure adequate availability for the general public.
- Widespread public access and need to preserve a quality experience to maintain current revenues.
- Need to complete work during active public events.
- Potentially unknown conditions within concrete slab can be discovered and addressed in the pre-construction period, avoiding schedule delays and costly change orders

By involving the contractor extensively during the design process, Oregon Convention Center will be able to better account for, plan around, and address the above factors prior to and during construction. This avoids project delays and expensive change orders, helps to reduce liability and revenue risks to Metro, and provides a foundation of cooperation upon which a high-quality result may be achieved, on schedule and on budget. Pre-construction services provided during the process include a constructability review, value engineering, and other service during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays, and less costs.

Given Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms projects

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 20-5075 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND PROCUREMENT OF CONSTRUCTION MANAGER GENERAL CONTRACTOR SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR THE OREGON CONVENTION CENTER VIP SUITE B AND PREFUNCTION A & C RESTROOMS

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Date: January 30, 2020

Prepared by: Dan Hoskin

### **BACKGROUND**

Oregon Convention Center was built in 1987 and has undergone decades of patching and partial repairs. Many portions or sections of it have reached the end of their useful life. There is a need to perform renovations of underutilized or dated spaces to create new, highly flexible and functional space with upgraded finishes and infrastructure. VIP Suite B as well as the restrooms located in both Prefunction A & C fall into this category and are in need of renovating.

Merryman Barnes Architects (MBA) and their design team have made design recommendations and are in the process of completing schematic design development for the project.

In addition to the delivery, staging, and installation of new materials and upgrades to the mechanical system in VIP Suite B, the scope for both projects will include the demolition and removal of all existing plumbing fixtures, flooring, wall treatments, lighting, casework and lighting. The value of this work is approximately three million dollars.

Generally this type of work is solicited using an Initiation to Bid. An alternate, qualifications based procurement method, a Request for Proposals, enables Metro to specifically request and qualitatively evaluate proposers' prior experience with the unique parameters of the project including experience with tight city sites, exposure to and expertise in building envelope systems, demonstrated successes with compressed schedules, and their approach to the COBID outreach and partnership and workforce diversity. This delivery method offers a better ability for public agencies to increase the use of COBID firms in sub-contracting opportunities.

The attached resolution and findings in Exhibit A describe the specialized nature of this project. Based on these findings, the Metro procurement manager believes that a value-based selection process is more appropriate than a traditional, competitive bid (which solely considers lowest bid price). Oregon Convention Center and CPMO staff, as well as the Office of the Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative procurement of General Contractor Services by a competitive Request for Proposals for the Oregon Convention Center VIP Suite B and Prefunction A & C Restrooms. This will allow Metro to consider cost as well as experience and expertise in completing similar projects and in selecting the most advantageous contractor for this project.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None

2. **Legal Antecedents:** LCRB Rule 49-0620(1), 49-0130, and 49-0690; Oregon Revised Statutes 279C.335 and ORS 279C.337.

3. **Anticipated Effects:** Public procurement process will be open and competitive, but items other than cost will be considered in the awarding of the contract. Increased use of COVID subcontractors is anticipated.

4. **Budget Impacts:** The RFP process offers safeguards for schedule and cost control of the project, including early involvement by construction contractor in the design process, as well as limited change orders.