

MINUTES OF THE METRO COUNCIL MEETING

October 28, 1999

Metro Council Chamber

Councilors Present: Rod Monroe (Presiding Officer), Susan McLain, Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent:

Presiding Officer Monroe convened the Regular Council Meeting at 2:08 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

A. OPEN SPACES ACQUISITION ACKNOWLEDGEMENT

Mr. Bob Treverseau and Mr. Jack Parker, Parker Northwest Paving Company, were presented with an award by Councilor Atherton for donating a 130,000-acre parcel of land along the Clackamas River. It is Metro's largest donation to date.

Mr. Treverseau thanked the Metro Council, noting the professionalism of those with whom he dealt. He acknowledged Charlie Ciecko, Mike Burton, Jim Desmond, April Olbrich, Jim Morgan, Joel Morton, and Barbara Edwardson for their hard work and dedication to completion of the project.

3. EXECUTIVE OFFICER COMMUNICATIONS

Mike Burton, Executive Officer, said with regard to the Parker Northwest Paving Company donation, that the property rights dated back to 1898, and was a daunting task to have been undertaken.

Mr. Burton spoke to the solid waste savings. He said he was aware of the input from citizens and the Council itself as to the disposition of the savings of approximately 60% for general purposes and 40% for solid waste. He congratulated the Council on their commitment to maintain stabilization of the tipping fee over the next three years. Combined with the rate subsidy that Metro has provided during the last two years and the actual rate reductions made during that time there has been a significant cost savings to the citizens of the region. He also congratulated them on their commitment to the priority of waste reduction and recycling.

Mr. Burton said that earlier in the week, he had been asked by Council to submit a budget assuming that the dollars resulting from converting 60% or about \$3.6 million in savings not be programmed in the budget. By Metro Charter and Code, he is required to submit to Council a budget by February. While some Councilors expressed specific ideas, he did not hear a consensus of direction. Without some assurances that the Council wanted to generally maintain

current programs next year, prudent management suggested that spending be reduced now to protect the ending balance. Appropriate steps at this time would include hiring freezes, and a freeze on discretionary spending. Another prudent step in preparing a budget with no new resources would be to have departments and legal counsel review Metro Code to identify those sections which must be amended or eliminated for the next fiscal year.

Mr. Burton understood that a subcommittee was to be established by Council to provide him with further policy direction by early next year. He requested adoption of a concept soon, possibly within the next two weeks, as to where the additional resources were to be allocated. He said he understood Council consensus on Metro's general fund reserve be increased to \$1 million. He urged the Council to move forward as soon as possible.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor McLain reviewed the two issues discussed at the last MPAC meeting. The first dealt with the 1997 Urban Growth Report Update discussing general concepts about opportunities to give assistance to the Council on that document. No motions were made, however, they discussed Resolution 99-2855, which Councilor Park and the legal staff had been working on in relation to the urban growth report update and other issues dealing with urban growth boundary review. Questions probably will be able to be answered by Councilors McLain and/or Park after next week's meeting.

Councilor McLain said Mr. Andy Cotugno, Transportation Department Director addressed MPAC regarding the regional transportation plan and the decision-making schedule, and suggested to MPAC that they had an opportunity to advise Council by November 24, 1999. Some good points were made about land use transportation connections and infrastructure concurrency issues and getting the MPAC and JPACT funding committees together for discussions about infrastructure costs.

6. CONSENT AGENDA

6.1 Consideration of the Meeting Minutes of the October 14, 1999 and October 21, 1999 regular Council Meetings.

Motion: **Councilor McLain** moved to adopt the meeting minutes of October 14, 1999 and the October 21, 1999 Council meetings.

Seconded: **Councilor Washington** seconded the motion.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

Presiding Officer Monroe moved ahead to Agenda Item 10.1, since a time certain hearing was to begin at 2:30 p.m.

10.1 **Resolution No. 99-2843**, For the Purpose of Adopting the Portland Area Air Quality Conformity Determination for the FY 2000 Metropolitan Transportation Improvement Program.

Motion: **Councilor Bragdon** moved to adopt Resolution No. 99-2843.

Seconded: **Councilor Washington** seconded the motion.

Councilor Bragdon said that Federal Transportation expenditures in the region required that the region demonstrate conformity with federal air pollution guidelines. This document approves the conformity determination that has been carried out and reviewed by DEQ and the Federal Government. There is an update to the 82nd Avenue Corridor in the year 2015, the CO budget is out of compliance, and this resolution allows analysis, and if changes in the air shed need to be made, it can be determined later.

Councilor Kvistad requested if an amendment needed to be moved.

Mr. Cotugno said yes, that he had submitted a memo with recommendations to incorporate the amendment that Councilor Bragdon just referenced.

Councilor Bragdon said that the pages on the attachment would coincide with the original pages.

Motion to Amend: **Councilor Kvistad** moved an amendment to Resolution No. 99-2843.

Seconded. **Councilor Bragdon** seconded the amendment.

Vote to Amend: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

Councilor Atherton asked Mr. Cotugno to explain why the test data showed a declining parts per million measurement in the field, yet the model showed an increasing level of emissions.

Mr. Cotugno, responded that the model actually showed a declining level of emissions over the forecasted time period consistent with the declining level of emissions that the measure data shows for the past time period, however, the established procedure for a specific area was for a budget or quota for emissions be set, and this area is slightly over the budget that was set. There continues to be a declining level of emissions but a very tight budget was set and it has not been achieved. This action causes closer attention to this area to see if the budget makes sense, and if so, what additional action is needed to maintain the standard.

Councilor Atherton asked if the model and the budget account for the airport light rail project and the increased usage in that area.

Mr. Cotugno said yes, all regional growth has been accounted for in this modeling.

Councilor Atherton said the model also includes urban settlement expansion with a certain level of transit, and reduce vehicle miles traveled, and inquired how this can be reconciled when vehicle miles traveled were increasing.

Mr. Cotugno said vehicle mile travel was going up, there had never been assertion otherwise, but the goal of vehicle miles per person going down.

Councilor Atherton asked where the model showed the limit of carrying capacity.

Mr. Cotugno these projections indicate the current status was right at the limit.

Councilor Atherton said the whole purpose of this exercise was to make certain that the expenditures of federal funds will not result in air pollution violations.

Mr. Cotugno said that was correct.

Councilor Atherton said that the expenditures that were planned would conform to the model and not result in air pollution violations.

Mr. Cotugno said yes, and the budgets for each progressive year state that there should be lower emissions over time and the estimates provided indicate that those limits were being adhered to, but right at the budget. There was no spare room.

Councilor Bragdon urged passage to continue federal fund eligibility.

Vote on the

Main Motion: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

7. PUBLIC HEARING ON IMAX LAND USE FINAL ORDER

Presiding Officer Monroe asked Councilor Washington, Chair of the Light Rail Steering Group to introduce this public hearing.

Councilor Washington read an opening statement regarding the South/North Light Rail Project regarding Resolution No. 99-2853A. This agenda item involved an application by Tri-Met for Council adoption of a Land Use Final Order amending the original South/North final order adopted by the Council last year by Resolution No. 98-2673. The requested amendments involved areas of the South/North project from the Steel Bridge to the Expo Center. A LUFO is an order adopted in accordance with Oregon law established in House Bill 3478. It differs from Locally Preferred Strategy which is a requirement of federal law. In 1999, the Council amended the LPS to incorporate the Interstate Max Project. HB 3478, adopted in 1996, required the Metro Council to decide the light rail route, stations, park and ride lots, maintenance facilities and high improvements, including the boundaries within which the facilities and improvements may be located. This would be accomplished by usage of a land use final order. HB 3478 required findings of fact demonstrating that the route, station, lots and improvements comply with ten land use criteria established by LCDC. LUFOs are governed by special procedures contained in HB 3478 which include the announcement of a number of procedures.

