

# MINUTES OF THE METRO COUNCIL MEETING

January 16, 1997

Council Chamber

Councilors Present: Jon Kvistad (Presiding Officer), Lisa Naito, Don Morissette, Susan McLain, Ruth McFarland, Patricia McCaig, Ed Washington

Councilors Absent: None.

Presiding Officer Jon Kvistad called the meeting to order at 2:08 p.m.

## 1. INTRODUCTIONS

None.

## 2. CITIZEN COMMUNICATIONS

None.

## 3. EXECUTIVE OFFICER COMMUNICATIONS

**Executive Officer Mike Burton** briefed the Council on the Urban Services Boundary ordinance and resolution that would be before Council on January 23, 1997. He planned to include a detailed presentation at that meeting. At this meeting he reviewed what the process that the Council would be going through. Next week's meeting would be the final decision on determining the Urban Services Boundary in a dispute that had been going on for almost 12 years between the City of Beaverton and the City of Portland over an unincorporated area that lie between the two cities. Two things brought this dispute to this point, one was the filing of law suits that went to the Oregon Supreme Court. The Supreme Court said that where there were conflicts between comprehensive plans within the Metro boundary area, the resolution of those conflicts would be determined by the Metro Council. Secondly, the State passed Senate Bill 122 which required that the counties have an orderly withdrawal from providing those services in areas that were urbanizing. Washington County was going through that process in their 2000 plan, indicating that in the area of dispute they would be withdrawing the urban services from that area and that those services should be provided by other government cities or special districts.

A year ago, Mr. Burton convened meetings with Portland, Beaverton and special districts that service that area including Tualatin Valley Parks and Recreation, Fire Department, the United Service Agency, Sewer Agency and others to try and see if the conflict could be resolved. The result of that was the narrowing of a geographic line on the Urban Services Boundary. He reiterated that this was not an annexation issue. What had happened in the past when an Urban Services Boundary was determined, that became the line at which an annexation usually occurred. That would not be the action being taken by the Council if they should act on this recommendation. Mr. Burton recommended that the proposed Urban Services Boundary be drawn. That same recommendation had been before City Councils of both Beaverton and Portland and they had approved that recommendation. The cities would be coming before the Council agreeing that this would be where the Urban Services Boundary should lie. He noted the map in the Council Office indicating those areas he was referring to. He added that not everyone agreed to this line even though the jurisdictions agreed, there would be testimony next week from people with views different than the jurisdictions' views.

The final analysis of that line was drawn where Mr. Burton thought that Metro could best provide a line of differentiation for services and where Metro would not interfere with existing deed restrictions that might have

existed at the time that there were plots or properties developed. The decision that the Council would be asked to make would be to make a decision as to where that boundary line should be and that was defined in the proposal. He reiterated that the jurisdictions had agreed to that line. If Council supported the proposal, it would allow those jurisdictions to go forward, for the county to pull out of those urban services areas and for the City of Beaverton and the special districts in Washington County that services those areas and the City of Portland to know exactly where they were supposed to be planning who delivered services where. This would allow an issue that had been going on for twelve years to be resolved. He added that he would be happy to provide a tour of the area for any of the Council who would like this.

**Councilor Morissette** indicated he would not be at the January 23, 1997 meeting but he would make himself available if he was needed.

**Presiding Officer Kvistad** said that a written request from Councilor Morissette indicating his wish to vote on this issue would allow coordination of a vote by phone.

**Councilor Morissette** said if it were a three/three vote, he would coordinate with Mr. Stone to make sure he was available to vote by phone. He indicated that he had a gentleman come in to talk with him about this issue, he asked Mr. Cooper what the appropriate way to disclaim this was. He indicated that this man was lobbying for having the boundary in a different location than the current proposal.

**Mr. Dan Cooper**, Metro Legal Counsel, said that the matter before Council was not a quasi-judicial matter but rather a legislative matter. The x-party contact limitation that Councilor Morissette expressed concern about did not apply here. However, out of caution, it would not be inappropriate for any of the Councilors who wanted to put in the record that they had had some information from individuals to do so at the next Council meeting.

**Councilor Morissette** reiterated that he would not be at next week's Council meeting and he would provide to Counsel the name of the individual who talked to him.

**Presiding Officer Kvistad** read a memo into the record about the process (as attached in the Permanent Record). "As many of you know, no formal action was taken by the Growth Management Committee on Ordinance No. 96-665 or Resolution No. 96-2426. I am announcing that the Ordinance and Resolution will be on next week's Council agenda for consideration. A background memo is created by Michael Morrissey and Jeff Stone regarding the Urban Services Boundary issue and you should find the memo in your box."

**Mr. Burton** said he would keep the Council informed about the Elephants. The Elephants could not sit down thereby creating foot problems. He said that it had been a matter of concern at the Zoo for some time.

**Councilor McFarland** said that the Elephant problem was ongoing. In fact one elephant had already been lost to this problem. No one had found the solution yet.

#### **4. TRAFFIC RELIEF OPTIONS STUDY UPDATE**

**Bridget Wieghart, Program Supervisor for the Traffic Relief Options Study**, updated Council about this ongoing two year study, which commenced in July 1996 examining whether or not congestion pricing or peak period pricing or variable pricing would be something that would be advisable to undertake within the region. At the end of the two year study, it would be a determination by the Council and Oregon Transportation Commission as to whether or not to pursue a demonstration project to further evaluate this traffic management tool. The study was funded under a federal grant program as part of the ISTEA program and it had been approved by Council and JPACT to undertake the study, the contracting process and the task force. The study was guided by a 15 member independent task force. She noted the fact sheet and newsletter that the Council

had received (a copy of these may be found in the Permanent Record of the Council) which had the names of the Task Force members.

