

## METRO COUNCIL GOVERNMENTAL AFFAIRS COMMITTEE

Monday, May 18, 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 1:36 P.M.

### **1. CONSIDERATION OF THE MAY 4, 1998, GOVERNMENTAL AFFAIRS COMMITTEE MEETING**

Chair McLain asked for any corrections to the minutes. There were none. Chair McLain said the minutes stand as read.

### **2. ORDINANCE NO. 98-738, FOR THE PURPOSE OF ADOPTING ETHICAL REQUIREMENTS FOR METRO OFFICIALS AND FOR LOBBYISTS**

Chair McLain said Ordinance No. 98-738 would be an update item. She said the committee asked legal counsel to review the work done by the Governmental Affairs Committee in March. She said Daniel Cooper, General Counsel, reviewed the committee's work and prepared suggested changes to the language to make the document more practical, understandable to the general public, and easier to implement. She said she had just received an additional memo from the Executive Officer listing suggestions and questions from department heads. She said she has asked Mr. Cooper to review the memo.

Mr. Cooper said at the request of Chair McLain he reviewed Ordinance No. 98-738, which will be first read at Council on May 21, 1998, and prepared a draft Ordinance No. 98-738A as a work product. He reviewed draft Ordinance No. 98-738A section by section. The substance of Mr. Cooper's explanations is included in his memo to Chair McLain, dated May 13, 1998, which is included in the agenda packet.

Councilor Naito asked Mr. Cooper to explain the definition of "exercise of official authority."

Mr. Cooper said the definition comes into effect in the substantive provisions of the ordinance. He said currently former Metro officials are prohibited from doing business with Metro for one year after leaving the agency. He said the definition of "exercise of official authority" would make it clear that the prohibition only applies when the nature of the business relates to something over which the former Metro official had the ability to exercise official authority. He said for example, a commissioner on the Metropolitan Exposition-Recreation Commission (MERC) only exercises official authority over MERC. He said many of the MERC commissioners have private lives and may occasionally bid for Metro contracts on business that is unrelated to their official duties. He said when the ordinance was first written and adopted by the Metro Council in 1995, the Council did not intend to prohibit such activities.

Councilor Naito asked if the definition would also apply to department heads. Mr. Cooper said yes. Councilor Naito said it would be inappropriate for the head of the solid waste department to enter into a contract with Metro on land use issues.

Mr. Cooper said Councilor Naito may wish to propose an amendment to the ordinance at the appropriate time. He said Chair McLain had asked him to change any of the existing provisions in the Metro Code in his review of Ordinance No. 98-738.

Councilor Naito said MERC commissioners' situation is different from paid staff's position because MERC commissioners are unpaid.

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Mr. Cooper said the prohibition against doing business applies both during the time a person holds an office and one year after. He said under the current ordinance, there is nothing to prohibit the current director of solid waste from submitting a proposal on a contract for traffic management studies.

Councilor Naito said it is appropriate for a former Metro official to return to Metro after a year and do business with the agency. Mr. Cooper said it is possible for a former official to do business with Metro less than a year after leaving, with Council approval.

Councilor Naito asked for the definition of "person's relative," as used in the definition of "business with which the Metro official is associated." She said immediate family should be covered, but not distant relatives.

Mr. Cooper said legal counsel can continue to work on the definition. He said he thinks the definition comes directly out of the state statutes on reporting requirements.

Councilor Naito said she believes the ethics form specifies immediate family or household. Mr. Cooper said he would check on the definition.

Chair McLain said Mr. Cooper indicated in previous conversations that "person's relative" referred to a family member living in the same household. Mr. Cooper said the definition of "business with which the Metro official is associated" only applies to the one section on doing business with former Metro officials. He said he would report back to the committee on how the provision would be defined under state law, and the committee can adjust the language if desired. Chair McLain agreed.

Mr. Cooper continued to review draft Ordinance No. 98-738A. In response to a question from Councilor Naito, Mr. Cooper clarified that the definition of "gift" under state law excludes beverages and meals when in the presence of the person paying for them.

Councilor Naito asked Mr. Cooper to clarify the proposed financial reporting requirements. She asked whether, if the symphony gives a Metro Councilor tickets to a symphony event, the Councilor would be required to report the tickets on his or her statement of interest, as the symphony has a legislative interest under MERC. Mr. Cooper said yes.

