

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 19-1435 FOR THE PURPOSE OF APPROVING A SOLID WASTE FACILITY FRANCHISE APPLICATION AND AUTHORIZING CITY OF ROSES DISPOSAL & RECYCLING, INC. TO OPERATE A TRANSFER STATION

Date: April 25, 2019
Department: Property and Environmental Services
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Length: 15 minutes

ISSUE STATEMENT

City of Roses Disposal & Recycling, Inc. (partner company of CORE Recycling) a Metro-licensed non-putrescible (dry) waste material recovery facility located at 4580 NE 138th Avenue in Portland, (Metro District 1), seeks authorization to operate a transfer station, named COR Transfer Station, at its existing facility. In addition to its current material recovery operation, COR Transfer Station seeks to accept putrescible (wet) waste for consolidation and transport to Wasco County Landfill in The Dalles for disposal. The Metro Council determines whether to approve or deny an application for a solid waste facility franchise. (Metro Code 5.01.180).

ACTION REQUESTED

Review applicable code criteria and Metro policies to determine whether Council should grant a new solid waste facility franchise to COR Transfer Station and authorize it to accept up to 15,000 tons of wet waste for calendar year 2019.

IDENTIFIED POLICY OUTCOMES

Approval of this ordinance will support the goals of the *2030 Regional Waste Plan* as described later in this report. It will also help achieve some of the transfer system configuration policy objectives that Council adopted in 2016. Additionally, it will help achieve many of the goals outlined in Metro's *Strategic Plan to Advance Racial Equity Diversity and Inclusion (Diversity Action Plan and Equity Plan)* and Property Environmental Services' *Diversity, Racial Equity and Inclusion (DEI) Work Plan, 2018-2022*. This staff report further describes these expected policy outcomes.

POLICY QUESTION

Does the Metro Council approve the solid waste facility franchise application and authorize COR Transfer Station to accept wet waste according to the provisions of Metro Code Chapter 5.01.180 and as described in the ordinance?

POLICY OPTIONS FOR COUNCIL TO CONSIDER

1. Approve the ordinance as proposed to grant a new franchise to COR Transfer Station effective 90 days after adoption of the ordinance.
2. Amend the ordinance to grant a franchise with different conditions other than those recommended by staff.

3. Amend the ordinance to declare an emergency, as requested by the applicant, finding that it is necessary to establish an earlier effective date for the franchise for the health, safety or welfare of the Metro area.
4. Do not approve Ordinance No. 19-1435.

STAFF RECOMMENDATIONS

Staff recommends that Council adopt Ordinance No. 19-1435 to authorize a new solid waste facility franchise. The applicant has requested that the ordinance take effect immediately pursuant to an emergency clause, rather than taking effect 90 days after Council adoption. Staff does not recommend that Council adopt an emergency clause.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Metro's *2030 Regional Waste Plan* sets the policy direction to shape the future of the solid waste system to better attain public benefits and improved sustainability. A major component of this plan is to take a broad look at the role, configuration, and services offered by publicly and privately-owned transfer stations. In 2016, Metro also 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 (no more than 40 percent); and
- 5) Improve rate transparency.

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

Tonnage Allocation

In addition to the objectives above, 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. Staff is developing the detailed methodology for future tonnage allocations for adoption as administrative rules later this year, to become effective in 2020.

In its franchise application, COR Transfer Station requested an allocation of 30,000 tons of wet waste per calendar year. If Council approves the ordinance as proposed, then the proposed franchise would become effective mid-way through the year. As such, staff recommends that the Council grant COR Transfer Station an initial tonnage allocation of 15,000 tons of wet waste for the remainder of calendar year 2019. In the future, 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.

Regional Waste Plan Goals

This proposed ordinance is consistent with Metro's 2030 Regional Waste Plan because it helps achieve many of the goals outlined in the plan including nos. 2, 4, 12, 13, and 16. In particular, staff finds that the proposed facility would likely:

- Increase the percentage of garbage and recycling system revenue that benefits a company owned by people of color (Goal 2);
- Increase the diversity of the workforce in occupations where people of color are underrepresented (Goal 4);
- Promote efficient off-route travel which reduces environmental impacts (Goal 12);
- Support investment in the host community by way of the Community Enhancement Grant program (Goal 13); and
- Implement the transfer system configuration policy by including a small, locally-based business in the region's solid waste system (Goal 16.7).