In terms of the status of the study, they had identified the different types of congestion pricing to be evaluated as part of the study. They had looked at a number of projects on the ground and also studies going on throughout the country to learn from those activities. They had looked at a recent project in California, SR 91, which had been open for a year. It was a four lane toll road which was constructed in the medium of the existing congested highway with private revenues based on the projected toll. It was variably priced which made it congestion pricing. The peak period was priced higher than the off peak. It had produced some interesting results. Because travelers on the road had a choice, it had been pretty well accepted within that region (Riverside, California). It had also attracted a broader array of customers than originally anticipated. About 50% of the commuters on that route had purchased the electronic transponder which allowed the commuter to go on the roadway. It was not a traditional tolling system. It was an electronic tolling system.

The study had also undertaken focus groups and targeted workshops with a variety of interest groups in the region as well as stake holder interviews to establish baseline public opinion and to get some feedback on what had been done so far. Most recently the study group had tried to match up the types of congestion pricing that they were looking at with congested locations throughout the region to see whether they could come up with a group for further evaluation. They had also established proposed evaluation criteria. The types of congestion pricing were as follows (she noted the maps in the Council packet, a copy of which may be found in the Permanent Record of the Council):

- 1) Spot pricing, tolling either electronic or manual, identified the characteristics that would make this type of pricing appropriate for a particular location to see if it would work within the region. In terms of the spot facility, a location that was a choke point was needed.
- 2) Partial facility, similar to the SR 91 example, where you took one or two lanes of an existing highway and priced those higher at the peak and lower at the off peak. That option was only suitable if there were three lanes in each direction on the existing highway. The study group was looking at facilities as they were and also with proposed capacity improvements in the Regional Transportation Plan. The region had very few three lane facilities in each direction.
- 3) Whole facility option, this managed more of the traffic. The drawbacks were if there were parallel routes, one could have spill over onto those routes. It was really most appropriate if there were not a lot of good parallel arterials. The group had identified some of these areas in the region.
- 4) Corridor option would be a situation where there was congestion on the highway but the highway had some arterials parallel to it, one would look at pricing the highway as well as the parallel arterials. This would be the most comprehensive approach but more expensive and more intrusive.
- 5) Area pricing was similar to what had been undertaken in Singapore and Trondheim Norway where a congested downtown area was taken and priced it through parking pricing which varied by time of day or through some kind of cord or licensing system which would charge a higher fee at peak periods for people who went into that area. Because this option was more complex and there were a lot more questions, the group was doing further literature review and talking with some potential congested areas in the region to see what types of pricing incentive they may already be undertaking such as parking pricing and whether or not this might fit. The group would come back with specific proposals for areas if they wished to study them further.

At this point the Council had in their packet a detailed outline of how the group had matched congested locations with these different types of options. This was for their preliminary field, the group would review these further over the next months, come up with 10 specific alternatives, bring these back to JPACT, Metro Council, and to public open houses. That would be the real basis for the study. She asked for the input of the Council if areas were left out.

She reviewed the proposed evaluation criteria to be used throughout the study at each stage. These criteria would help the group identify ten alternatives for review in the spring. Over the summer, the group would do further review and try to evaluate and condense these down to three to five options for concept design. She noted the two page overview (as included in the Permanent Record). She identified these criteria: implementation issues (legal), technology, revenue use, performance of the transportation system (basic cost benefit), how much time was being saved in aggregate versus the cost on the system, compatibility with land use and transportation plans, did it support 2040 and the Regional Transportation Plan, societal effects - essentially focusing on air quality and neighborhood infiltration or benefits from the pricing system, equity - the distribution of benefits, positive cost benefit and aggregate but were certain groups being hurt or helped disproportionately, political feasibility and public acceptance. The detailed findings of the both the location and types were contained in working paper 3 and the evaluation criteria in working paper 4 (contained in the Permanent Record of this meeting found in the Council Office).

## 5. CONSENT AGENDA

5.1 Consideration of the Minutes for the January 7 and 9, 1997 Metro Council Meetings.

**Motion:** **Councilor McFarland** moved approval of the January 7 and 9, 1997 Council Meeting minutes.

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

**Discussion:** **Councilor McFarland** noted that when she referred to Mr. Hall in the January 9, 1997 minutes, the word she used was conscientious not contentious.

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

## 6. ORDINANCES - FIRST READING

6.1 **Ordinance No. 97-677**, For the Purpose of Amending the Metro Code Chapters 2.04 and 6.01 and Declaring an Emergency.

**Presiding Officer Kvistad** assigned Ordinance No. 97-677 to the Regional Facilities Committee.

**Councilor McFarland** announced that because next Monday was Martin Luther King Day, the Regional Facilities Committee meeting had been moved to Tuesday at 10:30 a.m.

## 7. RESOLUTIONS

7.1 **Resolution No. 96-2434A**, For the Purpose of Approving Change Order No. 7 to the Waste Disposal Services Contract.

**Motion:** **Councilor McFarland** moved for the approval of Resolution No. 96-2434A.

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

**Discussion:** **Councilor McFarland** said that this resolution had been heard several times both in REM and Finance Committees and in Council. She asked Mr. Burton, the Executive Officer as well as the leader of the negotiation team, to come forward and to give an overview. She had said in December that it

would cost Metro \$85,000 to wait until January for a vote, however, it actually cost \$150,000 if indeed the resolution was adopted at this meeting. The passage of Change Order No. 7 would save the region \$37 million over the next 13 years. This contract could not be negotiated with someone else but the people with whom Metro had the contract. She believed that Metro had been treated very fairly and that these amendments would be useful to Metro and would serve Metro's rate payers well. She appreciated the evidence of good corporate neighbors because of the changes that were useful to Metro and to the rate payers.