Councilor Washington said the Council will decide the route, stations and park and ride lots including their locations. This information has been attached to Tri-Met's application and on maps posted in Chambers, and available for public review. He asked Mr. Dan Cooper, Legal Counsel, to summarize the procedural requirements.

Mr. Cooper stated that these procedures differ in some important aspects from other land use hearings. He explained the process and the appeals process under HB 3478. Metro's LUFO must comply with the ten established criteria by LCDC, which were available in the back of the Chamber. They were listed in the proposed findings. All public testimony should be directed toward the application of the LCDC criteria to the proposed amendments. Following the public hearing the Council might adopt the LUFO amending the light rail route, stations and lots including their locations as applied for by Tri-Met. Alternatively, the Council may chose to

continue the public hearing and refer the matter back to Tri-Met for further review and new application submittal. Should the Council adopt the LUFO as submitted by Tri-Met, any appeal from the Council's decision must be filed within 14 days following the date the LUFO is reduced to writing and signed. Failure to raise an issue at this hearing, or failure to provide sufficient specificity regarding that issue, will preclude appeal by the Land Use Board of Appeals. Written notice of the Council's adoption of the LUFO amendment will only be provided to persons who have provided oral or written testimony at this public hearing and who have also provided, in writing, a request for written notice and a mailing address to which the notice should be sent. Testifiers or requestors of written Council decision information must do so at the sign up table in the back of Chambers. Persons whose names appear only on petitions submitted at the hearing and do not provide oral or written testimony are not considered to have provided oral or written testimony at this hearing, as provided in the statute. He asked Councilor Kvistad to explain the hearing process and introduce the Resolution.

Councilor Kvistad explained the order of the hearing. First, he was going to make a motion, Mr. Richard Brandman, Transportation Planning Division Director, was going to give a presentation, Tri-Met staff would make their application presentation, Presiding Officer Monroe would then open the hearing to the public, after which a short break would be taken, and rebuttal from Tri-Met and staff comments as needed. Oral and written testimony would be accepted up to closure of the hearing. During and after rebuttal, no further written testimony would be accepted unless the Council re-opened the hearing.

Councilor Kvistad said after Tri-Met's rebuttal, the Council would either close the public hearing and decide the application, or may continue the hearing to a date certain. Should the hearing be continued, a schedule will be established for further submittal of testimony, and may limit the issues for additional testimony. Should the hearing be closed due to need or change of findings, the matter may be continued on this day's agenda or to a future date certain allowing adequate time for changes to be prepared. With that, he read the resolution into the record.

7.1 **Resolution No. 99-2853A**, For the Purpose of Adopting a Land Use Final Order Amending the Light Rail Route, Light Rail Stations and Park-and-Ride Lots, Including their Locations, for the Portion of the South/North Light Rail Project Extending from the Steel Bridge to the Exposition Center.

Councilor Kvistad stated that the resolution provides for the adoption of the LUFO amendment and the adoption of land use findings of fact in support of the LUFO amendment.

Motion: **Councilor Kvistad** moved to adopt Resolution No. 99-2853A.

Seconded: **Councilor Washington** seconded the motion.

Councilor Washington thanked all involved in this process.

Mr. Richard Brandman, gave a brief report and visual presentation. The resolution sets the footprint for the route, stations and terminus. A steering committee chaired by Councilor Washington unanimously recommended this LUFO to Tri-Met and Tri-Met unanimously recommended its application to the Metro Council. The proposed LUFO and facts have been attached to the resolution (which may be found in the permanent record of this hearing). The ten criteria have been addressed. The findings show how the Max route, stations and lots comply with the LCDC criteria. The criteria have been listed. Tri-Met evidence and the Metro staff evidence have been considered relating to the applicable criteria and this has been included in the

staff report to the Council. Metro staff's position is that the evidence demonstrates that the proposed project has met the legislative criteria.

Mr. Brandman stated that Metro now has a final environmental impact statement signed by the Federal Transit Administration and has been sent to Washington, D.C. for acknowledgment. A public comment document accompanied the statement. A shorter summary of the final environmental impact statement is available to be provided upon request. He turned the presentation over to Mr. Ross Roberts.

Mr. Ross Roberts, IMAX Planner, made a visual presentation of the alignments and stations for the proposed IMAX. He pointed out the changes to the alignments and stations. There were no highway improvements included in this project, and maintenance facility expansion consisted of expanding the existing Ruby Junction facility.

Presiding Officer Monroe opened a public hearing on Resolution No. 99-2853A. He stated that each person testifying would have three minutes.

Mr. Brandman clarified that Tri-Met needed to present their application.

Neil McFarland, Tri-Met Executive Director of Capital Improvement, thanked the Metro Council for their leadership, and Metro staff for their hard work on this project. It was hoped that by the next business day the completed LUFO, the City/Tri-Met Intergovernmental Funding Agreement committing local shares from the City of \$30 million and Tri-Met's financial commitment would be sent to the federal government.

Mr. McFarland stated the issue of the location of the Expo Station has been of special interest to some Councilors. He presented a letter from Mr. George Passadore and Mr. Fred Hansen of Tri-Met.

Presiding Officer Monroe opened the public hearing.

Rick Williams, Chair of the North Light Rail Citizen's Advisory Committee, 111 SW Columbia, Suite 1380, Portland, OR 97201. He urged the Council to go forward with this project. The report in front of the Council outlined the issues and concerns the Committee had at the beginning of the process. The main issues concerned funding, friendly condemnations and that the money be used to support the goals and needs and wants of that community. Another issue, that of parking, was divided into the categories of parking around the Expo Center, neighborhood mitigation and on-street parking. The Committee felt bicycling was critical, but did not know if Interstate was the place to put the bikes. He asked Tri-Met and Metro to study the alternatives. Community involvement needed to be increased. He urged the Council to go forward.

Amanda McCloskey, Community Development Network, 2627 NE Martin Luther King Jr. Blvd. #202, Portland OR 97212, said they were an association of non-profit housing developers and community development corporations working in the Portland area. Their concerns involved social impact on housing affordability in the area. Bringing light rail to one of the last remaining supplies of affordable housing in the area meant improvement and increased property values, but for the low income renters, an increase in their rent. She asked that these affordable housing concerns be considered by using non-profit housing, community land trusts and housing cooperatives, and inclusionary zoning.

Jim Worthington, 3232 SE 153rd Rd., Portland OR 97236, said he had been told by the City of Portland that this light rail would not cost a thing. This was not private money. Second, there seemed to be very little park-and-ride planned. He said Tri-Met had promised north/south bus lines instead of park and rides at 148th, 162nd and 172nd. He said there were no park and rides and still no north/south lines. He encouraged more park and rides and more housing, suggesting housing was a problem. It had not been a positive situation along the light rail.

Lenny Anderson, Chair, Swan Island Business Association Transportation Committee c/o Freightliner Corp CIA-BLD 4747 N Channel, Portland OR 97217, read a letter into the record signed by Wayne Cozad, II, President of the Association (a copy of which may be found in the permanent record of this meeting.) He said that the addition of the shuttle from Swan Island to the Rose Quarter Max, had above average ridership for Tri-Met. He pointed out that this transit project and connections to Swan Island created roadway capacity for the movement of freight by giving those employees options to driving alone. He encouraged the Council to go forward.

David Eatwell, Executive Director of the Kenton Action Plan, 2601 N Willis Blvd., Portland OR, urged support of this proposal and its funding and asked consideration of the proposed siting of an amphitheater at the Expo Center, the temporary terminus of the IMAX line. He asked that any facility be brought forward as part of a master plan project and any proposed amphitheater be sited to take full advantage of the light rail station.

Art Lewellan, 3205 SE 32nd, Portland, OR, a Brooklyn Neighborhood resident, said earlier this year he had opposed this alignment. However, he had changed this opposition. He thought that the most important work that had come out of Metro was the regional center plan, the 2040 plan. He did not think it could occur without the expansion of light rail. He submitted a letter for the record (a copy of which may be found in the permanent record of this meeting). He supported this proposal, and hoped for redesign of the south end of the line so it would be more acceptable to those who opposed it.

