

MINUTES OF THE METRO COUNCIL MEETING

Thursday, August 17, 2006
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Robert Liberty, Rex Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:01 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Curtis Sommer, League of West Linn Neighborhoods, 3038 Clubhouse Ct, West Linn OR 97068 spoke about a vision statement for the West Linn Triangle. He provided a letter for the record, which summarized his comments from the League. He recommended buffers between Lake Oswego, West Linn and Tualatin and explained why he suggested this idea (a copy of his letter is included in the meeting record).

3. REASONS FOR INVESTING IN ETHANOL

Scott Berry, Clackamas High School student, completed a senior project on the benefits of investing in ethanol. He then provided a PowerPoint presentation on the benefits of using ethanol (a copy of which is included in the meeting record). He provided background, environmental benefits, noted that ethanol supported the farming economy, created less reliance on petroleum, was renewable, and cost less.

Councilor Newman talked about one of the challenges of ethanol, which was that it required a lot of petroleum to produce the ethanol. Mr. Berry responded that they had proved this idea was false. There was a 30% to 38% increase in energy gained. Councilor Newman asked about the possibility of converting current automobiles. Mr. Berry responded that there was some modification necessary. Councilor Liberty talked about a report on ethanol summarized in the New York Times. He wondered about bio-diesel versus ethanol. Mr. Berry spoke to the benefits of each. Councilor Liberty suggested conservation as a primary focus. Councilor McLain talked about the corrosion on vehicles. She said they still needed to put money and research into looking at these issues. Councilor Park said he found the debate interesting. He felt it was interesting to look at the issue of self-sustainability.

4. CONSENT AGENDA

4.1 Consideration of minutes of the July 20, 2006 Regular Council Meeting.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the July 20, 2006 Regular Metro Council.

Vote:

Councilors Burkholder, McLain, Liberty, Newman, Park, Hosticka and
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Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

4. ORDINANCES – FIRST READ

4.1 **Ordinance No. 06-1125**, For the Purpose of Amending Metro Code Section 4.01.050 to Include a Conservation Surcharge With Regular Admission to the Oregon Zoo, Effective January 1, 2007.

Council President Bragdon assigned Ordinance No. 06-1125 to Council.

4.2 **Ordinance No. 06-1126**, For the Purpose of Amending FY 2006-07 Budget and Appropriations Schedule to Provide Funding for Metro’s Diversity Plan and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 06-1126 to Council.

4.3 **Ordinance No. 06-1127**, For the Purpose of Amending Metro Code Section 7.01.050 to Exempt the Oregon Zoo Conservation Admission Surcharge from Metro Excise Tax, Effective January 1, 2007.

Council President Bragdon assigned Ordinance No. 06-1127 to Council.

5. RESOLUTIONS

5.1 **Resolution No. 06-3722**, For the Purposed of Approving the Interim Waste Reduction Plan to Provide Direction for Regional Waste Reduction Programs Pending the Completion of the Regional Solid Waste Management Plan.

Motion:	Councilor McLain moved to adopt Resolution No. 06-3722.
Seconded:	Councilor Newman seconded the motion

Councilor McLain introduced the resolution on the interim plan. She talked about the outreach efforts to solicit input for the plan on waste reduction. She noted Department of Environmental Quality (DEQ) had approved the draft of the plan. She noted policy elements in the plan 1) providing a guiding direction and 2) program area section containing the goals and objectives to focus the work program. She noted Metro’s key role in creating changes in the reduction of waste. She suggested issues the Council must consider. She talked about product stewardship and the reduction of hazardous waste. She said this interim plan was focusing on meeting the 64% recovery goal by 2009. She stated that the sustainability goals were included in the interim plan. She felt Metro was headed in the right direction.

Council President Bragdon opened a public hearing.

Jeanne Roy, 2420 SW Boundary Portland OR 97239, said she was a citizen advocate for waste reduction. She had served many years on this effort. She said this plan was called interim because it had not yet been incorporated into the Regional Solid Waste Management Plan (RSWMP). State law required that Metro had a waste reduction plan. She felt this plan was the weakest plan she had seen because it didn’t say how they were going to accomplish the plan. She noted that there were a lot of important programs that should be included in the plan. She urged Council not

to approve the plan and send it back to staff for revision. Councilor McLain provided her comments to Ms. Roy's recommendation and spoke to the budget process. Ms. Roy said this was the only opportunity for the public to have input. Councilor Liberty asked Ms. Roy if the programs were the right way to reduce waste. Ms. Roy said she did support the programs. She was not sure how they would achieve the programs.