**Executive Officer Mike Burton** reviewed the resolution and thanked Councilor McFarland for the work she had done to bring this resolution to this point. When he took office two years ago, at that time he said the rates being paid were way above market. He sat down with the principles of Oregon Waste and asked to talk about Metro's rates. He was reminded by them that this was a business arrangement that this company had with Metro. It was a contract entered into in 1989 to dispose of the region's waste. In trying to reach accommodation, this resolution was an opportunity to save \$37 million for the region over the remaining life of the contract. Could he have brought a contract to Council that would save more money? He said no he could not have. This did not mean that he may not come back to Council later with additional savings. The contract before Council today was what Metro was able to deal with. He noted the questions that had come up about comparability to rates in other cities such as Seattle, Salt Lake City, Los Angeles. He did not believe this was the question, the question was what could Metro get for savings here that were as close to what the market may be, given the environment they were in. He believed that Metro had reached something which reflected very closely what the market would be. Another question was, was there an effect on recycling? He reminded the Council that Metro was into recycling because it was what the State required of Metro and because it was a good thing to do. State statute required a recycling goal, Metro's own Regional Management Waste Plan required efforts to reach those goals, the Council had set a goal for recycling and there was no deterrents from that. Metro would certainly press on every opportunity to reduce waste, to reuse waste and to recycling waste. He did not believe that this contract would effect that rate. What had been brought to Council was the best deal he could bring under the circumstances. He would continue to try to pursue the best business opportunities to reduce rates to regional customers. Some comments had been made about if there was a rate reduction, would these rate reductions be passed on to consumers? He noted that the Council did not set the consumer rates, it was the cities that did this. He encouraged the Council to ask for resolutions from those cities that those rate reductions be passed on to consumers.

**Councilor McFarland** said that if people wanted to hear a more detailed description she believed that Mr. Burton's staff would be ready to provide this.

**Councilor Naito** asked if Metro as an agency had an official position in the lawsuit over Amendment 4?

**Mr. Dan Cooper** responded that Metro, at the request of the Executive Officer, had filed an answer and motions in the lawsuit. Metro's position that was filed was that Metro thought that the lawsuit should be dismissed and that Amendment 4 should be upheld. His office took that action at the request of the Executive Officer. The Council had not taken a formal action either way, so in the silence of the Council, there was no question in his own mind that the Executive Officer had the authority to ask him to take this action in the lawsuit.

**Presiding Officer Kvistad** asked Mr. Burton if he had given notice to the Council in writing about this negotiation when it began?

**Mr. Burton** said he did not believe he had, he had notified the Chair of the Solid Waste Committee, Ruth McFarland. She and he had proceeded with a lot of discussion before formal negotiations occurred. He was uncertain what the Presiding Officer meant by negotiations.

**Presiding Officer Kvistad** summarized that there was no notice to the whole Council but Mr. Burton had had discussion between himself and individual councilors. He asked Mr. Burton how were the members of the Council selected to deal with those negotiations. Were they simply asked?

**Mr. Burton** responded that as the Executive Director he took the negotiations. He believed, under the Charter, this was his authority to do, to administer those contracts in place and that was the action that he took. He gave notification to the Chair of the Committee responsible for this area, that he was going to have those discussions.

**Presiding Officer Kvistad** asked at any time prior to notifying Metro's attorney to take a position on the pending lawsuit, did he notify the Council?

**Mr. Burton** answered that the lawsuit was filed against Metro and had to be responded to. He believed that the Council members received notification of the lawsuit at that same time as he had.

**Presiding Officer Kvistad** asked Mr. Burton if it would not have been helpful to have a discussion as to whether or not the Council wanted to take a position, and if so, that we did take a position with the seven members of the policy body of this agency?

**Mr. Burton** said that he would assume that the leader of this policy body would have brought that up before Council and asked them to take a position.

**Presiding Officer Kvistad** indicated that it would have been possible for him to have done that but prior to notification that Metro had taken a position, he chose not to.

**Mr. Burton** said that he believed that in the Charter he had that authority.

**Presiding Officer Kvistad** indicated that there may be some disagreement about that interpretation of authority.

**Mr. Burton** asked if that was germane to the matter before Council?

**Presiding Officer Kvistad** said that it was germane because it tied in. Change Order No. 7 stated that Metro gave up their right to Contract Amendment 4. It also stated that Metro had to take a position if any lawsuit were to come forward in favor of Waste Management or WMMX. He believed that was specifically germane to the issue. Metro would have to join a lawsuit and defend them on this item. It was directly germane.

**Councilor McFarland** said that when Mr. Burton said that she and he talked about these issues and as Chair of the Regional Environmental Management Committee she did, there was another person that was in on these negotiations from perhaps the very beginning and that was the Chair of the Finance Committee, Councilor Rod Monroe. She noted that she did unofficially poll the Council and found that there were four people in agreement with taking this action. She didn't realize she should poll the Council formally. If she should have, she was terribly sorry.

**Presiding Officer Kvistad** indicated that he had some very strong opinions on this issue.

**Councilor McLain** believed that the Executive Officer and the Chair of REM believed that they were carrying their responsibility out in a reasonable fashion. She did ask Mr. Cooper as an individual member of this Council if there were going to be any change of status with the lawsuit that she wanted notification personally. She did not received that notice. She had talked with both of the lawyers about this and she thought that in their mind they did not feel that it was necessary because the Executive asked them to, as far as the motion to dismiss.

She did not believe she would get notification the next time this occurred, but she was not notified this time. She added that it was a member of the industry that gave it to her and it was rather embarrassing not to have seen it prior.

**Councilor McCaig** said she was ready to vote on Amendment 7 or go to the public hearing?

**Presiding Officer Kvistad** said that the Council would be moving to the public hearing as soon as the Council was done with Mr. Burton and the Council had had general discussion about any technical matters.

**Mr. Burton** commented that was to remind the Council to follow the dollar both ways because there were some dollars at stake and one of the other comments that he had heard was that this large Waste Management company was running over the tops of other companies. In this region, Metro had the largest waste management companies in the world. He asked the Council to remember that this was not mom and pop versus the giant.