Richard Ellmyer, 9124 N McKenna, Portland, OR, said in 1981, he served with State Senator Bill McCoy in the Legislature. In 1983 he worked for Commissioner Gladys McCoy and supported the north light rail line to Vancouver. He strongly supported this project and hoped that the Council would continue to give their support. This light rail system currently ends at the Expo Center. There was a lot of development and planning going on at the Expo Center. He urged continued good planning for both Metro and the community.

Peter Teneau, 2715 N. Terry, Portland, OR 97217, read his letter into the to record (a copy of which may be found in the permanent record of this meeting).

Councilor Washington thanked those that testified from his district.

Presiding Officer Monroe called a short recess for Tri-Met to prepare their rebuttal. He closed the public hearing.

Presiding Officer Monroe announced the continuance of Resolution No. 99-2853A. He called Mr. McFarland to rebut.

Mr. McFarland indicated he had no rebuttal.

Mr. Brandman acknowledged the hard work of all involved. If the LUFO was approved, the next step would be for this project to be recommended in the President's budget for funding. By

February, 2000 the decision would be made. By early summer, a contract could be signed with the Federal Transit Administration.

Councilor Washington thanked Mr. Brandman and Mr. Roberts for their dedication. He also acknowledged Mr. McFarland's openness and effective communication skills.

Presiding Officer Monroe thanked all those that testified. He said that the Council had before them Resolution No. 99-2853A for approval, or the public hearing could be continued. He opened discussion to the Council.

Councilor Kvistad recommended a vote of approval at the current time. He thanked Mr. Roberts and his crew, among them: Sharon Kelly, John Cullerton, David Unsworth, Randy Parker, Jeanna Cernazanu, John Gray, Skye Brigner, Jodie Kotrlík, Shawn Wood, Susan Finch and Jan Faraca. He also thanked Fred Hansen and Neil McFarland from Tri-Met. Finally, he thanked Rick Williams and his Committee. He recommended an aye vote on the Resolution.

Presiding Officer Monroe asked if any Councilor wanted to continue the process. There was no response. He closed the hearing to written and oral testimony.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed.

Presiding Officer Monroe announced that the council would consider the Solid Waste Ordinances next on agenda.

9. ORDINANCES - SECOND READING

Presiding Officer Monroe opened a public hearing on Ordinance Nos. 99-823A, 99-824A, and 99-825A.

Jerry Rust, 3417 N Russet St., Portland, OR 97217, he is affiliated with St. Vincent de Paul of Lane County. He read his letter of opposition into the record (a copy of which may be found in the permanent record of this meeting.)

Jackie Dingfelder, 2124 NE 54th Ave., Portland, OR, said she testified previously in support of the Dakota Plan. She supported reinvesting in recycling and solid waste programs and supported existing natural resource programs that are currently underfunded. The plan also provides partnering with Metro in protecting fish and wildlife habitat. She urged support of this Plan. Public accountability must be made.

Jane Cromlin, Executive Director of Three Rivers Land Conservancy, 3125 SW Carolina St, Portland, OR referred the Council to her previous testimony. She supported the Dakota Plan's incentives programs providing resources to local jurisdictions. She supported keeping the solid waste savings, but only with a pre-determined plan. She urged support of Councilor Bragdon's Dakota Plan.

Councilor Atherton asked Ms. Dingfelder and Ms. Cromlin how they would propose these programs be funded after the that ten year window. What kind of dependencies would be created and what would the long-term funding be.

Ms. Cromlin responded that an excellent example would be the Greenspaces Bond Measure of \$135 million and the good that could be done with a short term program. Also, the Restoration

Grant Program. These programs do not need to foster a dependency, unless the voters decide to continue them.

Ms. Dingfelder agreed and said Metro was at an essential point in the planning processes with programs that were not going to be funded. The Greenspaces Program suffers from lack of masterplanning. Jurisdictions are understaffed regarding technical resources necessary for the planning of Title 3 and Goal 5 implementation.

Councilor Atherton asked if there were other opportunities to do capital investment.

Ms. Dingfelder said this was a possibility for long term. When the bond measure was passed, long term planning, restoration and maintenance was not included. This savings provides an opportunity to use part of these funds to repair some of the past damage.

Councilor Atherton said it ended in ten years and that was the problem.

Ms. Cromlin said she thought the long term management and maintenance could be built in at the beginning of the program.

Councilor Atherton said he heard what they said, his suggestion was to pay off the debt early and use the interest on the savings to seed an endowment to provide in the long term.

Ms. Cromlin said she was not familiar with that particular plan and could not comment on it.

Rachel Bloom, 0606 SW Nevada, Portland, OR, founder of Portland Supported Employment to support disabled persons in environmental areas. She received from Metro, through Clackamas County, a grant to recycle at the Clackamas Town Center Mall. The project has been successful and encouraged the Council to continue to provide that type of funding.

Presiding Officer Monroe closed the public hearing. He remarked that this had been a long process. Councilor Washington had held numerous public hearings. Much testimony had been heard from all sectors. He said the Council heard and supported the fact that these savings would not be used to grow a larger bureaucracy, that citizens wanted stable solid waste rates so when the ordinances are past, 40% of this money would be allocated to stabilize the rates for 3 years and an extra \$1 million had been allocated to enhance recycling. If more opportunities were found, more funding would probably be available. Also, appropriate uses for these funds could be natural resource development and development of the purchases made with the \$135 million open spaces bond measure money, habitat restoration and protection of fragile areas, assisting local jurisdictions with planning grant money and making the zoo more accessible to children. Because of the needs that have been brought forward, he appointed a budget subcommittee to commence immediately to review all of the testimony and needs. He appointed Councilor David Bragdon to chair the subcommittee, with Councilors Park and Washington as members.

Presiding Officer Monroe closed the public hearing. He remarked that this had been a long process. Councilor Washington had held numerous public hearing.

Presiding Officer Monroe appointed a budget subcommittee to report back to the full council, which acts as a budget committee of the whole, no later than Jan 1, 2000 or sooner if possible. He asked Councilor David Bragdon to chair the subcommittee with Councilors Park and Washington as members. He urged them to get to work as quickly as possible and assigned John

Houser, Senior Analyst to be the primary staff assistant. He further stated that all of the staff in the Council office and in the Executive office were eager to work with the subcommittee to develop a specific plan for determining where the needs are, how much money was needed to stabilize various funds that have been depleted and where investments should be made to best serve and best return to the voters of this region the benefits of this negotiation.

9.1 **Ordinance No. 99-825A**, For the Purpose of Amending Metro Code Section 5.02.025 to Modify the Disposal Charge at the Metro South and Metro Central Transfer Stations.

Motion: **Councilor Bragdon** moved to adopt Ordinance No. 99-825A.

Seconded: **Councilor McLain** seconded the motion.

Councilor Bragdon said he thought everyone was familiar with this ordinance regarding the tipping fee.

Councilor McLain said she would be supporting this ordinance. The major debate was on the tipping fee; why it should be kept at \$62.50 or lowered, and what the ramifications would be to recycling and other issues. She said that there was proof that returning the money would not be effective, efficient or valued from comments the Council heard in testimony. Another thing that she said was expounded on at the last meeting, but perhaps not emphasized enough, was that keeping the rate constant was a signal that Metro values recycling. She said it was important to support this ordinance because of the thorough conversation on these elements, but particularly because lowering the rate would harm recycling.