Equity Plan and Diversity Plan

The Metro Council adopted a Diversity Action Plan and the Equity Plan that set goals for Metro to advance racial equity, diversity and inclusion. This proposed ordinance is consistent with the strategies and goals outlined in those plans. In particular, staff finds that the proposed ordinance helps achieve Metro's goal of advancing racial equity by authorizing COR Transfer Station to operate a transfer station and participate in the region's solid waste system (Goal E).

PES DEI Work Plan

In 2016, the Property and Environmental Services Department (PES) adopted its first DEI work plan to support Metro's Equity Plan and Diversity Action Plan and further guide its work in solid waste reduction, regulation, management, planning and policy. Approval of this ordinance aligns with many of the DEI work plan strategies. Specifically:

- Providing services equitably, with a priority on communities of color (strategy 3);
- Create jobs, career pathways and promote workforce equity in the sectors where PES works, with a priority on people of color and women (strategy 5); and
- Incorporate racial equity outcomes into PES allocation of budget resources (strategy 6).

Emergency Clause

As previously noted in this staff report, if the Council approves the proposed ordinance, then the applicant seeks a franchise with an effective date earlier than the 90-days required under the Charter for adoption of an ordinance. The applicant submitted the following request for Metro to consider as part of its application:

Due to the urgency and necessity of this facility not only for the City of Portland but more importantly for the Metro Region, we are strongly urging and requesting that you and your council move forward with an emergency ordinance which would allow this facility to immediately receive wet waste if Metro Council decides to approve the application. The urgency in this matter has a triple bottom line effect for our region but moving forward with the standard 90 day process (upon approval), will only hinder our ability to work alongside all solid waste stakeholders in this region to achieve the desirable environmental outcomes by logistically citing the first ever privately owned transfer station in the City of Portland, achieve the social outcomes the Diversity Equity and Inclusion goals set forth by the Property and Environmental Services team strives to achieve and lastly the underserved community of East Portland will now have the

chance to host this facility and the ability to tap into the Community Enhancement Grant Program which will foster greater investments and economic opportunities for this part of the region.

Please consider moving forward with an emergency ordinance that would allow for this transfer station facility to provide all the community benefits we all hope to see in the near future.

Per the Metro Charter, all ordinances take effect 90 days after adoption *unless* the Council finds that an emergency exists that affects the “health, safety or welfare of the Metro Area.” In such instances, at least two-thirds of the Council (five Councilors) must approve an emergency clause and the Council must state the reasons for the emergency.

Staff does not find that there is an emergency circumstance, as described in Metro’s Charter, in this instance and does not recommend adoption of an emergency clause. Additionally, the proposed franchise includes several pre-operating conditions that the applicant would be required to complete before the facility accepts wet waste.

Specific Franchise Conditions

As mentioned above, the proposed franchise includes several pre-operating conditions and other unique requirements in addition to Metro’s standard requirements for transfer stations. The unique requirements included in the franchise are derived from the land use conditions required by the city of Portland, and facility infrastructure improvements required by DEQ for leachate management.

The proposed franchise requires that the facility must meet the following conditions before accepting wet waste:

- Install an odor control and neutralizing system subject to approval by DEQ and Metro;
- Install landscaping (a high hedge) along the southern property line that meets landscaping standards subject to approval by the city of Portland and Multnomah County Drainage District; and
- Implement facility infrastructure improvements for the capture and management of leachate (liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact) subject to approval by DEQ and Metro.

In addition to the above, the proposed franchise includes a specific operating condition that requires that the facility must remove all wet waste from the site within 24 hours of receipt. The facility may store small amounts of wet waste on-site overnight if the waste is enclosed in a covered container within a closed building.

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 1,420 property owners and residents surrounding the proposed facility, and emailed to various other parties that are generally interested in solid waste issues. The comment period began 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 this staff report. Overall, comments were mixed. Many neighboring residents expressed concerns about the location of this facility and its proximity to residential housing, increased traffic impacts, potential environmental and human health impacts, and odors negatively impacting quality of life in the area. Comments in

support of granting the proposed franchise generally described the benefits of approving a local minority-owned business with an emphasis on innovation and waste recovery.

In addition to posting the application for public review and comment, staff also hosted a community conversation in conjunction with DEQ's public hearing at Shaver Elementary School on April 9. Metro hosted this event in response to requests from the public received during Metro's public comment period. As explained further in the *Public Comment Report*, public opinion regarding the proposed transfer station is mixed.