**Presiding Officer Kvistad** called for any general discussion and technical questions.

**Ms. Alexis Dow, Metro Auditor**, commented on the report that the auditor's office did addressing the issues surrounding Amendment No. 7. Her report was distributed to the Council on January 15, 1997 addressing the issues in an objective fashion. (A copy of this report may be found in the Permanent Record of the Council Office) She reiterated that the first conclusion that came out of that objective review was that the adoption of amendment 7 would provide substantial savings to Metro, the \$37 million. Also, Metro would continue to pay above market rates for waste disposal, yes it was a deal but Metro would still be above market. Metro did have an existing contract with Waste Management and apparently this was the best deal they could negotiate. The savings could be passed on to the rate payers and if adopted such action should be initiated. The auditor also found that recycling may or may not be effected by the reduction of the reduced tip fees. She believed that its effects could be mitigated if the tip fees were kept within 10% of the current rates and were based on averages rather than the incrementally reduced tiers under amendment 7. Lastly, with respect to competition and potential monopoly in the effects, the important thing to keep in mind was the effect it would have on Metro rather than on others.

**Presiding Officer Kvistad** opened a public hearing at 2:50 p.m.

**Ms. Susan Keil, Business Service Manager for the Bureau of Environmental Services, City of Portland**, said that she was at this meeting on behalf of City Council to reaffirm their strong interest in having the Council pass the savings that would come from any change that was made on to the municipalities. They were committed to passing those on to their rate payers whether it be in terms of a real rate reduction or in terms of an absorption of costs but the rate payer would get the benefit of any savings Metro passed on. The rate payers told the City consistently that they liked the garbage and recycling service but they preferred that it cost less. Secondly, the City did not believe that a reduction, even if it were the full pass through of the savings that might be possible under this change, would adversely effect recycling either for commercial or residential customers. The amount was not large enough in light of a \$75 tipping fee to have that kind of an impact.

**Councilor McFarland** said she and Ms. Keil had worked together for the last three years. She had tried before to lower the tipping fee rate. She believed that she could speak for herself as well as the present Chair of the REM Committee, Councilor Morissette, that a resolution would be brought before the Council that would lower the tipping fee particularly if this resolution passed. She anticipated that this could happen so it would be up to the Council as to what was done.

**David Erickson, Metro Watch**, a group of concerned citizens, were concerned that Metro citizens had been paying 28% higher than any other city in the entire western United States for garbage rates. He asked the

Council, if the law suit regarding amendment 4 was successful, how much money would Waste Management owe Metro and how did that number compare to the \$37 million in savings proposed by Waste Management in the settlement negotiations? Secondly, had the Council been considering the ramifications of awarding a monopoly such as this to one vendor? Had this been something that had been discussed? Obviously the rate payer would not be getting the full benefit of the competitive environment that everyone else in the business world had to deal with.

**Presiding Officer Kvistad** asked if Mr. Erickson wished to hear a response.

**Mr. Erickson** said he would be happy to hear a response today if possible.

**Councilor McFarland** responded to Mr. Erickson's first question, it was that Waste Management wouldn't owe Metro any money, in deed, she believed that Metro would owe them a considerable amount. She asked Mr. Warner if she was correct?

**Mr. Warner** responded, it was likely.

**Ms. Diana Godwin, attorney in private practice representing the Regional Disposal Company.** The Vice President of that company, Jim Frank, asked her to delivery remarks. Regional Disposal Company had brought forth information to assist Metro Councilors and staff in determining what rate Seattle was paying for disposal services only. Their company would have liked to have Metro retain the most favored rate agreement, they were a major competitor with Waste Management. The existence of the most favored rate had assisted competition in the region and had assisted the company in being very competitive in the region. Regional Disposal Company understood the position that the Council was in and had been in for some time. There was litigation pending concerning Contract Amendment No. 4, that was very stressful. They understood that Metro wanted to resolve that uncertainty. Metro signed a contract in 1988 that contained a disposal rate that today was significantly higher than market, there was not much dispute about that, however, while Metro must live with that contract, at the same time Regional Disposal Company understood that Metro wanted to achieve any available savings for the rate payers. Contract Amendment No. 7 offered the opportunity to the Metro to accomplish those major objectives. It accomplished the major objective of settling contract Amendment No. 4 litigation, it accomplished the objective of obtaining \$37 million in savings for Metro that they presently did not have. Many would argue that there were potentially greater savings than that. Metro wanted rate relief for rate payers and also to settle the other legal issues that hadn't been discussed too much but they knew that there were other pending problems that Contract Amendment No. 7 would settle. Given that, she understood why the Council wanted to move forward at this meeting. In the past her company and she had suggested delaying and getting some outside help. Her company understood that was not necessarily what was going to happen so what she wanted to do was to talk about the fact that Metro could accomplish their major objectives by adopting the amendment. Her company was very concerned that before that resolution was adopted that the Council amend it to eliminate the tiered rate structure that appeared in paragraph B1 of that contract. She understood that Metro staff and Oregon Waste Systems had agreed that \$24.35 per ton approximated the disposal component only of the new Seattle contract. Regional Disposal Company urged the Council to eliminate the tiered rate, Metro needed to look to itself and the interest of its rate payers, however, it was in the best interest of Metro and its rate payers to be sure that Metro had continued competition in the region. The fact of competition in the Pacific Northwest was what had enabled and brought some pressure to bear to help make the negotiations successful. If the Council adopted the tiered rate it would result in one company getting 100% of the disposable municipal solid waste in this region. Presently 10% had been held out. If that went up for bid there would be no way that her client could come in and hope to bid against \$7.50 a ton. Her company was the largest landfill in the country in terms of annual tonnage. They could not bid at \$7.50 a ton for disposal. She did not believe other landfills could either. Metro would not have the benefit of any competition in this region. Her company would disappear from the Metro market and the situation that existed in 1988 of not having competition available would occur again with the tier rate. She believed that the tiered rate would



destroy the competitive marketplace in the Metro region. She said others would talk to the Council about their concerns about the inherent conflict with the tiered rate with the tonnage at \$7.50 per ton, what that would do to incentives to recycle where it cost more than that to recycle per ton.