Councilor Atherton said this debate was not about the \$62.50; it was about flexibility and the creation of a very large tax. He noted that he and Councilor Kvistad had voted against this tax at the last meeting. He said he was very much against creating a task force; Council was a seven member deliberative body and should take this large complex issue, break it down into manageable pieces and work through them to find agreement. Another issue that should be agreed on was protecting the core enterprise, the Solid Waste Management Fund, its operation and recycling. He said that there was a legal challenge that created a great deal of uncertainty to flow control. Metro has a state mandate to recycle; that was not being met. He said it was premature to create a tax without a better understanding of how it will be spent. The Solid Waste Advisory committee recommended looking out 7 years in testimony before the Council, and from his business experience he recommended looking out at least 10 years in order to stabilize the system. He said that Council also should examine its liabilities: Metro has extensive debt, not only in the solid waste system, but also in the agency. With this level of uncertainty Council should do one thing really well before starting a hodgepodge of other enterprises that cannot be done well. He recommended a no vote.

Councilor Kvistad said that it hard to know where to start. Out of a group of 7, 3 were picked as a special committee because the process was such a mess that we cannot make a decision – unbelievable. This ordinance would increase taxes by raising the tipping fee by 50 cents, but also increasing the excise tax within it from \$8.35 to \$9.00. He said that was a tax increase and even worse, Council was raising taxes before deciding how it would be spent. The process should be 1. Look at priorities, 2. Figure out where the money was needed, 3. Figure out how to spend the money and 4. Find the tax revenue to pay for it. He said he disagreed with all of this and would vote against it.

Councilor Park said the easiest thing would be to give the money back, however the issues were more complex. If, after all the testimony the Council believes those who know the recycling system and said lowering the tipping fee would undo the economic underpinnings of how this system works, then the conclusion must be to leave the fee at \$62.50. If, however, someone believes all of this testimony was untrue, people have not told the truth, or has hidden agendas, then any conclusion can be reached. He said he chose to believe the evidence he heard from people in the industry. He felt it was ironic that if the recycling rate goes down and the Council does nothing, leaving the tipping fee approximately the same on a percentage basis, Metro would increase revenues. Even if the money was given back this year, next year it would need to be raised and in the mean time the recycling system would be destroyed. He said that the important questions are, what does it do to the tipping fee, the recycling rate and the conflicting goals of Metro and the region, not to mention the state mandate of 50% recycling.

Councilor Bragdon said he would be supporting this ordinance in spite of some ambivalence and hesitation, as in effect Council was not just asking people they are buying a pig in the poke , but telling them that they are. This ordinance would create a windfall that does not belong to any of the seven councilors, but to the people. He said the burden was on the Council to describe and account for every penny of where the money goes. If it passes everyone should take the burden seriously and he believed that everyone has expressed that belief and should move on to track and spend this money in the most responsible way possible. He said he would vote yes with the understanding that this next step would happen.

Councilor McLain said another reason she was voting for this was because people said that they didn't want 2-1/2 cents, or 50 cents, \$8 or wait around for 10 years for \$80, but would rather have it invested in the community in the items listed in the charter. She said that was common sense and makes sense to her.

Councilor Washington said again that it has been quite a process and the easiest thing to do would be to give it back and not worry about it. However, he said, he guaranteed that if that happened the Council would be criticized for that; this was one of those no win situations. He did not see this process as an attempt to circumvent the will of the Council; if he did, then he would not do it. He asked everyone to bear with the Council as they work to do the right thing.

Presiding Officer Monroe commented that subcommittee was a part of Council life, all of the work was done in subcommittee and always has been except for the budget, which was traditionally done by the Council as a whole. There are 3 member committees dealing with land use, transportation and solid waste, so a time-certain budget subcommittee was not all that different. Three people can often ferret through the issues and come up with recommendations. Council subcommittees have no power unto themselves, but can only recommend. All decisions remain with the full Council. He also said that if these measures pass today, they will take effect February 1. Prior to one penny being collected there will be a complete plan. That plan may include more money than the \$1 million for recycling, it may include additional reserves, it may include checks to everybody on an annual basis as one Councilor has suggested, or it may include any of the other needs that have been suggested, especially in the Dakota plan.

Vote: The vote was 5 aye/ 2 nay/ 0 abstain. The motion passed with Councilors Kvistad and Atherton voting no.

9.2 **Ordinance No. 99-824A**, For the Purpose of Amending Metro Code Chapter 7.01 to Modify and Adjust Excise Taxes and Making other Related Amendments.

Motion: **Councilor Washington** moved to adopt Ordinance No. 99-824A.

Seconded: **Councilor McLain** seconded the motion.

Councilor Washington felt that everything had been said.

Councilor McLain pointed out that on page 5 of 99-824A the excise tax credit schedule was important to note. If people did not want to pay excise tax and could continue to improve their recycling rate, they would pay less excise tax. They could get as much as \$1.50/ton excise tax credit for between 40-100% recycling. She said that on pages 6-7, the Forest Grove situation, i.e. a privately owned transfer station, was addressed and included their tax not starting until June 30, 2000. It also provided an opportunity not to pay excise tax on out-of-district waste. She said the Council welcomed the opportunity to make sure the arrangement was equitable to all sides.

Motion to

Amend: **Councilor Kvistad** moved Kvistad Amendment #3.

Seconded: **Councilor Atherton** seconded the amendment.

Councilor Kvistad reviewed his amendment as a policy amendment that dealt with the way in which facilities are taxed. He said it would shift the excise tax currently collected at the Oregon Zoo (\$700 thousand) and at the MERC facilities (\$1.2-1.4 million) leaving those dollars with these facilities for a renewal and replacement fund. He believed that funds collected were best kept at the facility that generates the revenue, that Metro's tax policy should be clear and consistent across the agency, and utility based if it was a utility-based tax. The Hotel/Motel industry, the Visitors' Association and many of MERC and the Zoo's partners supported it. He believed that this was an opportunity to make a policy change in the way this government operates and funds itself and the way in which the operation managed by Metro are run, particularly MERC and the Zoo.

Councilor Park asked if, in this form would any funds be returned to the ratepayers?

Councilor Kvistad said the rate stabilization would return the funds to the ratepayers through stabilizing the rates for a much longer time.

Councilor Park asked if he had a projection of how far out it would go?

Councilor Kvistad said it would go out for the 9-years plus of the contract. He asked Mr. John Houser, Council Analyst, for the figures.

Mr. Houser said the Council has talked about carrying the existing rate, \$62.50, using existing reserves out about 3 years. He said that in the fourth year \$3.6 million additional funding would be needed to hold that rate. Then about \$4.3 million the next year and \$4.9 the year after that. If, as Councilor Kvistad suggested you began setting aside up to \$4.2 million a year in addition to existing reserves in all likelihood Metro could probably carry that rate out for the remaining life of the contract with the 10 years.

Councilor Park said he was trying to relate the fact that the hotel/motel tax was only paid by those businesses that are within Multnomah County while Metro was a regional facility and solid waste was gathered by region. He said he was looking for the incentive at what time do we get regional funding for those regional facilities and if this helps or hurts in the effort.

Councilor Kvistad said that the Zoo belongs to the region; the regional facilities, while they may be located within Multnomah County, are for the region as a whole. Metro has regional priorities and focus in areas beyond a commitment to green spaces. What this amendment says was that Metro was entrepreneurially based and leaves the revenue with the agency that generated it rather than siphoning it off into Metro general government.

Councilor Atherton reminded the council that the Solid Waste Advisory Committee has talked about stabilizing the rates for 7 years as well as stabilizing other Metro core businesses, the Zoo, Expo and Convention Center facilities. He agreed it would leave fewer funds available for flexible sources, but thought that this was an advantage. He urged support of the amendment.

Councilor McLain said Councilor Atherton had made a very good comment she wanted to address. The Council wanted a beginning of stabilized rates for 3 plus years, but this review would be happening every year, because this fund would come in every year. This was not \$60 million arriving here this year, it was over a 10 year period. If this agency went forward this year or next year that 7 years of funding can still be reached. There was a stabilization account in place that could be used or added to, in fact the committee has agreed it was a fund that would be added to.