Jeff Murray, Far West Fibers, 6440 SW Alexander St Hillsboro, OR 97219 said his company processed recyclables. He felt Metro should focus on education. He was very happy with section 4 of the plan focusing on education. He talked about the cooperative effort. He supported that section particularly. Councilor Liberty asked what kind of fibers his company recovered. Mr. Murray said they processed paper. Councilor Liberty asked about the success of business recycling. Mr. Murray added that businesses would do a better job of recycling through education. Councilor Park asked about the commercial recycling effort and outreach in Beaverton. Mr. Murray talked about the success of the program and the need to repeat educational efforts. He shared the successes of the program both with the commercial sector and multi-family dwellings.

Wade Lange, Building Owners and Managers Association (BOMA), 825 NE Multnomah Portland OR 97232, said he served on the Solid Waste Advisory Committee (SWAC) and represented the business interests. They supported the interim plan that had been put together. He talked about the opportunities to partner. He talked about trash hauling in the Portland area and the costs. They whole-heartedly supported the interim plan and the continued use of incentives.

Dave White, Oregon Refuse and Recycling Association/Tri-county, 1739 NW 156th Ave Beaverton, OR 97006 said the document was readable, clear and was a strong plan. It had a strong regional focus and would require local partnering. He asked, had they gone to the locals to talk to them about the plan? Their industry felt there must be local buy in. He noted page 39 of the plan. He asked Council if the local jurisdictions knew about page 39. If you got local jurisdiction buy in, the plan would be successful. Councilor McLain said they went to the Metro Policy Advisory Committee (MPAC) twice and asked that they review the plan. She felt it had been an integrated process. She said she knew that staff from Metro had been communicating with local jurisdiction staff. She noted that recycling issues were difficult to get on the jurisdictional agendas. Councilor Burkholder said they had requirements that we were required to meet. He said what page 39 did was provide mechanisms if local jurisdictions didn't follow waste reduction plans. Mike Hogle, Solid Waste and Recycling Director, said this was a rewrite of the previous waste reduction plan, which had been implemented over 10 years ago. They looked at this as a recovery recyclable issue in reaching the 64%. If local governments wanted to vary their program, they needed to come to Metro for a review. It was a checks and balance to ensure state recycling goals were met. He talked about the need to take the plan out to local jurisdictions once the plan was adopted. Councilor Liberty wondered how the existing program got us further along in our 64% goal. Mr. Hogle responded to his questions. He noted that organics collection, roll-cart recycling, and waste prevention activities added to the increase reduction in waste. Councilor Liberty talked about the plan and the integration into RSWMP. Mr. White said if there was a change in program Metro would look at the impact.

Councilor Newman asked Mr. Lange about his concerns. Mr. Lange said the business community was concerned about mandatory waste reduction. The business plan of a facility would be impacted by mandatory waste reduction.

Councilor Park asked Mr. White if there really was a local level of concern. Mr. White said they don't know about the plan. The question was whose responsibility was it to tell the jurisdictions about the plan?

Councilor Liberty asked Mr. Lange if BOMA had had a discussion about mandatory recycling. Mr. Lange responded that they wanted to promote waste reduction through education. He thought in working together and working with the tenants in their property they would see a significant increase in recycling.

Council President Bragdon closed the public hearing.

Councilor McLain appreciated the testimony provided today. She felt local jurisdictions and the general public had sat down with Metro staff and Councilors and talked about services provided over the past three years. They were responding to state requirements to meet a statewide goal. It was important that all citizens, local jurisdictions and businesses be included in the plan and educated on the plan. She agreed with Ms. Roy that the plan was more general. They were agreeing on a vision and principles. It was important that citizens and local jurisdictions had an opportunity to weigh in on the plan. She urged support of the plan.

Councilor Park said this resolution and plan was before SWAC. SWAC voted to forward the plan to Council. Local governments were part of SWAC and did hear about the plan. He talked about the system and felt that we were doing well with all of the competing goals. He noted Jeff Murray's testimony on the success of the program. They were continuing to make this a better system.

Councilor Liberty said he was still a bit uncertain about what the word interim meant. He felt the plan was a bit thin and a bit vague. Mr. Hogle said he was guilty of putting the word interim in the title. The disposal system plan will be developed over the next six months and then both would be integrated into the RSWMP.

