

STAFF REPORT

FOR THE PURPOSE OF APPROVING A ONE YEAR TERM EXTENSION AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE AN AMENDED SOLID WASTE FACILITY FRANCHISE FOR CITY OF ROSES DISPOSAL & RECYCLING TO OPERATE COR TRANSFER STATION.

Date: October 17, 2019
Department: Property and Environmental
Services (PES)
Meeting Date: October 31, 2019

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Length: 15 minutes

ISSUE STATEMENT

Metro seeks to amend the franchise for City of Roses Disposal & Recycling, a partner company of CORE Recycling who operates COR Transfer Station, located at 4580 NE 138th Avenue in Portland, so that the franchise requirements and term align with the other five Metro authorized franchises which are currently up for renewal.

ACTION REQUESTED

Approve Resolution No. 19-5027 which will authorize the Chief Operating Officer to amend the solid waste facility franchise for City of Roses Disposal & Recycling to include updated requirements and extend the term one year to align with the other five privately-owned transfer stations.

IDENTIFIED POLICY OUTCOMES

Approval of this resolution will support the goals of the 2030 Regional Waste Plan, the Business Food Waste Requirement and the Transfer System Configuration Policy. This staff report further describes these expected policy outcomes.

POLICY QUESTION

Should the Metro Council grant the Chief Operating Officer authority to amend the Metro solid waste facility franchise for City of Roses Disposal & Recycling to operate COR Transfer Station to include updated requirements and extend the term one additional year to align with the other five privately-owned transfer stations, according to the provisions of Metro Code Chapter 5.01 and as described in this staff report?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to authorize the Chief Operating Officer to amend the franchise to include updated requirements and extend the term one additional year to align with other privately-owned transfer stations.
2. Amend the resolution to amend the franchise with different conditions other than those recommended by staff.
3. Do not approve Resolution No. 19-5027.

STAFF RECOMMENDATIONS

Staff recommends that Council adopt Resolution No. 19-5027 to approve the amended solid waste facility franchise for City of Roses Disposal & Recycling. If Council approves this resolution, the amended franchise (F-057-19A) will go into effect on January 1, 2020.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The other five Metro authorized transfer station franchises expire on December 31, 2019 and all five facilities applied for renewals. Franchise renewals provide an opportunity for staff to update and better align existing language for increased consistency as well as incorporate additional requirements that implement policy decisions made since the last renewal, such as the adoption of the 2030 Regional Waste Plan (Ordinance No. 19-1431), the Metro Transfer Station Configuration Policy (Resolution No. 16-4716) and the adoption of a Business Food Waste Requirement (Ordinance No. 18-1418). The franchise for COR Transfer Station was issued on August 14, 2019 and has more than four years remaining in its term. Staff want to ensure that all franchisees are subject to the same franchise provisions, unless other requirements are appropriate to address site-specific issues. Therefore, staff recommends amending the franchise for City of Roses Disposal & Recycling to operate COR Transfer Station's as described in this staff report.

Metro staff propose changes to nine areas of the franchise, which are outlined below. References to specific franchise sections have been included when applicable.

1. Begin implementation of the 2030 Regional Waste Plan

The proposed franchise includes a new section, Section 5.0, which authorizes Metro's Chief Operating Officer to amend the franchise for the purpose of implementing Council's policies advancing progress on the 2030 Regional Waste Plan actions.

All solid waste facilities within the region, including transfer stations, must operate in a manner that helps to advance progress towards achieving goals of the 2030 Regional Waste Plan (Action 12.6). The 2030 Regional Waste Plan provides the region with long-term policy and program direction for materials management and solid waste system planning efforts. While Metro implements the 2030 Regional Waste Plan primarily through cooperative working relationships among Metro, the Oregon Department of Environmental Quality (DEQ), local governments and the private sector, the plan contains actions that must be implemented throughout Metro's solid waste system.