Councilor Bragdon said he could not support this amendment for he perceived it as a tax shift. He believed that making the general funds of this agency entirely dependent on solid waste and move away from diversification would be a mistake at this time. The government structure between this council and MERC seemed very odd to him, he would like the structure resolved in a larger discussion of where the authority and accountability resides. He closed by saying that he was supportive of these facilities and was not speaking against the facilities per se, just in terms of how they figured into the mix at this time.

Councilor Kvistad said he did not want to leave the impression that the way this would operate would free visitors from paying for the facilities they enjoy, rather the tax money would be returned to the facility that created it for improvements and repair. It would be a healthy decision for the Council to make. The decision as how MERC should operate in the future was irrelevant to the fact that these facilities belong to Metro and are under its care and control. He believed the best and healthiest thing to do would be to pass this amendment.

Vote to

Amend: The vote was 2 aye/ 5 nay/ 0 abstain. The motion failed with Councilors Kvistad and Atherton voting yes.

Councilor Bragdon said to the main motion he would vote for it with reluctance as before as the amendment directed a certain percentage into the general fund. He said he would not do that unless he was sure that it would be defined as to exactly what it meant. He felt it had been approached in a backward manner and should be rectified as soon as possible. If it passes he would like to make some additional comments.

Vote on the

Main Motion: The vote was 5 aye/ 2 nay/ 0 abstain. The motion passed with Councilors Kvistad and Atherton voting no.

9.3 **Ordinance No. 99-823A**, For the Purpose of Amending Metro Code Chapter 5.02 to Modify Charges for Direct Haul Disposal, to Modify Metro System Fees, to Create

Motion: **Councilor Washington** moved to adopt Ordinance No. 99-823A.

Seconded: **Councilor McLain** seconded the motion.

Marv Fjordbeck, Senior Assistant Counsel, reviewed the ordinance; it modifies certain solid waste fees, the regional system fee and the Metro facility fee. Additionally it includes a regional system fee credit of \$9 per ton and retains the current regional system fee credit system that the Council approved in modifying the ordinances in 1998.

Vote: The vote was 5 aye/ 2 nay/ 0 abstain. The motion passed with Councilors Kvistad and Atherton voting no.

Councilor Bragdon said in regard to his new duties that this committee assignment will probably disappoint 70% of the people and anger the other 30%. People have said that he, Councilor Bragdon, wants money for green spaces or natural resources planning, and that was true, but the result he wants most was to know what the money gets spent on, how it gets spent and that it gets spent in a responsible way. That was what he understands this subcommittee was about and he expects it to be conducted the way all subcommittees he has observed at Metro, with fairness and impartiality, just as JPACT was conducted, whether or not people agree with one another. He felt that one of the first steps was to establish criteria and asked each Councilor for their criteria, not programs. Councilor Atherton mentioned taking care of existing needs which was an important criteria for the subcommittee to know.

Presiding Officer Monroe said that like all meetings at Metro, the Special Budget subcommittee meetings are open and anyone was welcome to come and listen to the deliberations.

Councilor McLain said she didn't want to leave the audience going away thinking that this subcommittee was just starting to prioritize and give signals to the Executive for this year's budget and programs. There are some things that have been generally agreed to by the Council: 1. Keep a stable rate, 2. Funds like the Capital and Rate Stabilization Operations should be supported, 3. Business grants are important, 4. In recycling there are particular areas e.g. organic programs and construction debris, etc. that should get review and support, because they were the areas where the waste stream still was, 5. Started with 3 years plus, but continue to look at stabilization of rate as industry change was reviewed, 6. Agreed on \$1 million for Contingency, 7. Agreed that current charter related programs would not be decimated; i.e. Goal 5 and water issues would be finished, the affordable housing task force would finish their work, 2040 and RTP work in planning and functional growth compliance would be finished, a Green Spaces Master Plan would happen so that land Metro has acquired would not stay land banked. This task force will use the work of all seven Councilors as a base since Councilor Washington started deliberations in January.

Councilor Kvistad said he had calmed down, although he was still angry that a committee was arbitrarily sprung on the Council without talking to all of the Councilors in advance – that was a really bad precedent to set. He had a real problem with some of the Council being in the loop while others were not. Secondly Metro makes decisions on running a \$200 million dollar utility all the time, but when revenue becomes available that was labeled “discretionary”, or “extra” it becomes a free-for-all and focus was lost. Perhaps the charter should be reevaluated and fundamental changes made to it.

Councilor Washington said he didn't set the committee up on his own. He said Councilor Park and Councilor Bragdon didn't set the committee up on their own either. They were asked to do it by Presiding Officer Monroe who had a responsibility to preside over the Council.

Councilor Park said he wanted to apologize but he wasn't sure exactly what he was apologizing for. He wasn't aware that the other councilors weren't aware of the task force. He planned to work with the Council to improve communications and avoid similar problems in the future.

He agreed with Councilor Washington that it was within the purview of the Presiding Officer. He didn't want to give the public the impression that Metro had unlimited tax and spend authority. He said observers might have thought that Metro could tax and spend forever. He said Metro had already been given their Ballot Measure 547 or 50. In 1992, when voters approved the Council's Charter, Metro was unique, because it was the only elected regional government in the nation. He said the agency was also unique because it had a spending cap set on its general fund. In 1992, voters capped Metro's general fund at a maximum of \$12.5 million dollars. That figure was indexed to the inflation rate and that was it, period.

He said that if Metro's solid waste facilities or any other agency operations generated an excise tax in the hundreds of millions of dollars, the agency wouldn't have been able to spend it. He said it was important to remember that Metro has been working with funding mechanisms and budget constraints that voters placed on Metro several years ago. He said he would hate if the public got the impression that Metro had an unlimited amount of money and an unlimited ability to spend it. He said Metro doesn't. He praised those who created Metro's Charter for including taxing and spending restrictions. He said it would be nice if voters could accomplish that at the state level. But he said that was another discussion.

Councilor Bragdon said he also wasn't aware that all his colleagues didn't know about the committee meeting. He said it certainly wasn't his intention to surprise anybody. He added that one of the most important features of the draft resolution he wrote codified something that he thought a majority of the councilors said Tuesday. The resolution directed the Executive Officer to develop his budget for the next fiscal year and assume that the contract renegotiations and savings for Metro never happened. In other words, the Executive Officer was asked to develop a no new revenue budget and put it in writing for the Council to consider next week.

8. ORDINANCES – SECOND READING – QUASI- JUDICIAL PROCEEDINGS

8.1 Ordinance No. 99-816, Denying Urban Growth Boundary Locational Adjustment Case 98-7: Jenkins/Kim, and Adopting the Hearing's Officer's Report Including Findings and Conclusions.

Dan Cooper, General Counsel, said it was a continuation of the Council's discussion, which was at the point where they had already heard from the hearings officer and the record had been closed. The hearings officer made his report and recommendations, and the Council heard from both the proponents and opponents. The applicant and other people interested in the issue testified regarding the hearings officer's report and recommendation. Now it was back in front of the Council for further discussion.

In the meantime, the hearings officer prepared a memo to for the Council that outlined what he understood they were discussing to give councilors some sense of what further choices were in front of the Council. He repeated what he said at an earlier hearing that the Council's options

were to either (1) approve a motion to adopt the hearings officer's original report and recommendation, (2) adopt a motion to direct him to have a modified order, findings of fact and conclusions to support denial for different reasons, or (3) direct him to prepare for the Council an ordinance that would approve the application and prepare findings and conclusions, and a report that would support that approval. Those were the Council's three choices.