Staff finds that COR Transfer Station has a good compliance history as a material recovery facility and has adequately demonstrated that it is qualified to appropriately manage wet waste. The proposed franchise includes specific operating conditions to prevent and mitigate off-site impacts. Approval of the proposed franchise aligns with Metro's *2030 Regional Waste Plan*, the transfer station configuration policy, Equity Plan, and the PES DEI Plan. Staff finds that the application meets the franchise requirements in Metro Code Section 5.01.170 and the proposed franchise meets the objectives and goals of the Regional Waste Plan.

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 Solid Waste Management 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, leading with equity in particular.¹ In addition, staff finds that the proposed activity is consistent with the configuration policy in that it promotes more efficient off-route transport of waste to reduce greenhouse gas (as it provides a closer option for trucks operating in the vicinity) and provides an opportunity for a small, locally-based business to participate in the region's solid waste system.

- (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;

Approval of the proposed franchise would likely result in minimal shifting of tons of waste away from Metro's transfer stations. COR Transfer Station is seeking to initially provide additional transfer options for third-party haulers. Staff understands that most of the wet waste that the proposed facility is likely to receive in 2019 will be from a vertically integrated hauling company, Waste Connections, which currently transports waste to its affiliated transfer stations located in Clark County, Vancouver Materials Recovery Center, under authority of a Metro non-system license (NSL No. N-029-17B). Waste Connections is also the owner/operator of Wasco County Landfill. Because this waste has already been allocated to privately-owned facilities the associated revenue impacts have already been

¹ Regional Solid Waste Management Plan retitled to 2030 Regional Waste Plan during planning process. Metro Code will be amended to reflect this name change in 2019.

factored into Metro's budget. Additional information regarding the costs associated with the proposed franchise is provided in the budget and rate impact section of this report.

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

The applicant operated a dry waste material recovery facility at 5726 NE 109th Avenue in Portland since 2013. In February 2019, the applicant relocated its facility to 4580 NE 138th Avenue in Portland. The applicant proposes to perform material recovery activities and accept wet waste for consolidation and transport to a landfill for disposal. Staff finds that the proposed franchise is unlikely to adversely affect the health, safety, and welfare of Metro's residents because transfer stations generally pose minimal environmental risk. The proposed franchise requires the franchisee to manage all wet waste received inside of a building and subsequently remove from the site within 24 hours. In addition, COR Transfer Station has performed significant site improvements to appropriately manage waste, and meet all land use conditions such as paving, land clearing and landscaping, and internal and external rehabilitation of existing structures.

The applicant plans to use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health and the environment.

- (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;

As discussed in attachment 2, the *Public Comment Report*, this facility is located in a regionally-significant industrial sanctuary. City of Portland has granted conditional use approval for the proposed waste-related activity in this industrial zone. The site was formerly home to Oregon Recycling Systems, a processor of recyclable materials, from 1995-2016.

The proposed franchise requires the franchisee to operate the facility in a manner that controls and minimizes off-site impacts, including, but not limited to: odors, noise, vectors, traffic, etc. All wet waste will be required to be managed and received inside of a building and subsequently removed from the site within 24 hours of receipt, and all vehicles transporting waste materials will have to be covered. Furthermore, additional facility infrastructure improvements will be required prior to the facility accepting wet waste such as: installing an odor control and neutralizing system subject to approval by DEQ and Metro, improving the leachate capture and management system within the building, and increased landscaping to function as a buffer.

Staff's detailed response to both the concerns and the benefits of approving this proposed transfer station, which were submitted to Metro during the comment period, is included as attachment 2, the *Public Comment Report*.

In addition, in order to help mitigate potential impacts from solid waste facilities on host communities, Metro requires that any facility receiving wet waste must collect and remit to

Metro \$1 per ton for use in local community enhancement programs to mitigate facility impacts by improving economic opportunities, neighborhood livability, and public safety. As previously mentioned, COR Transfer Station is already operating as a dry waste material recovery facility at this location. Approval of a franchise will initiate the formation of a Community Enhancement Committee to grant funds for enhancement projects. Staff finds that the proposed franchise is not likely to adversely affect the surrounding community in an unreasonable manner.

- (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 staff's investigation of COR Transfer Station has revealed a good record of compliance. DEQ and city of Portland staff have reported that there are no code, environmental, or nuisance violations at the site. Based on the applicant's good compliance record operating a material recovery facility, staff finds that there is a strong likelihood that COR Transfer Station will comply with the requirements and standards of the proposed franchise.

Anticipated Effects

Approval of ordinance No. 19-1435 will authorize the COO to issue a new franchise to COR Transfer Station to accept up to 15,000 tons of wet waste in 2019 and establish future annual allocations as described in Metro's tonnage allocation methodology currently being developed. If approved, the franchise will replace and supersede the applicant's current solid waste facility license upon its effective date. The proposed license becomes effective on August 14, 2019, and expires on December 31, 2023.