Councilor Naito said at the state level, when lobbyists provide elected officials with something, the lobbyists have to submit a statement declaring how much they spent, making it easy for elected officials to fill out their statements of interest. She asked if under draft Ordinance No. 98-738A, it would be the responsibility of the individual recipient to keep records of all items received. Mr. Cooper said yes.

Councilor Naito asked if it would be allowable for a lobbyist to provide tickets to a non-profit event if the non-profit organization itself has no legislative interest. She asked how that would be reported. Mr. Cooper said it would be allowable, and it would be reported if the person who paid for the tickets had a legislative or administrative interest in Metro. Mr. Cooper reviewed the language on restrictions on meals and entertainment and reimbursement for attendance at events.

Councilor Naito asked who would determine which expenses would have been eligible for payment as a Metro expense. Mr. Cooper said the Executive Officer would approve travel expenses for department directors, and Councilors have their own expense allowances. He said Councilors' expense accounts are at their considerable discretion, although the Council has adopted for itself fairly narrow policies on how the money may be used. He said there is a procedure for the Presiding Officer to approve all expenses before they are paid.

Councilor Naito asked about the restrictions on meals and entertainment. She asked if officials may receive a meal at a community event which is not a public event, such as a banquet hosted by a car dealership. Mr. Cooper said that would not be allowable, and Metro officials would have to pay for their own tickets.

Mr. Cooper reviewed abuse of public office. He said the section is an attempt to rewrite section 5(a)(4) of the original ethics code, which addressed the use of property and equipment and included an exception for *de minimis*,

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discreet, and infrequent personal use of telephone equipment and mail. He said the section on abuse of public office was written based on what the State Government Standards and Practice Commission has occasionally ruled, but has not written as a formal rule or statute: office equipment and facilities may not be used for personal gain or to avoid personal expense. He said the language in section (b) pertaining to normal work hours is intended to address the problem of employees who spend long personal hours at the office.

Councilor McFarland said she occasionally comes into work on the weekends to catch up on reading. She said she cannot understand why this would not be allowed. Mr. Cooper said the language many need more work. He said the language is not intended to prohibit that type of activity. He said the language is aimed at occasions, documented by security, in which employees have come to the office on the weekends and acted as if they were at home, including an occasional six-pack of beer.

Councilor McFarland said she knows of a few instances of employees improperly spending time at the office, but she also knows that several staff members come in on the weekends to complete any work they were not able to finish during the week. She said she is not in favor of hassling them for working on the weekends; she thinks it is commendable. She asked Mr. Cooper to modify the language, because she finds it slightly offensive as written.

Chair McLain said she and Mr. Cooper had a lengthy discussion about the advantages and disadvantages of the new and old language. She said the old language was criticized as a laundry list, and Mr. Cooper attempted to replace it with a general statement that employees should be in the office for official business only. She said the Executive Officer is responsible for determining appropriate hours and activities.

Mr. Cooper said legal counsel can improve the language. Mr. Cooper reviewed the prohibition against doing business with certain former Metro officials. He said the language was taken verbatim from the current code. He said he could work on modifying the language if Councilor Naito so desired. Mr. Cooper continued to review draft Ordinance No. 98-738A.

Councilor Naito asked if some of Executive Officer Burton's comments on the ethics code are moot now that the lobbyist registration requirements only apply to paid lobbyists. Mr. Cooper said that may be true; he has not yet examined Executive Officer Burton's comments in detail.

Councilor Naito said she agrees that Oregon state law is sufficiently strict in regard to political campaigning. She asked if the ethics code would interfere with existing abilities for campaign contributions subject to regular State requirements. Mr. Cooper said the ethics code would not prohibit Metro officials from receiving campaign contributions. He said he believes it would be unconstitutional to do so.

Councilor Naito asked how the ethics code would apply in situations in which a Metro official goes to lunch with a lobbyist to discuss campaign issues and reports the lunch as an in-kind campaign contribution. Mr. Cooper said if the lunch is reported as a campaign contribution, it would be subject to campaign contribution regulations. He said there are obviously gray areas, and while he can give advise on legality, it is hard to predict appearances.