2. Incorporate new tonnage allocation methodology

The proposed franchise has been updated to reflect a new tonnage allocation methodology that begins in 2020. The new methodology uses a percentage based approach that determines allocations based on Metro's annual solid waste forecast. The solid waste forecast is being finalized; therefore, there are placeholders in the proposed franchise where the number of tons will be included later. The tonnage amount for 2020 will be available before the franchise term begins and will be inserted prior to issuing the franchise. The Chief Operating Officer will continue Metro's long-standing practice of amending franchises each November to update the number of tons allocated for the following year.

3. Clarify the nature of the franchise

The proposed franchise has been updated to clarify that a Metro franchise is the grant of authority given by the Council to operate a transfer station as specified under Metro Code Chapter 5.01. This is a distinction from that of local governments which issue solid waste franchises that grant the right and responsibility to provide collection service in a specific area. There are solid waste

companies that hold a Metro franchise and a local government franchise, which can cause confusion because the nature of these separate franchises is different. A Metro franchise is a regulatory permit and not a negotiated agreement

To help clarify this important distinction, this proposed franchise has been updated to remove contract-like language. Franchisees retain the opportunity to contest provisions of the franchise and seek amendments through a change of authorization process per Metro Code 5.01.230, but Metro determines whether to approve or deny any change of authorization.

4. Incorporate operations and performance standards that advance equity

The proposed franchise includes a new requirement to advance progress on the 2030 Regional Waste Plan and the Property and Environmental Services Diversity, Racial Equity and Inclusion Work Plan goals. The franchise requires the franchisee to comply with Oregon's "ban the box" law (ORS 659A.360) (Section 6.17). Oregon's "ban the box" law makes it illegal for an employer to inquire about criminal convictions before the interview stage of hiring. This law removes barriers to employment for people convicted of crimes. Additional existing federal, state, and local provisions that advance equity may be incorporated in future franchise amendments.

5. Align franchises with the Food Waste Framework

The proposed franchise includes a new requirement to advance progress on the Business Food Waste Requirement. In a 2014 work session, the Metro Council reviewed the region's current commercial food waste recovery efforts and staff introduced potential paths forward to ensure that the region has a stable and sustainable commercial food waste transfer and processing system for the long term. The Council confirmed its desire to accelerate the region's recovery of commercial food waste and its wish to process that waste in or as close to the region as possible. The Council determined that in order to increase commercial food waste recovery and attract stable, local processing capacity, Metro should:

1. Require certain businesses to separate their food waste for recovery and eventually prohibit the disposal of food from businesses;
2. Determine how to efficiently collect and deliver food waste for processing; and
3. Secure local and stable processing capacity.

Based on Council direction, staff developed policies and initiatives to fulfill these objectives. To address the first objective, the Metro Council adopted Ordinance No. 18-1418 in July 2018 which added the Business Food Waste Requirement to Metro Code 5.10. Under this ordinance, each local government must require certain businesses in its jurisdiction to separate and recover food waste to be delivered to a facility authorized by Metro. Businesses in the first group (largest generators) will be required to begin separating food waste in March 2020, the second group in March 2021 and the third in September 2022. The adoption and implementation of this policy was a major step forward in developing a stable and sustainable food waste recovery system. As of the date of this report, 16 of the 21 local governments required to adopt the Business Food Waste Requirement have done so (including the city of Portland), two have received extensions and three have received a notice of non-compliance from Metro for not meeting the policy requirements.

To address the need for an adequate waste transfer system to allow growth in the collection of commercial food waste in the region and provide equitable access to transfer services, Metro is seeking to expand its facilities' capacity to accept this material as well as determine the role that private transfer facilities should play in helping to also provide this capacity. In order to expand

system capacity for commercial food waste, staff recommends that the Metro Council require a transfer station with current or pending infrastructure in place to accept food waste for reload and transfer to an approved recovery facility, whereas a facility that does not have the necessary infrastructure in place will not be subject to the same requirement. COR Transfer Station will not be required to accept food waste at this time, but the franchise authorizes the Chief Operating Officer to amend the franchise to require the facility to accept food waste if necessary to implement the Council's policies.

