

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 19-5029, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO FRED MEYER FOR TRANSPORT OF COMMERCIAL FOOD WASTE TO THE DIVERT, INC. FACILITY LOCATED IN ALBANY, OREGON FOR PROCESSING

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Date: November 21, 2019  
Department: Property and Environmental  
Services  
Meeting Date: December 5, 2019

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### ISSUE STATEMENT

Fred Meyer seeks to renew its non-system license to transport pre-consumer commercial food waste from its Clackamas Distribution Center to Divert, Inc. in Albany, Oregon for processing. Metro Code Section 5.05.160 requires the Metro Council to approve or deny a non-system license for putrescible waste.

### ACTION REQUESTED

Approve Resolution No. 19-5029 which will authorize the Chief Operating Officer to issue a renewed non-system license to Fred Meyer for a term of one year.

### IDENTIFIED POLICY OUTCOMES

Approval of this resolution will support the goals of the 2030 Regional Waste Plan and the Business Food Waste Requirement.

### POLICY QUESTION(S)

Should the Metro Council grant the Chief Operating Officer authority to renew the non-system license for Fred Meyer to transport commercial food waste to Divert, Inc. in Albany, Oregon for processing, according to the provisions of Metro Code 5.05.160 and as described in this resolution?

### POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the resolution as proposed to renew the non-system license to transport commercial food waste to Divert, Inc. in Albany, Oregon for processing.
2. Amend the resolution to renew the non-system license with different conditions other than those recommended by staff.
3. Do not approve Resolution No. 19-5029.

### STAFF RECOMMENDATIONS

Staff recommends that Council approve Resolution No. 19-5029 to issue a renewed non-system license (NSL) for Fred Meyer to transport commercial food waste to Divert, Inc. (Divert) in Albany, Oregon for processing. If Council approves this resolution, the renewed non-system license (N-181-20) will go into effect on January 1, 2020. Staff recommends issuing a 12-month NSL to authorize Fred Meyer to transport this food waste to Divert until such time that Divert becomes a designated facility. Future changes to Metro Code Chapter 5.05 may include requirements that any facility outside of the Metro region receiving putrescible waste from the Metro region, must be a designated facility.

## STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

## KNOWN OPPOSITION / SUPPORT / COMMUNITY FEEDBACK

There is no known opposition to the proposed non-system license. However, in the past, several local government solid waste directors expressed concerns about (1) allowing the region's food waste to go to facilities like Divert when Metro is planning to establish a food waste processing facility at Metro Central, and (2) the impact that the service Divert provides has on food donation at Fred Meyer stores. Staff finds that Divert, Inc. provides needed capacity for processing commercial food waste generated within the region. When other legislation is adopted which affects how food waste is managed in the Metro region, Metro may amend or terminate this proposed NSL if it is in the public's interest.

## LEGAL ANTECEDENTS

Metro Code Section 5.05.040 prohibits any person from utilizing a non-system facility without an appropriate license from Metro. Additionally, Metro Code Section 5.05.140 provides that, when determining whether or not to approve an NSL application, the Metro Council will consider the following factors:

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed NSL authorizes the transport of food waste to Divert, a food waste processing facility located in Albany, Oregon. The environmental risk from the use of this facility is presumed to be minimal because it is fully regulated and monitored by the appropriate local and state authorities. It has been Metro's practice to rely on the local land use authority and the state environmental agency to determine whether environmental or human health risks posed are known, reasonable and appropriate. Food waste is processed within 48 hours of receipt and procedures are in place to manage any leachate within the building.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Divert's Albany facility is permitted by the Department of Environmental Quality (DEQ permit No. 1594) and has land use approval by the city of Albany. DEQ has indicated the facility is in compliance with its permit requirements. A recent (DEQ) inspection conducted in March 2019, found no violations.

- (3) *The adequacy of the non-system facility's operational practices and management controls;*

DEQ regulates the Divert facility. During the last DEQ inspection in March 2019, the inspector recommended that the facility take steps to further mitigate the possibility of leachate migrating into a storm drain from broken totes staged outside, to prevent potential violation of the permit. DEQ staff considers the operational practices and controls in place at this facility to be appropriate for the proper management of food waste processing and adequate for the protection of health and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

The proposed license authorizes Fred Meyer to continue to transport food waste to Divert's Albany facility for processing into a liquid slurry. The slurry is transported by Divert to Stahlbush Island Farms in Corvallis, Oregon, which operates an anaerobic digestion facility to produce biogas. Thus, approval of the proposed NSL will support Metro's current recycling and waste reduction efforts. Metro, in partnership with local governments providing technical assistance, will monitor whether the diversion of food waste to Divert has an impact on the availability of food intended for donation.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

This proposed license will not affect Metro's existing contractual agreements. Metro's long-term disposal contract with Waste Management, which guaranteed nearly 90 percent of the region's putrescible waste flow to a disposal site owned by Waste Management, expires on December 31, 2019, and therefore is outside of the term of this proposed license, which is effective January 1, 2020.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety and environmental regulations.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

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.