**Mr. Duane Woods, Counsel for USA Waste Services Inc.** said that there had been much discussion about this proposed change order (a written memo of his comments to the Council may be found in the Permanent Record found in the Council Office). Was this the best deal? Was it as good as Seattle's deal from Waste Management? Was it as good as the Pierce County proposal? In his company's opinion, the answer was no. On the other hand, as a company that had invested a significant amount of expense, opposing what happened with Amendment Four and hoping that there would be a day where Metro got a better deal, they supported the view that Metro had something significantly better than what they had two and a half years ago. They also believed that the Executive and the Council wanted the best rate. He believed that there had been good faith on everyone's part to get a better deal for the rate payers. But cost was not the only issue, several members had pointed out that that was not really the issue here today. If the Council decided that this was the best deal economically that Metro could cut, his company could live with that. The structure of this proposal caused his company grave concerns and should cause rate payers, others and the Council some concerns as well. It was self evident that when Waste Management was negotiating its business deal with Metro it had three clear objectives, one was to eliminate the risk that Amendment Four would be invalidated, in fact, it would be back under the most favored rate agreement, second, they would like to reduce the amount of dry waste that Metro was diverting out of the Metro system that was not going to the Waste Management facility at Columbia Ridge, for example, effecting the RFP on the transfer station and that waste that went to River Bend Landfill. In addition, he believed that Waste Management wanted to minimize the cost of giving Metro reductions by trying to get larger waste volumes. The first objective of getting rid of the risk was achieved by correcting the procedural defect when Amendment Four was signed by the former Executive. The second and third objectives were achieved by the structure of the deal, by the way it dropped 63% at 550,000 ton to \$10 per ton. In none of Metro's analysis or staff analysis did his company think that Metro would ever get to 550,000 tons. In fact, they were projected to be at 647,000 tons and this year they were over 700,000 tons. He asked why was there an adjustment at that level, 63% down, was it based on the cost savings and operating the landfill? Not a chance. It didn't drop 63%. There were no drops like this in any contract he had seen nationally nor on the west coast. Seattle's rate provided for a drop if they hit over 450,000 tons around \$3 to \$4. His company had many contracts that scaled down if they got additional volumes, \$.50 to \$1.50, not \$17.00. Why did it do that? If it were the intent of staff or Metro in all of these competitive bids for the additional waste stream to look at that contract tiered rate and call that the marginal cost, then of course none of them were ever going to be able to compete for that waste stream. How could his company compete if Metro was going to tell his company that they had to compete against \$8.00 per ton because that was what the contract said. In reality, they knew that Metro was paying more than that. If you averaged out the total tonnage against what Metro paid in total for disposal, the staff had indicated Metro paid about \$25.00 per ton. What he was saying was that there was benefit to that competition. There was a significant benefit to the community, to having an extra facility available that could take waste streams, in terms of a lower cost and competition for that dry waste stream. This structure went directly against that. It was directly against Metro policy of encouraging a healthy disposal sector, competition. One couldn't help but wonder what it did to recycling. One could say that the Metro fee was not going to adjust so it wouldn't effect it but on the commercial side of this industry, which was very deregulated for dry waste, why wouldn't Waste Management be able to offer \$7.50 a ton. It did not conflict with this contract to do that once they were over 550,000 tons. His company couldn't compete against that kind of a level. In fact because it was front loaded at \$27, Metro had already paid for it. It was easy to offer that rate. There was no rationale for that kind of structure, there was no cost based rationale for dropping 63% at 550,000 tons. It was his company's hope that this Council, if they chose to approve this deal, would look at the actual rate that Metro was actually paying based on the total expense Metro was paying during any year and use that rate, the fixed rate or the blended rate. In any competition for other waste streams, don't stop the attempts to competitively bid diversion of waste that was either not going there or did not have to go there.

Make people compete for that waste. Keep the disposal sector healthy. It was better for the rate payer, better for Metro. It should not effect this deal.

**Mr. David White, Regional Representative of the Oregon Refuse and Recycling Association and the Chair of the Tri-County Council**, a group of garbage haulers representing the tri-county area. His council had discussed Change Order No. 7 and several issues came up for them. Mr. White was asked to put them in the record. These issues had to do with their request that any savings be passed along to their customers. He noted that Mr. Burton said that that was a local government issue but what caused the concern for his group was a letter from Mr. Warner addressed to a number people that said, "it was our expectation that these savings will be passed along as lower tip fees". That idea of an expectation, he understood that Mr. Warner couldn't make a policy statement, that they would be passed along but he thought their fears were allayed to some degree because of what they had heard discussed today. It was a concern of the association and the Tri-County Council. As discussed at the previous SWAK meeting, even if those tipping fees were lowered and passed along at the garbage can, that might only be \$.30, but the fact was that Portland's plastics program was considered to cost a \$.25 and actually cost less. That could actually be a recycling program that could be implemented in the future based on that type of a savings. Next, they were concerned about the impact on recycling and dependent upon who one talked to, it could or could not have an impact, dependent upon whether the rates were averaged or not. Mr. Doug Anderson, on the REM staff, wrote a report to Mr. Warner saying that one of the ways to address that issue was to average the rates. At Tri-County, it seemed to them that if you were going to average the rate why not have a flat rate. It was confusing to them, did that mean that the garbage bill to their customer would be higher in January than in December. Of course that would not be what would happen. Metro was going to have to come up with an average tipping fee that Metro predicted would be the tipping fee for the entire year. It seemed that if this was done, the flat rate would go along way towards addressing this concern.