He said that if the Council hadn't had the hearings officer's memo they should have gone straight to their further discussion and consider their vote on which, if any, of the motions they wanted to adopt. He would then come back to the council with whatever the council directed to be prepared, assuming it was different than what the Council had in front of them. At that time, everybody would get an opportunity to comment on what those revisions were. Mr. Epstein however, put that in front of the Council. It was probably very appropriate that he gave a very short description of it and that he gave the Council the chance to ask him any questions. Then Mr. Cox, who represented the applicant in all fairness, ought to have had a chance to briefly say what he thought about it. He said hopefully the Council would then have enough information to have made a decision and have moved forward from there.

Mr. Larry Epstein, Hearings Officer, drafted a memorandum to assist the Council in the reconsideration process. He said the Council had options to adopt. The first page explained it, and the first half basically explained what Mr. Cooper said. He said the Council had the choice to adopt the ordinance or affirm that they were going to adopt the ordinance without any changes to the draft order. The Council could adopt the ordinance with changes to the draft order or they could adopt a different ordinance – one that would approve the locational adjustment with substantial changes to the draft order.

What he gave the Council was a list of a dozen issues that he understood were under discussion at the last hearing. He tried to identify what it was he said in the original final order, what the issues were, and what both sides of the issue were. He understood what the Council would do, whether they reached consensus or a majority was reached on each issue, and he gave Metro language to adopt to replace the findings that were in the hearings officer's original order, depending upon how the Council evaluated each issue. What Mr. Cooper asked him to do was prepare two decisions - one for approval and one for denial. But he had a lot of trouble doing that because there were some sub-issues. He said the Council may have decided differently than he recommended on some of those sub-issues and still may have come up with the decision to deny. To find for approval the Council had to conclude that all of the findings that he made to support denial were wrong.

He gave the Council a memorandum with findings that they could have adopted, either to have modified his decision or to have reversed it, or to have modified their decision or to have reversed it. There were two modifications: one on page 5 and one on page 7. One dealt with sanitary sewer service that needed to be corrected because it incorrectly reflected the facts. So, he recommended the Council make that change. It was item B on page five of his memo. On pages 6-7 there was some discussion of parks and open spaces. He said the Council might remember there was some question about whether parks and open space, as it's used in 3035Cc1, whether it included private open space. He believed there seemed to be consensus on the Council that it was meant to apply only to public open space. If the Council wanted to make that change to reflect that decision then they would make the change that was described on page 7. He said there was one other change that the Council might make and that was whether land inside the urban growth boundary that was used for agricultural purposes was relevant to the evaluation of whether the locational adjustment would conflict with nearby agricultural uses.

He said in his opinion the Council couldn't do that. He said the adopted Metro code is clear on that issue, but the Council adopted the code and they would get to construe it. He said then all Mr. Cooper would have to do is defend the Council. He didn't recommend that change because of the meaning of the words that were in the Metro code.

He just wanted to identify those three in particular. He thought all of the issues that the Council raised or were raised by the exceptions and by their discussions were in there. He said he was happy to answer any questions the Council had or he could walk them through the memo. However, he said he had not planned to walk the Council through it, but instead to let them discuss the contents of the memo.

Councilor McLain asked in his original if he said it was relevant or irrelevant.

Mr. Epstein said it was relevant. The question was whether the locational adjustment would adversely affect existing agricultural uses. The Metro code said when a proposed adjustment would allow an urban use in proximity to existing agricultural activities the justification in terms of this sub-section must clearly outweigh the adverse impact of any incompatibility. He found that the agricultural activities that adjoin this property, which were occurring on land inside the boundary were relevant under that standard and that the use would be incompatible with that agricultural activity on land inside the boundary. He also found that it would be incompatible with land outside the boundary, which was used for agricultural purposes. So the Council could still find that the applicant or petitioner failed to comply with this standard based only on agricultural activities outside the boundary.

Presiding Officer Monroe said that was the question that Councilor Park was most interested in.

Councilor Kvistad asked if the Council was in the questions and rebuttal phase or discussion? He said following the rebuttal he was going to make a comment or motion.

Councilor Atherton asked Mr. Cooper a question. He thought he heard Mr. Epstein say that the Council had to find that all of the conditions were violated. He thought that the Council had to find only one.

Mr. Cooper said to support an approval, the Council must find that all of the reasons Mr. Epstein found for denial were ones they disagree with. Now, since the way the code was written the Council could cumulate some of these things and balance and weigh and add up multiple impacts. The Council may simply find that some of the things Mr. Epstein found tipped the balance one way, weren't quite that bad and since the Council may disagree on some other ones then that effect is a superior urban growth boundary. But he said, in general, this was a case were to approve you have to have found they have met the criteria.

Mr. Cox said what he put in front of the councilors spoke to the issue of whether or not a political boundary is or was an appropriate means by which to divide property when the Council brought it into the urban growth boundary. What he presented to the Council was a document dated 1979 the CRAG Urban Growth Boundary Findings Supplement submitted under the auspices of the Metropolitan Service District. He took from selected sections of it. He instructed the Council to look at page 9, under the envelope area 3.2.2. It said map 3 also showed lands, which were in sewer districts. The lands were clear candidates for an urban designation because some commitment had been made to urban use. Properties within sewer districts were assessed taxes by the district even though they may not have had sewers. Concerning the boundary features on 3.3, the last sentence on the first paragraph said commonly accepted legal features,

such as city limits and property lines, were also appropriate for a UGB. The UGB coincided with existing administrative or political boundaries. The record also showed that other documents in the Council's history indicated that over 10 percent of the boundaries were located primarily because of the sewage possibilities. In this case, USA followed the Multnomah and Washington County boundaries. People in Washington County are serviced by sewer and that was one of the initial reasons why the boundary was placed where it was. In addition, the county boundary there was chosen and is also available. I think the statistics showed that the majority of the various ways that the bound was solved was either by urban service district, which in this case was USA and by city boundaries. Those two made up the predominant of about seven different factors that went into it. The reason he presenting this was merely to contest the concept or to help explain the concept that a political boundary was not a satisfactory boundary under the UGB. In fact, that was one of the basic reasons the UGBs were selected.

He also wanted to point out that in the discussion by Mr. Epstein of this proximity he was correct. The Metro code said that proximate agricultural activities or agricultural activities in proximity, to the extent that that indicates that the Council has then considered those, even if they were not in the UGB, seemed also to be an incorrect interpretation of the Council's policy. He said it might have been an interpretation of the word proximity. He referred to the Council's policy as it goes back to when CRAG/Metro was first set up. He referred to the land use element of the CRAG regional Plan under the Metropolitan Service District. This was also dated and revised in December of 1977 and November of 1978. He wanted to remind the council that it says, "All areas within urban growth boundaries on the regional land use framework map are urban areas." Urban areas included land forecasted to meet urban population needs for a minimum of 20 years. It was intended that most population and employment growth in the region would occur within urban areas. The presumption was that it was urban land. The Council couldn't, in effect, have it both ways because if the Council carried that concept they use land inside the urban growth boundary to its logical conclusion, the Council could defeat every piece that was inside the UGB. He also said that while there was discussion that you had to meet all or none of it, he would go back to the controlling language. Metro Code Section 3.01.035 provided that a locational adjustment shall result in a net improvement in efficiency goes on. The word net was a balancing act. It was a balancing word. It was not saying that you had to meet every one of these elements. It was a net balancing act.

There were a couple of other things that he had to point out. There were a couple of presentations made that he didn't believe were supported by the record. Those were the representations made in some of Mr. Epstein's statements. Specifically, it said that the UGB did not otherwise facilitate needed development on existing urban land. The petition did not specifically argue the issue and Council did not discuss it. Therefore, changes of finding did not need to be made. He said he did argue that the whole purpose was in effect a connectivity argument for all the utilities, all the roads, etc. To have said he didn't argue that was too much of a summary statement.

