

METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

Monday, February 23, 1998

Council Chamber

Members Present: Susan McLain (Chair), Lisa Naito (Vice Chair), Ruth McFarland

Members Absent: None

Chair McLain called the meeting to order at 12:03 P.M. She thanked the committee for meeting at an earlier time than usual.

2. ETHICS WORK SESSION

- AMENDMENTS TO [RESOLUTION] NO. 97-2538 FOR COUNCIL STAFF AND COUNCILORS
- LOBBYIST REGISTRATION

Meg Bushman, Council Analyst, reviewed the amendments to Resolution No. 97-2538.

Councilor Naito asked if the term "gift" in item 44 is defined as per Oregon Revised Statutes (ORS) 244.020(8). She said she is concerned that without a definition, "gift" could be interpreted as a cup of coffee. She said that the committee may not want to adopt the same standard for councilors as for staff.

Ms. Bushman said Resolution No. 97-2538 does not define the term "gifts," therefore a cup of coffee would be considered a gift. She said an amendment to the resolution would be needed to exempt incidentals such as coffee.

Councilor McFarland said she is concerned that item two exposes the Council to attack from anyone whose idea of impropriety differs from that of a councilor. She said it would lead to paralysis.

Chair McLain asked Ms. Bushman to present the resolution by section and answer councilor questions as they arise.

Ms. Bushman said *deminimis* items, such as coffee, would be considered a gift. She said the ethics code came from the City of Portland, and was later passed by the Metro Executive Officer.

Councilor Naito asked if the City of Portland elected officials are not allowed, under their own charter, to accept a cup of coffee from a lobbyist. Ms. Bushman said the City of Portland ethics code is advisory only.

Councilor Naito said she would prefer to have a clear code with sanctions for violations, rather than an advisory code. She recommended that the committee not omit the language in item 46 that had been struck, so that staff members know what they can do if they have a practical question about how to promote their own political views outside of public office.

Marv Fjordbeck, Senior Assistant Counsel, said the only difficulty with the language is that in the past, employees have asked the Office of General Counsel for its opinion. The Office of General Counsel is not the lawyer for the employee, i.e. if an employee operates on advice from legal counsel and gets into trouble, the Office of General Counsel cannot represent the employee instead of the government. In the past, the Office of General Counsel has provided advice on what the law said, with the understanding that it was not acting as the legal counsel for the employee.

Councilor Naito suggested that the sentence be rephrased so it is clear that staff could review the letter of the law with the Office of General Counsel.

GOVERNMENTAL AFFAIRS COMMITTEE

Monday, February 23, 1998

Page 2

Mr. Fjordbeck said the Office of Legal Counsel is comfortable explaining what the law is to employees. However, if legal counsel tells an employee whether he or she can do something, it is approaching the line of giving legal advise.

Councilor McFarland recommended that the committee omit item two. She said the statement is meaningless, because it is impossible to determine impropriety.

Councilor Naito said she would prefer not to strike out the second sentence of item 47. She said the information could be helpful to staff.

Chair McLain reviewed the amendments systematically. The committee discussed item two.

Councilor Naito said the statement is appropriate for staff because staff are responsible to the Presiding Officer. However, it is unclear who would determine impropriety in the case of councilors. She recommended that the statement either be omitted or applied only to staff.

Chair McLain said each councilor is individually responsible for determining the appearance of impropriety. She said item two is a statement that recognizes that councilors continually make decisions about avoiding the appearance of impropriety. She recommended to leave the language in the document.

Councilor McFarland said the language implies that councilors have acted improperly up to now. She said that if councilors act improperly, they are not reelected. She said the language may apply to staff because they answer to a specific person. She said the statement will cause unnecessary problems.

Chair McLain said the committee could work further on this section and look for language that it could support, or it could vote on the current words and continue. She asked for the committee's opinion. She said she thinks the statement is valuable because it demonstrates to the public that the Metro Council is cognizant that it confronts this issue every day.

Councilor McFarland said it is one thing to be held accountable to rules, and she supports rules. She said councilors are being hung out to dry not because they broke the rules, but because they could not read minds and know everyone's interpretation of impropriety.

Councilor Naito agreed and said the standard of impropriety is too vague, and it is unclear who would enforce the ethical code and determine what actions are improper.

Chair McLain recommended that the committee omit the language, and said she will try to find a different way to address the issue.

Motion: Councilor McFarland moved to omit item 2 under the section "Trust."

Vote: Councilors McFarland and Naito voted aye. Chair McLain voted nay. The vote was 2/1 in favor and the motion passed.

Ms. Bushman continued to explain the amendments to the resolution.

Councilor Naito said she supports the strike-out of item three, because as a political body, there are processes that need to be followed which can preclude the most economical option. Councilors McLain and McFarland agreed.

Councilor Naito said item 43 is not necessary because it is State law, however, she does not mind including it.

Councilor Naito said item 44 should define the term "gifts." She said employees and councilors should be held to the State's standards.

Councilor McFarland said the Metro Code states that councilors use the State Legislature's standards. She said item 44 would only create chaos.

GOVERNMENTAL AFFAIRS COMMITTEE

Monday, February 23, 1998

Page 3

Chair McLain said the purpose of item 44 is to demonstrate that the Council understands the importance of its own ethics code. She recommended referencing item 44 to the State standard for councilors (ORS 244.020(8)).