**Mr. Jeff Murray, Far West Fibers Inc**, a privately held recycling company operating three recycling facilities in the Portland area, addressed the tiered rate structure of the contract. As a recycling company, Far West Fibers objected to this tiered rate structure established by Change Order No. 7. They felt it was counter productive to the goals of Metro, the region and the State of Oregon in regards to waste reduction and recycling. If Change Order No. 7 was passed as written the tons of future waste reduction and recycling would take away from Metro the most important tons to Metro, the cheapest ones. These would be the tons Metro needed to ship to Arlington to recognize the full savings that were being offered for giving up the most favored rate clause in the existing contract. On behalf of Far West Fibers, he recommended that the tiered rate structure offered in the Amendment 7 be eliminated and a lower rate for all garbage sent to Waste Management Landfill be negotiated, a rate that was comparable to rates paid by other large suppliers of garbage throughout the northwest. This would give the Metro region a competitive rate and help eliminate the potential conflict a tiered rate would create with the region's goals of waste reduction and recycling.

**Presiding Officer Kvistad** closed the public meeting at 3:16 p.m.

<b>Motion</b>	<b>Presiding Officer Kvistad</b> moved to amend Change Order No. 7 to provide a flat rate of \$24.34 for all tons and all other terms and conditions would remain the same consistent with that flat rate.	<b>to Amend:</b> of this contract
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**Seconded:** **Councilor McLain** seconded the motion to amend.

**Discussion:** **Presiding Officer Kvistad** said he was very sensitive to the comments that had been made about this tiered rate. He was very concerned about this contract and the potential predatory nature of the pricing. He thought that Metro had been presented by Waste Management a number representing the price that the City of Seattle paid for their waste. He personally disagreed with that but he was taking them at their word to say that this was the rate. As such, he believed for this agency and this government to accept any rate

lower than received by another jurisdiction for a facility which Metro had helped to fund which allowed this vendor a opportunity to bid for other waste, for Metro to have a structure which was potentially detrimental to some of the recycling goals, convoluted and potentially predatory in nature, to move simply to a flat fee equaling that of Seattle would allay his fears and would allow him to vote forward this contract.

**Councilor McFarland** said she resisted this amendment to this agreement. One of the things that the Presiding Officer said about the implication that maybe the staff had not given the Council an accurate reflection of what Seattle was paying, she did not understand their preoccupation with Seattle, but the reality was that she believed that the staff gave the Council a very conservative estimate. The truth was that it was very likely that this would bring Metro to what Seattle was paying without any further modification of these numbers. She understood why the staff was conservative in this because they did not try to over reach on any of their predictions or numbers but she thought that this amendment would defeat a part of the purpose of the resolution. She urged the Council to vote against this amendment.

**Councilor McLain** spoke in favor of the amendment. First, there was one philosophical problem with Change Order No. 7. She believed Bruce Warner, Jim Watkins, Mike Burton, Dan Cooper's Office and Waste Management had acted in a very professional way during this conversation on contract. They had done their best to bring forward a good package for themselves and for the Council. She had no doubt about that. The work she had done especially with Jim Watkins and Bruce Warner had been very professional and she had appreciated all the help. There was one fundamental difference that Metro continued to carry on with this contract and that was that Metro had conflicting goals of a low disposal rate for this agency and for the public and a high recycling rate. With this Change Order No. 7, Metro continued that conflict at high degree. She thought that this Council had an obligation to try and minimize that conflict between Metro goals so that both of their goals could be successful. The only way this could be done would be with a flat or fixed rate. Metro had already given Waste Management 90% of a commitment of Metro's waste stream. Those were big commitments. She believed that Metro had to make an equal commitment to ourselves that we truly were going to try and make sure that there was not a conflict between low and reasonable disposal costs and extremely high and effective recycling rates. This was why she supported this amendment.

**Councilor McCaig** said that she wished that this was much easier but it was not. The complexity of this deal was worked out over weeks if not months of negotiation. She did not think, from her perspective, that it was appropriate that the Council take an item that had been on the table in negotiations and resolved, maybe not to the Council's satisfaction, but the negotiation that resulted in the proposal before Council was built having reviewed whether Metro could do a flat rate and whether Metro's partners in the negotiation would accept it. They had already said no. That was why the proposal in front of Council was as it was. It was the best deal that Metro could get from Waste Management. She was unwilling to unravel this as a result of an amendment that came in the day of the final proposal in order to unravel the entire proposal. The Council had no indication from Waste Management, in fact they had had early indications and negotiations that they would not accept this. That was the point, Waste Management did not want this. Yes the Council had the opportunity to say no to the entire deal, Change Order No. 7 but to amend Amendment 7 with this proposal in fact eliminated the deal. She planned to vote no on the amendment.

**Councilor McLain** said that in response to that last comment, it did not come to Council unless they wanted Council to review it. If it were going to come to Council as a basic situation where there was a plastic rubber stamp on it, she did not know why the Council was up there then. The Council was reviewing this amendment to look at this the negotiation work that had been done and to say if it were reasonable or if there were some flaws that this Council could not support. This was the only flaw that she found in this contract. Change Order No. 7 was in deed better than Amendment No. 4. Change Order No. 7 did do some things that Metro had not been able to do before but it still got away from the fundamental need that this Council had of not having a chance of not competing in both the recycling goals and low disposal fees. Metro needed an opportunity to take away that conflict that continued because of this type of tiered rate. This was why Metro got the small

bucks. The Council was here to review any change order, any contract, and to represent the public. The public had written in, including a recycling advocate call, that indicated that this was a very concerning proposal because of this declining fee structure. She was responding to the public and to the industry and to this Council's need for trying to make sure that Metro's goals worked.

**Councilor McCaig** followed up by saying that this was not the deal before the Council. If the Council amended Amendment No. 7 to include this language, the Council would not have made it so. It was not a done deal. Metro had not cinched a deal. Waste Management would still have the opportunity as the Council had amended this to walk away from it. It was not the deal before the Council. Metro would be giving up a sure thing for an unknown if the Council accepted this amendment to amend Change Order No. 7.