He also wanted to point out other areas of Mr. Epstein's memo where he disagreed. On page 8 it said, "There is no substantial evidence that including the subject property will necessarily enhance transportation efficiency." He said he thinks Mr. Epstein failed to recall that in the record was a letter from Washington County's Transportation Department that said it will increase the efficiency of the transportation system out there. Regarding the question about retention of agricultural land, Mr. Epstein seemed to focus only on one service issue, the sewer issue. Mr. Cox said it was services, and it went back to his connectivity argument. He said the last time he spoke to the Council he talked about a balancing act. The more that Mr. Epstein's original position has changed, the less weight it has been given. He believed that he dealt with all

the issues, and his client has established sufficiently that he has a right and the proper evidence to produce the proper findings to allow the land to be included as a locational adjustment.

Councilor Atherton asked if Mr. Cox said he (Mr. Cox) and his client have a right to a locational adjustment.

Mr. Cox said if he established that he had met the standards, he believed he had established the right to a locational adjustment.

Councilor Atherton asked if there was a right to a locational adjustment.

Mr. Cooper said in quasi-judicial proceedings, in general, where the Council has applied specific criteria to the facts, if they find that all of the evidence in the record showed that the applicant had met all of the criteria and there was no other evidence that was credible that would controvert it, then the Council must approve. If the Council failed to approve, they would be subject to being reversed on appeal and being directed to approve it. That was quasi-judicial in general. He said he thought it was fair to say there was controverted evidence. So the Council would get to pick and choose between what evidence they wanted to believe is most credible. He thought it was appropriate for Mr. Cox to advocate on behalf of his client that he had a right to it. He thought the Council was in a position, depending on which evidence they believed was most credible, to make a decision either way.

Councilor Atherton said because of this balancing act, this weighing, this does not imply a right.

Mr. Cooper said Metro had never had a case where the Council had turned down a locational adjustment and had been reversed on appeal, but there are land use cases where that had happened.

Motion: **Councilor McLain** moved for denial with different findings.

Seconded: No seconder of the motion.

Motion: **Councilor Atherton** moved to adopt Ordinance No. 99-816.

Seconded: **Councilor McLain** seconded the motion.

Councilor Atherton said he believed the Council had a full testimony of the hearings officer's arguments and they were adequate to support his recommendation to accept this ordinance.

Councilor Kvistad said that Mr. Cox had made a compelling case and should the motion fail he would offer another.

Councilor Park said he understood the motion to accept the ordinance as was originally presented.

Presiding Officer Monroe said it originally passed at one time and was reconsidered.

Councilor Park said one of the reasons he asked for reconsideration was because some of the findings that Mr. Epstein found were very confusing. For example, agricultural activities inside the UGB could be used to deny additional acreage coming in. Knowing what he knew about land use laws, and farming and right to farm laws and so forth, it didn't make any sense to him. He

couldn't accept that fact. The legislature had denied right to farm inside the UGB. He sited the part about gravity feed in terms of sewers. Probably the crowning issue for him was the similar situated land. He couldn't support the ordinance because of those particular issues. He said he did think that the county line made a difference. He mentioned Urban Reserve 5 last time and different tax issues in terms of other findings that the council had done. He said that there is a line there. He said he would vote no.

Councilor McLain said because the lack of second on her motion, and because of her inability to go against the hearing officer's report that was in front of the Council, she thought it followed to the T the criteria that Metro had in their code. She said it was unfortunate that she still had to do that because she believed that accepting this particular motion and the way it was formed would require Metro to go against it's own code to reach agreement with the individual coming forward.

She talked about areas on page 18 in the draft order where the hearings officer found the petition does not include all similarly situated property and that if it did the locational adjustment would exceed 20 acres contrary to MC3.01.035B. If as little as 26 feet on the land north of the subject site was similarly situated and therefore included in the petition, the petition would include more than 20 acres. She said she knows that Metro hasn't had over 100 acres of locational adjustment, but said this flied in the face of the Metro Code, which says Metro didn't want to inch out the boundary. That's why the Council put in the original similarly situated as an important criterion. She would be negligent in reviewing the Metro code if she accepted anything other than the motion that she was allowed on the floor. She wanted on the record that she believed that changes that the hearing officer made on sewer, public parks and open spaces, and the use of agriculture outside the urban growth boundary only, already accepted by the Council, would improve the document.

Motion to

Amend: **Councilor McLain** moved to amend Ordinance No. 99-816 to accept the additional language on page 5 on the sewer issue, on page 7 on the public parks and open spaces issue, and on page 15 on agricultural use inside versus outside the urban growth boundary.

Councilor Washington asked for a point of order. He requested that audience members either turn their cell phones off or leave the Council Chamber.

Councilor Atherton requested a further clarification to understand what the Council was trying to do. He asked that Councilor McLain reframe and clarify her amendment.

Seconded: **Councilor Atherton** agreed to a friendly amendment concerning the additional language on page 5 only.

Councilor McLain provided the clarity, one item of the amendment at a time.

Councilor Kvistad asked for a point of order. He said when dealing with an amendment, the amendment is taken in parts, but the amendment was made in total. He said discussion on the actual amendment itself was in order if it was to discuss the individual portions of it that were supposed to be made in the amendment making not in the acquiescence to the amendment.

Presiding Officer Monroe ruled the process of changing one item of the amendment at a time by friendly amendment was in order.

Councilor Atherton asked Mr. Cooper what the relevance was to trying to write code through a hearing process and adoption of findings.

Mr. Cooper said the courts had recognized that most, if not all, laws particularly local ordinances had some inherited ambiguities from time to time. When a body that had the power to write the rules interprets its own rules, the courts gave deference to those interpretations. The better practice was to hire more lawyers to write more precise language. But the Council has not followed his advice so they must interpret their own rules. Once the Council interprets the rules, if they find themselves interpreting something regularly, it is probably better to go back and clean it up and write it the way you had been interpreting it. That way the Council wouldn't find themselves in the same problem in the future. It was appropriate as the Council deemed necessary to have made those interpretations.

Councilor Atherton said he would vote no on the amendment.

Councilor McLain said she would go forward with the friendly amendment that was accepted. She would also put those two amendments back up for consideration independently if that was what the rest of the Council wanted.

Councilor Kvistad clarified that the ordinance before the Council was an existing ordinance. For it to be amended in any way required a vote for that amendment not a friendly amendment to an ordinance. It was already on the table.

Mr. Cooper said Councilor Atherton's motion was originally to adopt the ordinance that was there. He had now amended his motion so that his original motion was now a motion to adopt the original ordinance with the one modification indicated on page 5 of the hearings officer's memo. So that was now Councilor Atherton's motion.

Presiding Officer Monroe said the seconder agreed so the Council was in order on that motion.

Councilor Washington asked for a clarification about what constituted a yes vote and a no vote.

Presiding Officer Monroe said a yes vote meant the Council accepted Mr. Epstein's original denial with one change and the reasoning. A no meant the Council rejected Mr. Epstein's original denial and other motions were in order. A yes denied the locational adjustment. A no kept all options open on the table.

Councilor Atherton said this was the inappropriate venue for amending the Metro code and making serious policy considerations. The net effect was it still did not meet the locational adjustment criteria. He recommended a yes vote to deny the application and accept the ordinance.

Vote: The vote was 2 aye/ 5 nay/ 0 abstain. The motion failed with Councilor McLain and Atherton voting aye.

Motion: **Councilor Kvistad** moved to direct the Office of General Counsel to develop an ordinance and an order to approve the locational adjustment application.

Seconded: **Councilor Bragdon** seconded the motion.

Councilor McLain talked about similarly situated land. The passage of the motion was in direct disagreement with the Metro code and the arguments in Mr. Epstein's memo were not compelling. They were talking in 3.3 about a boundary feature not a locational adjustment. These were original boundaries that they talked about. The location adjustment asked the Council to remember two things that the motion couldn't prove. They were on net improvement inside the urban growth boundary and similarly situated land that they could show a difference in the dirt. Just because one said Multnomah County on one side on an official map and one side said Washington County. She said that flew in the face of Metro's code. The similarly situated land issue was extremely important, especially to the agricultural protection. It was extremely important especially to the reasons that had been listed on elevation, slope and soils based on the SCS classifications. Mr. Cooper may have been put in a situation of demonstrating that within 26 feet where it is not similarly situated. She said Mr. Copper probably wouldn't be able to do that. She asked if metro didn't take these issues into consideration because the region had a sewer company, USA, that served more than one jurisdiction and that those county lines meant nothing. She said her vote in this particular situation was to accept the reasonable interpretation of the Metro code.