6. Align confidentiality language with public records law

Section 13.4, Confidential information, has been updated to align with current public records law which has more restrictive timelines for responding to a requestor. Metro will provide a franchisee with a courtesy notice of a public records request within five days of receiving such a request. Metro has the legal obligation to determine if any information marked "confidential" by the franchisee is objectively confidential according to public records law.

7. Clarify franchise amendment process

Current franchise language states that the franchise can be amended by the Metro Council adopting an ordinance. Proposed language in Section 12.1(b) expands this authority to include amendment by resolution.

8. Streamline franchise language for modernization and consistency

A suite of non-substantive updates have been made to clarify existing requirements and to streamline authorization language within and across facility classes.

9. Completion of pre-operating conditions

Metro included specific pre-operating conditions in COR's franchise that had to be met prior to the facility accepting putrescible waste: installing an odor control and neutralization system, installing landscaping and improving facility infrastructure for leachate management. These pre-operating conditions were met; therefore, the pre-operating conditions section has been removed and these requirements have been moved to Section 6.0 Operating conditions.

KNOWN OPPOSITION / SUPPORT / COMMUNITY FEEDBACK

This amended franchise is proposed by Metro and therefore did not require a public notice period. On October 31, 2019, the Metro Council will hold a public hearing on this proposed franchise amendment. Written and verbal public comments will be accepted at the meeting, prior to the Council voting on the resolution.

Metro provided an opportunity for the public to review and submit comments on the original franchise application (ORD 19-1435) during a public notice period that was opened on December 28, 2018, and closed on February 8, 2019. A detailed description of the written comments that Metro received during that time is provided in the Public Comment Report included as Attachment 2 to the staff report for Ordinance No. 19-1435.

On September 9, 2019, Metro provided the franchisee with a redline copy of the franchise that outlined the proposed changes. Staff discussed the changes with the franchisee in person and over the phone.

LEGAL ANTECEDENTS

The franchise and Metro Code Chapter 5.01 authorize the Metro Council to amend the franchise at any time.

ANTICIPATED EFFECTS

Approval of Resolution No. 19-5027 will authorize the Chief Operating Officer to amend the franchise for City of Roses Disposal & Recycling to update requirements and extend the franchise term one year. In addition, the Metro Council authorizes the Chief Operating Officer to determine annual tonnage allocations using the tonnage allocation methodology adopted by administrative rule. The tonnage allocation for 2020 will be determined using a percentage based approach once the solid waste forecast is final in November. If approved, the proposed amended franchise becomes effective on January 1, 2020, and expires on December 31, 2024.

FINANCIAL IMPLICATIONS

As mentioned above, staff are developing administrative rules that will set forth a detailed process for determining and adjusting future tonnage allocations. Staff notes that this prescribed tonnage allocation process, beginning in 2020, may result in a different, to be determined, tonnage allocation for each of the region's transfer stations. Metro will adjust tonnage allocations for all privately-owned transfer stations and require that at least 40 percent of the region's wet waste tonnage flows to publicly-owned transfer stations (Metro Central and South). Therefore, approval of the proposed franchise is expected to have minimal impact to Metro's Solid Waste Fund operating costs and revenues.

As a result of future adjustments, individual Community Enhancement Committees might experience an increase or reduction in funds based on potential future tonnage shifts.

BACKGROUND

The applicant is a locally-owned company that owns CORE Recycling which operates COR Transfer Station located at 4530 NE 138th Ave. in Portland (Metro Council District 1). The facility currently holds a Metro-issued franchise (F-057-19) which authorizes it to receive putrescible waste, perform material recovery on non-putrescible waste and accept source-separated recyclable materials. The facility specializes in the recovery of waste generated during construction projects that seek to obtain LEED (Leadership in Energy and Environmental Design) certification. LEED projects require that the solid waste resulting from construction activities be recovered to a higher degree and be more extensively documented than from standard construction projects.