**Councilor McLain** responded that this was true, if the Council put in an amendment then Waste Management had an opportunity to say that it did not work for them and walk away. If they had an opportunity to do that, she believed that was all fair in love and war. The situation was that they couldn't talk to Metro nor find out how the Council was feeling unless the Council was in a public place. Waste Management would only find out what the commitment of this Council was on recycling and low disposal fees if the Council did public business in public. They were trying to do public business in public so that Waste Management knew exactly what the Council was thinking about the conflict with tiered rates between recycling and low disposal fees. It did not work, Waste Management had put them between a rock and a hard place. Wasn't there anything that Council could be done on a flat rate? This was what was being asked for with this amendment.

**Councilor McFarland** reminded all the members of the Council that we had several hearings on the Change Order. She reiterated this further. It was heard in the REM Committee, in the Finance Committee and in the Council. She too believed that this was a last minute amendment that could have been brought forward much sooner than this. She reminded the Council that there had been several opportunities prior to this meeting to have public input on this information.

**Councilor Naito** said she would oppose the motion. She did agree that the declining rate was troublesome and had a potential concern down the road but those were concerns that the Council could address as they moved forward while taking advantage of the savings to the rate payers that this amendment offered. She believed that the recycling issue could be dealt with in looking at the tipping rate and she had talked to a number of recycling advocates. While they may be concerned, she thought that the Council should be concerned as well. There was nothing in this deal that would necessarily reduce recycling. While it was a concern and she believed that the Council should watchdog these, there was no question, she believed that a deal had been brought to Council and pending in front of the Council for several months, specifically since last December and at this late hour she thought it was inappropriate to open it up.

**Councilor Washington** said he was not voting on a deal, today he was voting on an agreement.

**Presiding Officer Kvistad** closed by saying that he was attempting to deal with this with a positive approach and good humor. He still believed and felt very strongly about where the Council was with this. It was said that there had been a lot of hearings and a lot of opportunities on this, quite frankly, there had not been. The Change Order No. 7 was brought to Council on a Monday, it went to a committee meeting on a Wednesday, to another committee meeting the following Monday and then the Council was asked to vote on the Change Order that Thursday. The vote was put off for a week and he thought that at that time he had asked for a delay. He made a commitment at that time to the members of the Council that if they granted the delay he would not lobby the members of the Council on this item. He had stuck to that agreement. Today, that agreement ended. He believed that for Metro to have any rate lower than that of another vendor which was comparable to Contract Amendment No. 4 was not in the best interest of the people of this region. He consistently held his opinion that Contract Amendment No. 4 was invalid, that the lawsuit proposed by this Council and moved forward by this Council would have succeeded on appeal. He supported the lawsuit that had been filed by

other vendors in this region for that very reason. The only way for him to be able to support this in good conscience was for Metro to receive a rate that was equal or lower to that given to any other major vendor at a landfill that Metro helped fund and develop. That was the reason for this amendment, the reason that the amendment was before Council was that this was the place to make amendments and to be clear about where the Council was. The amendment was before the Council for that purpose regardless of which way it went, he would have some fairly strong comments to come but he would appreciate the Council's aye vote.

**Vote** The vote was 2 aye / 5 nay / 0 abstain. The motion to amend failed with  
**to Amend** Presiding Officer Kvistad and Councilor McLain voting aye, Councilors  
**the Motion:** Morissette, McFarland, Washington, Naito and McCaig voted nay.

**Councilor Naito** said she had learned more in the last week about garbage than anyone would want to know. If the Council were authorizing a new contract today there would be no way that any of the Council would go for this agreement or contract. Metro's projections were that they would be paying an average of \$25.15 or possibly lower per ton to Waste Management. Most people, even the Metro staff, had said that market rate was about \$18.00 per ton. However, Metro was not in a position to negotiate a new contract. The Council was here to make a decision based on many action that had been taken prior to the current Council and she would try to make the best decision she could within that framework. She was essentially bound by the agreements that had been made before Council and by positions that the agency had taken in various lawsuits. Correctly or not, in 1994, the Executive Director opted for Amendment No. 4. She knew that there was a lot of history on this issue and a lot of feelings on both sides of this issue. As an agency a position had been taken to uphold Amendment No. 4 so technically, in response to the individual testifying on Metro Watch, if Metro won the lawsuit, Metro's win would be to uphold Amendment No. 4. This deal, being so much better for the rate payers than what was in Amendment No. 4, there was almost no position other than to go and vote yes today. She noted that she was a lawyer yet she had no knowledge of the merits of the lawsuit and she did have to rely on Metro's Legal Counsel, who was part of the negotiating team, to make this contract, to make those decisions on the merits of the lawsuit and not to take his position completely but to seek his advise, he was the person that advised this entity. She had taken that into consideration. She had also looked at the report of Alexis Dow, Auditor, and her analysis of what the potential would be in accepting this amendment. Ultimately for Council Naito it came down to some policy considerations; one, it did provide substantial long term relief to the rate payers and she believed there was a commitment to reduce the tipping fee. This was good government when there could be actual savings to the public. This was what the public was asking for, both tax payers as well as rate payers. She did have two concerns about the Change Order, one was competition. She thought this was something that Metro had to continue to watch, whether or not this rate structure eliminated competition in this region. It was possible it could, however, the Council should be aware that when the original contract was signed there was no competition in the region. In Metro's neighboring partner, Washington, there was competition and major multinational companies. With respect to the recycling, Metro would have to watch that and make sure that Metro's goal was to continue recycling. She knew that the Executive Director had made a commitment that they would continue to comply with State law and even exceed whenever possible. She felt comfortable in supporting Amendment No. 7.