Councilor McLain said any policy document was never finished. They could always amend the document. She urged support of the resolution.

Vote:

Councilors Hosticka, Newman, Burkholder, McLain, Park voted in support of the motion. The vote was 5 aye/2 nay, the motion passed with Councilor Liberty and Council President Bragdon voting no.

5.2 **Resolution No. 06-3717**, For the Purpose of Endorsing Regional Support of the "Plug-In" Partners National Campaign.

Motion:	Councilor Burkholder moved to adopt Resolution No. 06-3717.
Seconded:	Councilor McLain seconded the motion

Councilor Burkholder said they were invited to support a plug-in hybrid car national initiative. He talked about the net energy benefit. The Joint Policy Advisory Committee on Transportation (JPACT) considered this resolution and adopted the resolution. He urged support.

Vote:

Councilors Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Park absent from the vote.

5.3 **Resolution No. 06-3720**, For the Purpose of Authorizing the Chief Operating Officer to Enter into Options to Purchase Properties in the Newell Creek, Lower Tualatin River Headwaters, Forest Park and Johnson Creek Target Areas, and Including a Property in the Forest Park Target Area Subject to Unusual Circumstances under the Proposed 2006 Natural Areas Bond Measure Implementation Work Plan.

Motion:	Councilor Hosticka moved to adopt Resolution No. 06-3720.
Seconded:	Councilor Liberty seconded the motion

Councilor Hosticka reviewed the resolution and explained the issues about the Forest Park Target Area unusual circumstances. Councilor Liberty added his comment. Councilor Hosticka urged support of the resolution.

Vote:

Councilors Hosticka, Burkholder, Newman, McLain, Liberty and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Park absent from the vote.
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5.4 **Resolution No. 06-3721**, For the Purpose of Adopting the Metro Diversity Plan.

Motion:	Councilor McLain moved to adopt Resolution No. 06-3721.
Seconded:	Councilor Hosticka seconded the motion

Councilor McLain explained the Metro Diversity Plan and the efforts that had gone into the plan. She talked about the principles of the plan. She noted the Diversity Action Team at Metro and how they planned to advance this effort. She reviewed current initiatives at Metro, which included Chief Operating Officer's accountability on these issues, opportunities for diversity training, increases in our recruitment efforts, increases in our citizen advisory committee, as well as employment and procurement strategies. She also talked about a budget amendment that would be coming forward on September 7, 2006 to support the program.

Council President Bragdon opened a public hearing.

Vicki Nakashima, Partners in Diversity, 4685 Galewood St., Lake Oswego OR 97035 said she was the director for Partners in Diversity. They were working together to support initiatives to support diversity. Metro was one of the first organizations to step in and participate in the Partners in Diversity. In reviewing the plan the areas that were effective were 1) leadership commitment, 2) measuring the progress, and 3) investment. She believed these three elements would help the plan continue.

Samuel Brooks, Oregon Association of Minority Enterprises, 4134 N Vancune Portland OR 97217 said he had looked at Metro's plan. It was a great start. He suggested inclusiveness in diversity was important. He acknowledged Metro's staff.

Baruti Artharee, Partners in Diversity, 1235 NE 47th Ave Portland OR 97213 said he was a member of the Partner's organization. He also represented Providence Health Systems. He talked about his past experience working with groups on diversity both in public and private sector. He noted a document he shared with Councilors (a copy of which is included in the meeting record). He said diversity was changing in the State of Oregon. He was pleased to have worked with the COO and Metro staff. He talked about what they had done at Providence on diversity.

Council President Bragdon closed the public hearing.

Councilor Burkholder said that diversity was one of the Council's operating principles. This was a critical success factor. He felt there was a deep commitment on the part of the Council and Metro. He acknowledged Mr. Jordan's commitment to taking this task on.

Councilor Liberty said he had the opportunity to attend his first "Say Hey" event. He was impressed by the attendance at the event. He thanked all for the work they had done.

Council President Bragdon added his thanks. This was about the plan and internalizing it.

Councilor McLain said this was a good start. We needed to continue to do this in a big way.

Vote:

Councilors Hosticka, Burkholder, McLain, Newman, Liberty, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed with Councilor Park absent from the vote.

5.5 **Resolution No. 06-3724**, For the Purpose of Approving an Application for a Wetland Mitigation Easement to the City of Wilsonville and Matrix Development Corporation.