Chair McLain said the Presiding Officer has scheduled the original ordinance for first reading on March 21. She said it can then be sent back to committee or amended in full Council. She said in her opinion the Executive Officer and Presiding Officer have enough concerns about the ordinance that it would be amend the ordinance in committee on June 1. She said she expects the committee to act on the ordinance when it returns, and for the Council to vote no later than the end of June. She said she and general counsel have considered all of the items in Executive Officer Burton's memo.

Councilor Naito said some of the Executive Officer's concerns will be addressed with Mr. Cooper's new language.

Chair McLain said she will schedule Ordinance No. 98-738 for the next agenda and will prepare a written response to the Executive Officer's letter.

### **3. RESOLUTION NO. 98-2638, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO WASHINGTON COUNTY "COOPERATIVE AGREEMENTS" AMONG SERVICE PROVIDERS**

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Chair McLain invited Brent Curtis, Washington County Planning Manager, to speak on the resolution. She asked Larry Shaw, Senior Assistant Counsel, to introduce the resolution.

Mr. Shaw said Resolution No. 98-2638 is a work product from Washington County, and is the first set of agreements from Senate Bill (SB) 122, which required greater coordination among service districts and provided for counties to convene those discussions. He said the first set of agreements now before the committee is a series of agreements to agree later on the detailed urban service agreements. He said the cooperative agreement with Washington County is an important first step. Mr. Shaw summarized the staff report to the resolution. He said the purpose of SB 122 is to include service districts in comprehensive planning with cities and counties, and approving such cooperative agreements is part of Metro's coordination function. He said Mr. Curtis told him that while these agreements were completed last fall, the county is still having early discussion leading to a draft on urban service agreements.

Chair McLain said that looking at Exhibit A, it appears that only the general parameters have been decided, not the agreements themselves. She asked if Washington County is now working on the details of the agreements. Mr. Shaw said no, Exhibit A lists ten or twelve actual agreements. He said there is a stack of agreements with the resolution that are in the Council record. He said in the staff report he tried to take out the provisions in those agreements which are essentially similar and focus on Metro's responsibilities.

Chair McLain asked if Exhibit A states that all the separate park agreements are listed in Metro's part of the record. Mr. Shaw said there is only one park agreement: the agreement between Tualatin Hills Park and Recreation District, Washington County, Cities of Beaverton, Hillsboro, Portland, Tigard and Metro.

Chair McLain asked if the parks agreement is all inclusive and Washington County has a park provider for every inch of the county. Mr. Shaw said he cannot answer that question; Exhibit A lists the cooperative agreements submitted to Metro for approval. He said he is sure there may be more cooperative agreements in the future that in some areas.

Mr. Curtis said the cooperative agreements focus around service districts. He said the point of the agreements is to bring service districts into the same status that land use jurisdictions have with one another, in order to set up a way to notify and coordinate. He said Washington County has not reached step two, which is to determine which governments should be parties to urban service agreements. He said the answer to Chair McLain's question is no, there is not a parks provider for all of urban Washington County. He said Tualatin Hills covers a majority of urban Washington County that is unincorporated, and also serves some incorporated areas, but there are portions of the county that are urban but do not have an existing service district. He said the urban service agreements themselves will undoubtedly address those points.

Chair McLain asked if the only difference between current procedure and the proposed Metro notice procedure is that Metro will notify service districts. Mr. Shaw said yes, currently Metro's notice provision goes to property owners and affected local governments, which does not necessarily include all of the service districts that have now entered into these agreements.

Chair McLain asked if schools are included in Washington County's notice procedures. Mr. Curtis said the county is not required to have a service district cooperative agreement with school districts. He said high growth school districts have their own set of planning requirements, which can lead to similar cooperative agreements.

Chair McLain said in relationship to the Regional Framework Plan, Metro has asked for schools to be included in planning discussions. She asked if school districts are part of land use planning discussions in Washington County.

Mr. Curtis said the work is done primarily by the chief administrative officials of the governments who organize and discuss how to prepare the agreements and then present the agreements to the elected bodies. He said in doing that work, it was recognized that while the law does not require school districts to participate, it is very important to keep them informed and ask them to be involved.

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Chair McLain said schools are a personal area of interest, and while Metro probably can not do anything at this point, she wants to make sure that Metro follows its Regional Framework Plan and indicates its interest in including school districts in service provision networking and planning.

Mr. Shaw said he believes the requirements in the statutes for high growth school districts go far beyond cooperative agreements, and in some respects beyond urban service agreements, because schools are essentially required to insert their capital improvement plans into local government comprehensive plans.