**Councilor McLain** indicated that there were two things that were important to her, that was that the Council had in a public place Waste Management's representatives and that they were hearing the Council's dialogue and it was also publicly to tell the Council what each Councilor was feeling about what needed to be done whether the Change Order No. 7 was passed or not. She had tried her best over the last month to impact the process so that Metro would have a better contract than even what staff brought to Council over a month ago. There were three areas she had worked on. Area 1 was making sure that there would not be a connection to Change Order No. 7 and Amendment 4, that Change Order No. 7 would be what the Council was talking about and that Change Order No. 7 would not be tied to Amendment No. 4 or to that litigation. She got that. Area 2 was that in that resolution that Metro would again reaffirm and support that recycling and diversion would

continue at a high level. She got that. The third area that she could not get was that flat fee. She had asked staff to go back again and again. Staff couldn't do it, Waste Management could not honor that request. She thought that from the industry, from the community, from the recycling advocates and from at least two Councilors that Metro was still interested after Change Order No. 7 in looking at a flat rate. Metro was at the crux where if Metro was effective as she thought they were going to be on diversion of dry waste, creative ways to divert wet waste and Metro's ability to be able to continue to get Metro's transfer stations to be leaders in recycling even at that last ditch effort, Waste Management was going to want to go to a flat rate because it would be beneficial to them as well. Her message today was, yes, \$37 million over 13 years was OK, but it was not enough. She promised she would vote up if Metro got those things that we could do. She had tried to get the amendment, she couldn't. She would be voting yes today but only with the understanding that her commitment was to divert waste, to have higher recycling rates and to get Waste Management to a point where it would be better for them if there were a flat rate.

**Presiding Officer Kvistad** noted that he had been involved with Contract Amendment No. 4 since day one. He expressed that he had a deep fear about Change Order No. 7, was apprehensive and felt a lack of trust. He addressed Waste Management, to where the Council was and where they came from, he could not say in good conscientious that he trusted them. This was difficult for him to say because he operated himself, his business and personally on the basis of trust. He had felt that there had been a breach of that trust and that there had been an underlying specific agenda that had not been in the best interest of the people of this region. He could not get beyond that, he had tried to be very cordial and he believed that he had been to Waste Management. But he wanted to say this for the record, flat out and right up front so there was no misunderstandings. Beyond that what did you do when you had \$32 million that could go to the people of the region before you when you knew that they could receive more and that the people of this region deserved Metro doing more for them. They deserved a competitive environment with the lowest rate possible. They deserved vendors from which they could make choices and they deserved the lowest rate that Metro could humanly get as elected officials. He did not believe that this rate was the best rate that Metro could get, he believed it was far from it. But having said that, he would like to move forward with Metro's partners, hopefully in an environment where the trust would be built back. It pained him to do so and he was doing this with a great deal of apprehension but he would vote in favor of this contract with the understanding that in the future Metro's negotiations with Waste Management and Waste Management's discussions with this agency would be ones that really took in the best interest of the people of this region. He thanked those who were involved in putting this resolution back on the table. He thanked those in the industry who had worked with him over the last months and years on Contract Amendment No. 4 and who had been very good partners. It was his hope that Metro would not be in a situation where this would be used as a predatory and anti-competitive pricing. It was however his feeling that it would be and that some of those who he had considered to be good regional partners with the rate payers here would no longer be able to operate in this market. He felt that this would be a shame for the people of this State and of this region. He indicated that he would reluctantly vote in favor of the resolution.

**Councilor McFarland** closed by urging the aye vote for this resolution.

**Vote on the Main Motion:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

7.2 **Resolution No. 96-2423A**, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 1997-98 and 2001-02.

**Motion:** **Councilor McCaig** moved the approval of Resolution No. 96-2423A.

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

**Discussion:** **Councilor McCaig** thought that Jennifer Sims was going to give the presentation. She indicated that this resolution was Councilor Mornoe's, putting in place the plan by which Metro would be investing in the capital needs over the next five years authorizing the next plan for the fiscal year to be completed.

**Mr. Dennis Strachota, Capital Improvement Plan Coordinator Financial Planning Division**, said what this resolution did was approve for consideration future projects that covered the years 1997-98 through 2001-02. In terms of the projects it was detailed in the substantive committees as well as the Finance Committee. He noted the changes that were approved by the Finance Committee would be reflected in a revised document that would be issued in the next several weeks. This resolution approved for consideration close to \$300 million worth of projects over the next five years and a large chunk of those were projects that had already had been approved, such as Open Spaces acquisitions and the Zoo Oregon Project.

**Presiding Officer Kvistad** said he had one or two concerns about some of the projects in the plan. He had verbalized them before but he did not believe they were substantive enough for him to not support the resolution.

**Councilor Naito** noted that she would abstain on this vote as the work had taken place prior to her being on board.

**Vote:** The vote was 6 aye/ 0 nay/ 1 abstain. The motion passed with Councilor Naito abstaining from the vote.

## 8. COUNCILOR COMMUNICATION

**Presiding Officer Kvistad** announced next week's meeting would be an evening meeting because it was a public hearing the neighborhoods had asked for as well as a MCCI presentation. He noted that the new schedules for committee meetings and Council meetings were in Council boxes.

**Councilor Morissette** announced that he would not be at the meeting, he would be in Houston on business.

## 9. ADJOURN

With no further business to come before the Metro Council this afternoon, the meeting was adjourned by Presiding Officer Jon Kvistad at 3:45 p.m.

Prepared by,

Chris Billington

Clerk of the Council

DOCUMENT NUMBER	DOCUMENT DATE	DOCUMENT TITLE	TO/FROM
011697c-01	010997	amended pg 7 minutes	billington
011697c-02		updated ord. 97-677	McFarland
011697c-03	011697	revised council agenda	billington
011697c-04	011497	recycling advocates	Betty Patton
011697c-05	011697	amendment	Kvistad
011697c-06	011697	testimony	Duane C. Woods
011697c-07		ord. announcement	Burton
011697c-08	011697	TRO study update	

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011697c-10	fall-winter 1996-97	TRO newsletter	
011697c-11	summer 1996	TRO newsletter	
011697c-12		peak period pricing	
011697c-13		color maps	
011697c-14	010797	TRO evaluation criteria	
011697c-15	110096	TRO wrk paper #3	
011697c-16	110096	Eval Criteria & Methods	ECONorthwest
011697c-17	011597	analysis, change order 7	Alexis Dow
011697c-18		proposed CIP	