Councilor Naito said she does not believe staff should receive any gifts from lobbyists. She said staff are held to a different standard than councilors. She asked Mr. Fjordbeck what standard is used for staff in the State Legislature. Mr. Fjordbeck said ORS 244.020(8) applies to both staff and elected officials.

The committee agreed change item two to read, "Metro Councilors and staff and their families do not accept personal gifts from individuals seeking Metro action, as "gift" is defined in ORS 244.020(8)."

Councilor Naito said she would prefer to leave in the struck language in items 46 and 47. The committee agreed.

Councilor McFarland asked Chair McLain to clarify the intent of item 48. Chair McLain said that in the past, a councilor requested the tower room in the Metro Regional Center for his son's pre-prom date. The intent of item 48 is to clarify that such purposes are inappropriate.

Councilor McFarland said the current language insinuates that she could not meet with anyone in her office to discuss anything other than Metro business. Chair McLain said she does not believe the language says that.

Councilor Naito said she is concerned that item 47 would preclude telephone calls home to check on her children. She said staff may face the same situation.

Chair McLain asked Mr. Fjordbeck if items 47 and 48 would prevent councilors and staff from occasionally calling home or greeting people who stop by the office.

Mr. Fjordbeck said the Council can decide what rules to apply to itself. The Office of General Counsel and the Executive Officer have reminded the staff through a general memorandum that the items listed in item 47 belong to the government and are intended for government use. In general, use of telephones for limited-purpose, *deminimis* personal use has been deemed acceptable, and generally speaking, the Executive Officer has deemed use of the computer, including electronic mail or internet access for personal use, inappropriate for staff.

Councilor Naito said she feels comfortable with the Executive Officer's memorandum.

Chair McLain said she does not agree with the distinction made in technology between electronic mail and the telephone. She said the same policy should apply to both.

Councilor McFarland said it would impossible to function as normal citizens without occasionally using electronic mail or the telephone for activities that are not directly seen as Metro business. She said the word "*deminimis*" is unclear and should be clarified. She said it is her understanding that sending additional electronic mail, after a user is logged into the system, does not cost any more money. She asked if her understanding is correct.

The committee agreed to amend item 47 to add language to define its use. She asked the general counsel to add the language used by Executive staff.

Councilor Naito said there is no way to prevent incoming, personal telephone calls and electronic mail.

Councilor McFarland asked Mr. Fjordbeck if it costs more to send an additional electronic mail message once a user is on the network. Mr. Fjordbeck said he could not give a definitive answer, but he would be surprised if the cost was significant.

Chair McLain asked legal counsel to add a statement to item 47 that says it is acceptable to make brief personal calls.

Councilor McFarland recommended that the same language be added to item 48.

GOVERNMENTAL AFFAIRS COMMITTEE

Monday, February 23, 1998

Page 4

Chair McLain said she considers items 47 and 48 to be different from one another. She said she does not remain in her office unless she is waiting for another meeting, and she would consider such a situation to be Metro business. Councilor Naito agreed. Chair McLain said she does not think item 48 would prevent a councilor, who is in the building for Metro business, from visiting with someone who stops by the office.

Councilor McFarland said item 48 creates unnecessary problems.

Chair McLain asked Mr. Fjordbeck if there is any way in which item 48 could prevent Councilor McFarland from having a cup of coffee with someone in her office between meetings. Mr. Fjordbeck said it would not, but added that item 47 and 48 could be further defined based on committee discussion.

Alexis Dow, Metro Auditor, thanked the committee for addressing the issue of a code of ethics for the Council and Council staff. She said that State law applies to "public officials," not just "elected officials." "Public officials" includes elected officials, employees, and volunteers. She said current literature concerning codes of ethics strongly suggest adopting broad statements regarding the need for trust, objectivity, accountability, and leadership. She referred the committee to the code of ethics adopted by the City of Portland, because it avoids identifying specific examples of what one can and cannot do, and provides broader statements of the end goal.

Chair McLain said the committee will revisit items 47 and 48 at the next meeting.

Councilor Naito said it is appropriate to have staff covered by the objectivity section of the code of ethics. In the past, there have been situations in which staff members have testified, and it was unclear whether they were representing themselves or Metro, and there was an appearance of undue influence. On the other hand, Councilor Naito said councilors are elected based on their personal convictions, and she would not support applying the objectivity section to the Council. Councilor McFarland agreed with Councilor Naito.

The committee agreed to the objectivity section as amended by Ms. Bushman.

Ms. Bushman briefly reviewed the lobbyist registration. The committee agreed to address the lobbyist registration at the next committee meeting.

Councilor Naito said she supports the lobbyist registration, and feels it is a good idea to allow more time for public comment before the committee holds a work session on the lobbyist registration.

1. CONSIDERATION OF THE FEBRUARY 2, 1997, GOVERNMENTAL AFFAIRS COMMITTEE MEETING MINUTES

Motion:

Councilor McFarland moved to accept the minutes of the February 2, 1997, Governmental Affairs Committee meeting into the record.

Vote:

Councilors Naito, McFarland and McLain voted aye. The vote was 3/0 in favor and the motion passed.

GOVERNMENTAL AFFAIRS COMMITTEE

Monday, February 23, 1998

Page 5

3. COUNCILOR COMMUNICATIONS

There were none.

There being no further business before the committee, Chair McLain adjourned the meeting at 1:01 P.M.

Submitted by,

Suzanne Myers
Council Assistant

i:\minutes\1998\govtafrs\02238gam.doc

Oral Testifiers (testimony cards included)

Ethics Work Session
Alexis Dow