Financial Implications (current year)

As described above, it is Metro's understanding that for 2019, COR Transfer Station will partner with Waste Connections to accept the wet waste that it currently transports to its affiliated facilities in Clark County Washington. COR Transfer Station proposes to transport the waste to Wasco County Landfill which is also affiliated with Waste Connections. Metro's cost and rate model already assumed that waste would not come through Metro's transfer stations. Therefore, approval of the proposed franchise is expected to have minimal impact to Metro's Solid Waste Fund operating costs and revenues. Furthermore, beginning in 2020, as part of Metro's tonnage allocation methodology, 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).

If this proposed ordinance is approved, a Community Enhancement Committee will be established in the city of Portland which could receive up to \$15,000 in 2019, and \$1 per ton of wet waste received for all subsequent years under the proposed franchise. As a result of this action, other Community Enhancement Committees might experience a reduction in funds based on potential tonnage shifts. For example, it is possible that the Metro Central and South community enhancement committees could experience a reduction in funds if any tonnage shifts to COR Transfer Station.

This ordinance may also have the effect of driving rates down at privately-owned facilities as a result of increased competition, which would benefit rate payers. Cost savings may also occur if vehicle miles traveled are reduced.

As previously explained in this staff report, 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 COR Transfer Station.

BACKGROUND

The applicant is a locally-owned company that operates a waste hauling service (City of Roses Disposal and Recycling) and a Metro-licensed dry waste material recovery facility. COR Transfer Station has operated a facility on NE 109th since 2013. COR Transfer Station applied for and obtained Metro and DEQ authorization to operate a dry waste material recovery facility at its current location, 4530 NE 138th Ave in Portland.² COR Transfer Station primarily accepts and processes mixed dry waste collected by its hauling company. It does not currently accept waste from the general public, and is not proposing to accept self-haul waste as part of its transfer station operation. It 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.

Metro has conducted one inspection of the applicant's current site on NE 138th Avenue, and 44 inspections of the former location at NE 109th Avenue (from August 2011 - January 2019). COR Transfer Station is currently in compliance with Metro's requirements and has a good history of compliance. In addition, DEQ and city of Portland staff have reported that there are no enforcement or compliance issues associated with the current site.

The functions of regional solid waste system are implemented by Metro, cities and counties, and many private for-profit businesses and non-profit organizations. This sharing of responsibilities means that Metro has a strong interest in the success of the private sector at creating, expanding, preserving and broadening efforts that advance waste prevention, reuse, recycling and energy recovery. In December 2017, the Metro Council established a new Investment and Innovation grant program to support this interest through the granting of funds to businesses and non-profit organizations involved in these efforts and to help foster economic opportunities for people who have historically been left out of the garbage and recycling system, particularly communities of color. COR Transfer Station applied for and was granted a capital grant for \$500,000 with a 100 percent matching requirement. The grant will be used to expand dry waste material recovery and processing operations at its facility. This expansion will include significant property improvements and new equipment to increase both the volumes and types of materials recovered for reuse and recycling at COR Transfer Station.

The applicant seeks to continue and evolve its current material recovery activities on dry waste and also accept wet waste to diversify its operation, and avoid the added costs of travel time and tipping fees using other transfer stations. The site was formerly occupied by Oregon Recycling Systems which operated a material recovery facility there from 1995-2016. Additionally, the city of Portland had previously granted a conditional waste related use of the site and Metro had previously issued a transfer

² Metro Solid Waste Facility License No. L-057-18 and DEQ Solid Waste Disposal Site Permit 1606

station franchise to the former occupant in 2005, although the transfer station never opened. The site has undergone significant site improvements under COR Transfer Station's ownership.

On November 28, 2018, the applicant submitted to Metro a complete solid waste facility franchise application accompanied by payment of the appropriate application fee of \$500. The applicant requested to both become authorized to accept wet waste for transfer and amend its NSL (N-134-16C) to similarly authorize the transport of waste to Wasco County Landfill for disposal. The proposed non-system license amendment will be brought to Metro Council for consideration on May 16, 2019, under Resolution No. 19-4981 on the consent agenda.

ATTACHMENTS

- A. Exhibit A to Ordinance No. 19-1435: Draft Franchise No. F-057-19
- B. Attachment 1 to Staff Report: Images
- C. Attachment 2 to Staff Report: Public comment report