Although approval of Resolution No. 19-5029 would authorize Fred Meyer to transport waste to Divert, the proposed NSL does not obligate Divert to accept Metro-area waste. Additionally, adoption of this proposed resolution does not limit Metro's ability to terminate the NSL if Divert is unable or unwilling to accept this waste in the future or if more proximate food waste processing capacity is available earlier than the end of the license term.

## **ANTICIPATED EFFECTS**

Approval of Resolution No. 19-5029 will authorize the Chief Operating Officer to issue a renewed NSL to Fred Meyer to transport up to 4,400 tons of packaged and unpackaged commercial food waste per calendar year to Divert's Albany facility for processing and disposal. The proposed NSL would take effect January 1, 2020 and expire December 31, 2020.

## **SPECIAL PROVISION OF THE NSL UNIQUE TO DIVERT PROCESSING FACILITY**

In March 2018, Divert began conducting a monthly waste residual sampling study on Metro area food waste transported to its facility to calculate the weight and resulting percentage of residual which is transported to a landfill and is subject to fees and taxes. This information is submitted to Metro monthly as a requirement of the current NSL (N-181-17-C). Metro tracks this information and uses it to inform future licensing conditions. Staff recommends that the NSL continue to include a condition requiring Fred Meyer to remit fees and taxes on 30 percent of the food waste tonnage that is transported to

Divert each month under the NSL. This percentage corresponds to the approximate percentage of residual waste that results from processing the waste at Divert.

### **FINANCIAL IMPLICATIONS**

It is Metro's policy to manage the region's waste according to the waste management hierarchy. Metro's Regional System Fee and Excise Tax rates are based on the amount of waste that is anticipated to be disposed, in conjunction with Metro's budget for the next fiscal year. Much of the commercial food waste that will be delivered to Divert under authority of this proposed NSL will be exempt from the fee and tax because it will be recovered for biogas production instead of disposal at a landfill. The residual waste resulting from the processing of this material (about 30 percent of the total) will be disposed and is subject to remitting the fee and tax. Currently, all of this commercial food waste is being sent to Divert for processing and Fred Meyer has not proposed an increase in tonnage, so there should not be a direct financial impact to Metro.

### **BACKGROUND**

Fred Meyer grocery stores located in the Metro region consolidate all of their unsold products, primarily food waste, at a central distribution center located at 11500 SE Highway 212 in Clackamas, Oregon. Unsold food, including produce, dairy products, deli products, baked goods, floral cuts and trims, and packaged materials are placed into Divert's enclosed bins and are transported to Divert's facility in Albany within 24 hours.

Divert accepts packaged and unpackaged food waste from grocery stores for the purpose of performing data analysis on product waste, referred to as "shrink" in the grocery industry. The analysis helps stores to identify more effective inventory management practices. Divert uses camera equipment and data analysis software to analyze the components of the grocery store waste that it receives. Divert then mechanically processes the waste into a liquid slurry which is transported to an anaerobic digestion facility at Stahlbush Island Farms near Corvallis to produce biogas. Divert reports that the residual waste of the incoming material is approximately 30 percent by weight and is comprised of packaging pieces, fibrous materials and other residual solids. The residual waste is transported to Coffin Butte Landfill for disposal.

Fred Meyer submitted a complete renewal application to Metro on August 28, 2019. The waste covered by this proposed NSL is generated at the Fred Meyer Clackamas Distribution Center located in unincorporated Clackamas County, and is subject to the county's solid waste management regulations as outlined in the County Code. Clackamas County generally supports the flow of commercial food waste from its jurisdiction to Divert if it is transported in accordance with the requirements of the County and Metro. Adoption of this proposed resolution does not limit Metro's ability to amend or terminate the NSL if there is a significant change in circumstances or Fred Meyer does not comply with any license condition or other regulatory requirements related to the transport of commercial food waste.

In 2018, 1,705 tons of commercial food waste were transported to Divert from Fred Meyer and 1,520 tons have been transported through September 2019.

### **ATTACHMENTS**

- A. Exhibit A to Resolution No. 19-5029: Draft non-system license N-181-20.