STAFF REPORT

FOR THE PURPOSE OF APPROVING THE SOLID WASTE FACILITY FRANCHISE RENEWAL APPLICATION OF PRIDE RECYCLING COMPANY, AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED SOLID WASTE FACILITY FRANCHISE TO OPERATE A TRANSFER STATION

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

Prepared by: Joanna Dyer, 503-813-7550, joanna.dyer@oregonmetro.gov
Presenters: Roy Brower and Joanna Dyer
Length: 15 minutes

ISSUE STATEMENT
Pride Recycling Company, a Metro-authorized transfer station located at 13910 SW Tualatin-Sherwood Rd. in Sherwood, seeks to renew its Metro solid waste facility franchise. Metro Code Section 5.01.210 requires the Metro Council to approve or deny a solid waste facility franchise renewal.

ACTION REQUESTED
Approve Resolution No. 19-5023 which will authorize the Chief Operating Officer to issue a renewed solid waste facility franchise to Pride Recycling Company for a term of five years.

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 renew the Metro solid waste facility franchise for Pride Recycling Company according to the provisions of Metro Code Chapter 5.01.210 and as described in this resolution?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to renew the Metro solid waste facility franchise for Pride Recycling Company.
2. Amend the resolution to renew the franchise with different conditions other than those recommended by staff.
3. Do not approve Resolution No. 19-5023.

STAFF RECOMMENDATIONS
Staff recommends that Council adopt Resolution No. 19-5023 to approve the renewal of the solid waste facility franchise for Pride Recycling Company. If Council approves this resolution, the renewed franchise (F-002-20) will go into effect on January 1, 2020.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

A franchise term is typically five years. The current franchise became effective on January 1, 2009 and was set to expire December 31, 2013. Due to projects impacting the solid waste system including the Solid Waste Road Map and the expiration of Metro's disposal contract with Waste Management (which required that 90 percent of the Metro region's putrescible waste be disposed at a Waste Management landfill), the franchise term was extended by the Metro Council three times since 2013 resulting in the current term end date of December 31, 2019.

This franchise renewal is an opportunity 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). Metro staff propose changes to eight areas of the franchise, which are outlined below. References to specific franchise sections have been included when applicable. Franchisees had the opportunity to provide verbal and written feedback on the proposed changes, some of which resulted in additional modifications to the proposed language.

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 or privilege 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 6.16). 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, two have received extensions and three, including the city of Sherwood, have received a notice of non-compliance from Metro.

    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 looking 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. Currently, all franchisees are authorized to accept commercial food waste. In 2018, Pride Recycling Company received a $500,000 Metro Investment and Innovation matching grant to expand the facility's capacity to accept food waste for reload and transport to a recovery facility. 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. Section 3.9 has been updated to require Pride Recycling Company to accept commercial food waste once its expansion, partially funded by Metro's Investment and Innovation grant program, is complete in 2020. Metro may require other facilities to accept food waste in the future by action of the Chief Operating Officer.

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.

KNOWN OPPOSITION / SUPPORT / COMMUNITY FEEDBACK

Metro posted notice and provided an opportunity for the public to review and submit comments on the franchise application. The public notice was posted on Metro's website, mailed to approximately 131 property owners and residents within one-quarter mile of the proposed facility, and emailed to local community groups, neighborhood associations and various other parties that are generally interested in solid waste issues. The 30-day public comment period began on August 1, 2019, and closed on August 30, 2019.

Metro provided the applicant with a redline copy of the franchise that outlined the proposed changes. On August 2, 2019, Metro staff met with Pride Recycling Company staff to discuss these changes and to listen to their feedback.

Metro received one written comment during the public comment period from the Vice President of Pride Recycling Company in response to the proposed franchise language. A detailed description of these written comments is provided in the *Public Comment Report* included as Attachment 2 to this staff report. On October 31, 2019, the Metro Council will hold a public hearing on this proposed franchise renewal. Written and verbal public comments will be accepted at the meeting, prior to the Council voting on the resolution.

LEGAL ANTECEDENTS

Pursuant to Metro Code 5.01.180, the Council must consider the following factors when determining whether to issue a franchise:

(1) *Whether the applicant has demonstrated that the proposed solid waste facility and authorized activities will be consistent with the Regional Waste Plan;*

Staff finds that the proposed activity is consistent with the regional values and policies outlined in the 2030 Regional Waste Plan and specifically aligns with many of the goals of the plan, including goals 12, 13 and 16:

- **Goal 12**: Manage all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public.
- **Goal 13**: Invest in communities that receive garbage and recyclables from the Metro region so that those communities regard solid waste facilities as assets.
- **Goal 16**: Maintain a system of facilities, from small recycling drop-off depots to larger full-service stations, to ensure equitable distribution of and access to services.