Councilor Park . . . very difficult to weigh, in some ways, easy in others. Councilor Atherton's motion to repeat last time's ordinance did not solve anything. He said last time he requested a reconsideration because the Council was not sending clear signals as to its criteria for allowing certain things to happen. He thanked Mr. Epstein for the good job on the rewrite, and said he appreciated the extra effort to help the new Councilors. He said the hard part was the fact that the Council could only take the evidence that was presented to it, and future actions or intentions could not be considered. If the land adjacent to the property in question was not inside the UGB, then he would have to favor the denial. However, the adjacent land was currently inside the UGB, the county line did exist, and legally he could not take into consideration the next-door land owner's intent to remove his land from the UGB, under recently passed law. Therefore, he had to vote in favor of Councilor Kvistad's motion.

Presiding Officer Monroe said he need to ask Mr. Cooper one clarifying question because he was not sure how to vote on the motion. He said he thought Mr. Cooper had said that if the Council found that even one of the points made by Mr. Epstein was valid, that the Council should vote to deny.

Mr. Cooper clarified that the criteria set forth all had to be satisfied, but many of the criteria were written as cumulations of particular factors, and so the ultimate criteria was, would the new boundary created by approval superior to the existing urban growth boundary? So if the Council found that one of the criteria that was an "and" was unsatisfied, then the Council should vote for denial. But each of the sub-criteria did not have to be specifically satisfied because they cumulate and they end up with balancing and net improvement. As Mr. Cox said, the question was, was there a net improvement in the efficiency of the urban growth boundary? He said if the Council was concerned about a specific criteria, Mr. Epstein could probably say in which category the criteria fit.

Presiding Officer Monroe said the most compelling issue for him was adjacent land being of like type, and whether or not the fact that it was in another county made it different in some way, when even an earthworm crossing that line would not know the difference. He said he found that compelling, and he would vote against the motion.

Councilor Kvistad said if that earthworm paid property taxes, there was a big difference. He said he found the applicant's case to be made, he found it compelling, and he felt the new

boundary line would be superior and would make a good adjustment for the urban growth boundary. He recommended an aye vote.

Vote: The vote was 3 aye/ 4 nay/ 0 abstain. The motion failed with Councilors Bragdon, Kvistad and Park voting aye.

Motion : **Councilor Kvistad** moved to table the ordinance to next week.

Seconded: **Councilor Park** seconded the motion.

Vote: The vote was 3 aye/ 4 nay/ 0 abstain. The motion failed with Councilors Kvistad, Washington and Park voting aye.

Presiding Officer Monroe called for a five-minute recess.

Motion: **Councilor Washington** moved to reconsider the vote by which Councilor Kvistad's motion failed.

Second: **Councilor Kvistad** seconded the motion.

Vote: The vote was 4 aye/ 3 nay/ 0 abstain. The motion passed with Councilors McLain, Atherton, and Monroe voting nay.

Presiding Officer Monroe called for further discussion of Councilor Kvistad's motion. There was none. Presiding Officer Monroe asked Councilor Kvistad to close.

Councilor Kvistad recommended an aye vote.

Vote: The vote was 4 aye/ 3 nay/ 0 abstain. The motion passed with Councilors McLain, Atherton, and Monroe voting nay.

Mr. Cooper said once he had a document prepared, he would furnish the Council with a copy so that notice may be given to everybody. He said it would come back to the Council for further opportunity for public comment and comment by the applicant, and then it will come before the Council for final action.

10. RESOLUTIONS

10.2 **Resolution No. 99-2857**, For the Purpose of Granting a time Extension for Compliance with Titles 1, 2, 4 and 6 of the Urban Growth Management Functional Plan for the City of Sherwood and Requiring Action to Assure Coordination among the Comprehensive Plans of the Cities of Sherwood, Tualatin, Tigard, Beaverton, and Washington County Concerning Title 4 of the Functional Plan.

Councilor McLain asked Presiding Officer Monroe to move Resolution No. 99-2857 to the Growth Management Committee.

Presiding Officer Monroe moved Resolution No. 99-2857 to the Growth Management Committee.

11. COUNCILOR COMMUNICATION

There were none.

12. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 5:40 p.m.

Prepared by,

Chris Billington
 Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
102899c-01	10/28/99	Metro Council Session – Oct. 28, 1999: Thank you to Bob Traverso for 130-acre land donation		Openspaces Acquisition Acknowledgment
102899c-02	10/14/99	Minutes of the Metro Council Meeting, October 14, 1999	TO Metro Council / FROM Chris Billington	Consent Agenda
102899c-03	10/21/99	Minutes of the Metro Council Meeting, October 21, 1999	TO Metro Council / FROM Chris Billington	
102899c-04	10/28/99	Resolution No. 99-2843: Portland area Conformity Determination	TO Metro Council / FROM Andrew Cotugno, Transportation Director	Resolution No. 99-2843
102899c-05	10/28/99	South/North Light Rail Project, Resolution No. 99-2853A: Opening Remarks, Metro Council LUFO Hearing	TO Metro Council / FROM Councilor Washington	Resolution No. 99-2853A
102899c-06	10/1/99	Interstate MAX Advisory Committee Final Report, October 1999	TO Tri-Met / FROM Interstate MAX Advisory Committee	
102899c-07 (attached to item 102899c-06)	10/25/99	Regional funding for Interstate MAX	TO Tri-Met Board of Directors and	

102899c-08 (attached to item 102899c-06)	10/26/99	Interstate MAX/Expo Stations (attached to item 102899c-06)	Metro Council / FROM Wayne E. Conzad, II, President, Swan Island Business Association (SIBA) TO Councilor Kvistad / FROM George Passadore, President, Tri- Met Board of Directors, and Fred Hansen, General Manager, Tri- Met	
102899c-09 (attached to item 102899c-06)	10/28/99	Testimony at Portland hearing on "North" light rail.	TO Metro Council / FROM Art Lewellan	
102899c-10 (attached to item 102899c-06)	10/28/99	Written testimony from Peter Teneau, 2715 N Terry, Portland, OR 97217	TO Metro Council / FROM Peter Teneau, 2715 N Terry, Portland, OR 97217	
102899c-11	10/28/99	South-North Land Use Criteria		
102899c-12	10/19/99	Exhibit C: Proposed Findings of Fact and Conclusions of Law, South/North LRT Land Use Final Order Amendment, Interstate MAX		
102899c-13	10/28/99	News Release: Metro Council Oks Interstate Max Line	FROM Beth Anne Steele, Council Public Outreach Coordinator	
102899c-14	10/28/99	Amendment #3	TO Metro Council / FROM Councilor Kvistad	Ordinances Nos. 99-825A, 99-824A, 99- 823A
102899c-15	10/22/99	Financial Projections for Amended "Dakota" Ordinance	TO Metro Councilors / FROM Terry Peterson, Interim Director, Regional	

102899c-16	10/28/99	Metro Council Hearings – Solid Waste revenue issues	Environmental Management TO Metro Council / FROM Jerry Rust, St. Vincent de Paul of Lane County
102899c-17	10/28/99	Resolution No. 99-2857	Resolution No. 99-2857
102899c-18	10/28/99	Resolution No. 99-2863	
102899c-19	1/1/79	CRAG Urban Growth Boundary Findings Supplement (To the December 28, 1978 Submission), Submitted Under the Auspices of the Metropolitan Service District	FROM Metropolitan Service District