**Motion:** Councilor Naito moved to recommend Council adoption of Resolution No. 98-2638.

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

### 4. UPDATE ON PLANNING FOR 1999 OREGON LEGISLATIVE ASSEMBLY

Randy Ealy, Executive Analyst, said the minutes of the last Governmental Affairs Committee meeting cite Executive Officer Mike Burton as saying that the budget is about \$60 million, not \$60,000. He said they have since checked the budget, and the amount is actually \$75,000.

Councilor Naito asked why so much more money has been budgeted for lobbying than the \$45,000 last session. Mr. Ealy said the proposed budget increase is due to an anticipated proactive agenda. He said the plan is to hire a lobbyist at least three months earlier than last session. He distributed a packet of information to the committee which includes a timeline and examples of the communication outlines for the 1997 and 1995 sessions. A copy of the information packet is included in the meeting record. He said the work is on schedule, and reviewed the communication outlines. He said he is prepared to generate a similar communication outline for the 1999 legislative session if the committee feels it is appropriate.

Chair McLain asked to see a draft communication outline at least three days prior to the next Governmental Affairs Committee meeting. Mr. Ealy said he would try to get the outline to the committee members a week before the June 1 meeting.

Chair McLain asked Councilor Naito if there were any problems in the process last year. Councilor Naito said one difficulty is getting an official Council vote as the session gets shorter. She said there was a telephone requirement that the lobbyist contact the rapid response team initially, and immediately thereafter, notify the entire Council of decisions made by the rapid response team. She said the lobbyist could not represent an official Metro position without a Council vote, he or she could only privately indicate Metro's position.

Mr. Ealy suggested setting up a rapid response team and telephone tree that directly gets in touch with the necessary parties. He said in the past there appears to have been a legislative committee.

Councilor Naito said a legislative committee could be created that could meet more spontaneously. She said the other prohibition is that decisions cannot be made over the phone because it would circumvent Metro's public meetings law. She said there might be some way for the Council to suspend its public meeting laws to require a one-hour notice.

Chair McLain said it is important for the lobbyist to have appropriate phone numbers for the Councilors, and to understand that he or she is responsible for informing the chair of Governmental Affairs and applicable committees of legislative actions. She said the committee should discuss what to do when the lobbyist needs an official Metro vote, because in the past the process has been too slow and has created problems. She said the Council has the ability to meet by phone if a Councilor is absent. She asked if there could be a public notice process that would allow the Council to take an official vote with some Councilors on telephone and others in the Council Chamber for a committee or Council meeting.

Mr. Ealy said Metro needs to be able to adapt when the legislature goes under 24-hour rule or one-hour rule. Councilor Naito recommended that Mr. Ealy check with other jurisdictions because all jurisdictions are probably in the same predicament. She said realistically the lobbyist does not speak the official position in the final legislative

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meetings, but people still have to look to the lobbyist to find out the likely position. She asked Mr. Ealy to find out if any jurisdictions have the ability to hold emergency meetings to make legislative decisions.

Chair McLain said the committee would like to review the process and look for possible creative solutions. She said this will be a Governmental Affairs agenda item, and will be addressed on a regular basis in committee.

Mr. Ealy said he has received a few legislative priority lists from individual department heads. He said Governor John Kitzhaber is currently preparing his budget and the revenue forecast is scheduled for release on June 1.

Chair McLain said in addition to department heads' legislative priorities, committee chairs will also have items to add to the list. She asked Mr. Ealy to meet with the committee chairs personally.

**5. COUNCILOR COMMUNICATIONS**

There were none.

There being no further business before the committee, Chair McLain adjourned the meeting at 2:44 P.M.

Respectfully submitted,

Suzanne Myers  
Council Assistant

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**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MAY 18, 1998**

The following have been included as part of the official public record.

<b>ORDINANCE/RESOLUTION</b>	<b>DOCUMENT DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>DOCUMENT NO.</b>
<b>Update on Planning for 1999 Oregon Legislative Assembly</b>	5/18/98	Timeline for Metro lobbyist; 12/12/96 memo to Mike Burton from Brad Higbee, Western Strategies Re: Draft Metro Legislative Process; and Exhibit A 1995 Legislative Process, Principles & Priorities	051898ga-01