(2) *The effect that granting a franchise will have on the cost of solid waste disposal and recycling services for the citizens of the region;*

In 2018, Pride Recycling Company was awarded a $500,000 Investment and Innovation Grant from Metro to expand the floor space in its transfer station to enable it to accept and transfer mixed residential yard debris and food waste, commercial food waste and an increased amount of dry waste. The facility expansion is anticipated to allow Pride to handle 50,000 to 60,000 tons of commercial food waste and yard debris mixed with residential food waste. Metro staff is proposing to add a franchise provision requiring Pride Recycling Company to accept commercial food waste once the facility expansion is complete in 2020, which will provide much needed capacity as the west side of the region expands commercial collection in coming years.

The effect of granting a renewed franchise would be to minimize significant disruption to the solid waste system with regard to the cost of solid waste recycling and disposal services for the residents of the region in 2020.

(3) *Whether granting a franchise is likely to adversely affect the health, safety and welfare of Metro's residents in an unreasonable manner;*

Metro staff is not aware of any facility incidents or operating procedures that have adversely affected the health, safety and welfare of Metro's residents in an unreasonable manner during the term of the current franchise. Staff finds it unlikely that the franchised operation will adversely affect the health, safety and welfare of Metro's residents due to the type of activity performed and the good compliance record of the operator. The facility is also regulated and monitored by Metro and DEQ.

(4) *Whether granting a franchise is likely to adversely affect nearby residents, property owners, or the existing character or expected future development of the surrounding neighborhood in an unreasonable manner;*

Metro staff is not aware of any significant complaints or impacts on the surrounding neighborhood during the term of the current franchise. Staff finds it unlikely that Pride Recycling Company would unreasonably adversely impact the surrounding neighborhood due to the operator's experience and compliance record.

(5) *Whether the applicant has demonstrated the strong likelihood that it will comply with all requirement and standards of this chapter, the administrative rules and performance standards adopted pursuant to Section 5.01.280 and other applicable local, state, and federal laws, rules, and regulations, ordinances, orders or permits pertaining in any manner to the proposed franchise.*

Metro has a long history with this facility and staff finds that the applicant is likely to comply with regulations and standards if the franchise is renewed.

ANTICIPATED EFFECTS

Approval of Resolution No. 19-5023 will authorize the Chief Operating Officer to renew the franchise for Pride Recycling Company. 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 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, Pride Recycling Company, is the owner and operator of an existing solid waste facility located at 13910 SW Tualatin-Sherwood Road in Sherwood (Metro Council District 3). Pride commenced operation in 1991 as a reload and material recovery facility. The facility currently holds a Metro-issued franchise (F-002-08H) to operate a transfer station authorized to receive putrescible waste, perform material recovery on non-putrescible waste and accept source-separated recyclable materials. Under the terms of the existing franchise, Pride Recycling Company is authorized to accept up to 88,880 tons of putrescible waste generated from within the Metro region in calendar year 2019. Pride Recycling Company also holds a solid waste disposal site permit for a transfer station and material recovery facility issued by DEQ (Permit No. 422). The applicant is well known to Metro as an operator of a Metro-franchised solid waste facility and as a long-standing solid waste management company in the Metro area. The applicant has operated its facility for over 28 years and has extensive experience in recycling, solid waste collection, transfer and disposal. Staff concludes that the applicant is fully qualified to operate and manage this facility in a competent and efficient manner.

In addition to its franchise, Pride Recycling Company holds one non-system license (N-002-16D) that authorizes it to transport Metro area waste to Columbia Ridge Landfill in Arlington, Oregon and Coffin Butte Landfill in Corvallis, Oregon.

Metro has conducted 56 site inspections at Pride Recycling Company from January 1, 2009 to date. Staff has found the facility to be a well-run operation with no observable reason to suspect impending problems or issues. Metro issued one notice of violation during the franchise term (NOV-269-10). During an Enhanced Dry Waste Recovery Program (EDWRP) sampling event on November 4, 2010, two samples of non-putrescible waste removed from a transport trailer were found to contain primarily putrescible waste, violating the mixing provision in the franchise. The facility was given the opportunity to correct without financial penalty. Pride is currently in compliance with its Metro issued non-system license and franchise.

DEQ and City of Sherwood did not report any current enforcement or compliance issues associated with this site.

On August 1, 2019, the applicant submitted to Metro a complete solid waste facility franchise application accompanied by payment of the appropriate application fee of $500. The applicant has not requested any new authorizations, tonnage increases or changes to its current franchise provisions.

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 Pride Recycling Company, 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-002-20
B. Attachment 1 to Staff Report: Images
C. Attachment 2 to Staff Report: Public comment report