Under the terms of the existing franchise, COR Transfer Station is authorized to accept up to 15,000 tons of putrescible waste generated from within the Metro region in calendar year 2019. The facility received a partial-year tonnage allocation because it started receiving putrescible waste in August of this year. COR Transfer Station also holds a solid waste disposal site permit for a transfer station and material recovery facility issued by DEQ (Permit No. 1606). The applicant is well known to Metro, first as an operator of a dry waste material recovery facility, and now as a Metro franchisee operating a transfer station.

In addition to its franchise, City of Roses Disposal & Recycling, Inc. has one non-system license (N-057-16D) that authorizes it to transport Metro area waste to Wasco County Landfill in The Dalles, Oregon and Cowlitz County Headquarters Landfill in Castle Rock, Washington.

Metro has conducted two site inspections at COR Transfer Station during the current franchise term. Staff has found the facility to be a well-run operation. COR Transfer Station is currently in compliance with its Metro issued non-system license and franchise.

DEQ and City of Portland have reported that there are no current solid waste enforcement or compliance issues associated with this site.

Tonnage Allocation

A major component of the 2030 Regional Waste Plan is to take a broad look at the role, configuration and services offered by publicly and privately-owned transfer stations. In 2016, under Council's direction, Metro established a transfer system configuration policy to:

1. Ensure that the region's transfer system provides maximum public benefit;
2. Maintain the current configuration of publicly and privately-owned transfer stations;
3. Ensure that an adequate amount of wet waste flows to publicly-owned stations (at least 40 percent of the region's wet waste);
4. Limit the amount of wet waste that any one company may accept for transfer within the region to no more than 40 percent of the tonnage reserved for private transfer stations; and
5. Improve rate transparency.

The configuration policy also seeks to promote more efficient off-route transport of waste to reduce greenhouse gas emissions and provide opportunities for small, locally-based businesses to participate in the region's solid waste system.

The transfer system configuration policy shifted Metro away from its historical "tonnage cap" approach, in which the Metro Council had established annual facility tonnage limits, to a more systematic and predictable "tonnage allocation" system, in which tonnage authority is proportionally allocated to privately-owned stations each year. Beginning in 2020, Metro will determine and adjust tonnage allocations for all privately-owned transfer stations in the region, including COR Transfer Station, by applying a percentage-based allocation methodology currently being developed using the allocation framework that Metro Council adopted in November 2018 via Ordinance No. 18-1426.

This new approach to the wet waste tonnage allocation methodology includes reserving 40 percent of the region's wet waste tonnage for Metro's publicly-owned facilities and allowing the remaining 60 percent to be allocated in accordance with the finalized methodology. Staff is proposing a phased implementation of the new allocation methodology, where the 2020 allocations are intended to limit disruption to the system and help transition to full implementation of the new methodology in 2021.

Beginning in 2021, the allocation methodology will include a "base share" component for system stability and a "goal share" component to more directly support Metro's equity, service and environmental goals from the 2030 Regional Waste Plan. The goal shares will be determined by evaluating each transfer station's efforts to support and achieve Regional Waste Plan goals such as more efficient off-route travel, increased diversity of workers, paying living wages, addressing community concerns, providing reasonable, consistent and responsive rates and other goals that Council may deem to be important.

The forecasted tonnage for 2020 is projected to generally decrease relative to 2019. This projected decrease in tonnage, along with the addition of two new transfer stations in the region, make it infeasible to replicate current transfer station tonnage allocations in 2020 while maintaining Metro's 40 percent reserve.

ATTACHMENTS

- A. Exhibit A to Resolution No. 19-5023: Draft franchise F-057-19A
- B. Attachment 1 to Staff Report: Images