Motion:	Councilor Hosticka moved to adopt Resolution No. 06-3724.
Seconded:	Councilor Newman seconded the motion

Councilor Hosticka provided an overview of the application for a wetland mitigation easement. Councilor Liberty asked about previous legislation that impacted this legislation. Councilor Burkholder asked a clarifying question about long-term liability. Jim Desmond, Regional Parks and Greenspaces Director, added his comments about the plan and responded to their questions. Council President Bragdon said he had similar reservations to Councilor Burkholder. He assumed that Mr. Desmond would come back to Council if the plan did not meet his expectations. Mr. Desmond said staff had raised these concerns from the beginning. They were 100% committed to making a good plan. Councilor Park asked additional questions about the mitigation project. Mr. Desmond said there were several projects that were similar. He talked about the public benefits of this site. He urged that this mitigation be done in the same water basin. He felt it was a good partnership.

Councilor Newman said he had not been to this site. He asked how Mr. Desmond would characterize it now. What had been our long-term plan? Mr. Desmond said historically it had been farmed but there had been a lot of ditching. They wanted to bring back the natural hydrology. The area had become overrun with exotics. They would have to remove all of the exotics and plant native plants. He talked about the cost of the project. Councilor Newman asked if these dollars weren't available from the private partner, how would they proceed? Mr. Desmond responded that the project would be delayed greatly. He talked about other projects in the area that were more of a priority. He felt this was an incredible opportunity to tie the wildlife refuge all the way to the river. Councilor Liberty said he felt this was an attractive opportunity. He asked about the restoration efforts and the necessity for pumping. Mr. Desmond responded to his question. Councilor Hosticka said the idea that what they were doing was taking a situation where someone was going to fill in and then use public property to mitigate was a concern. He

felt it was a loss of wetlands. He was willing to support this easement but they should be careful to assure that the wetlands improved.

Vote:

Councilors Park, Hosticka, Burkholder, Newman, McLain, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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5.6 **Resolution No. 06-3706**, For the Purpose of Entering an Order Relating to the Roger and Ann Miracle Claim for Compensation under ORS 197.352 (Measure 37).

Sonny Conder, Planning Department, summarized the claim. The staff recommends denial because Metro found that there had been no loss of value.

Council President Bragdon opened a public hearing.

Mark Bobbitt, the attorney representing the Miracles, said he believed the Metro analysis was flawed. The purpose of the Metro Council was to serve a judicial function. The basic rule was the Council was to interpret statutes. They were not allowed to legislate. He spoke to the claim and the timing of the claim. The claim was effective the date it was filed. The claim was based upon the present enforcement of the 20-acre overlay. The claim was not based upon the passage of the Ordinance in 2002. The analysis of the staff was premised on the basis of the adoption of the Ordinance in 2002. At the time the claim was filed, Mr. Miracle had already received a waiver from the City of Damascus and Clackamas County. He summarized Measure 37 and what it allowed the claimant to do. The second issue was the determination of what was fair market value. He defined fair market value as defined by the court. He suggested Council should be using the same definition as the courts used in condemnation: income, cost or comparable sales. They were using the comparable sales for the purpose of determining fair market value. He felt staff's analysis was flawed. He then talked about the Jaeger method. It had never been accepted nor showed up in any court case in the State of Oregon. Fair market value was the standard the courts and the State of Oregon used. He continued his comments about the Jaeger method. In conclusion, he said, there was no issue as to the validity of the claim. The sole issue was a reduction in fair market value. He urged Council to send this resolution back to staff for reconsideration.

Roger Miracle said he was here because he had submitted a Measure 37 claim. He read a portion of Measure 37 and spoke to what was the basis of his claim. The basis for these staff recommendations were faulty and in error. He talked about the comparable sales methods and summarized what Metro's staff report said. His claim was in the present tense. He had approval from the City, State and County to develop one-acre parcels. The staff recommendation missed the point. He said Measure 37 did not refer to the future or the past. His claim was in the present, as of February 1, 2006. In light of that fact, there were two issues, 1) restriction of the use of private property and 2) reduction of fair market property. The crux of the issue was the valuation. He said the report said he had failed to establish loss in value. The courts had upheld establishing value for the property as what a willing buyer and willing seller would agree to. Further, looking at the 20-acre overlay and having one building site opportunity going by the values presented in the report, page 8 and 10 on attachment 2, put the value at about \$252,000 to \$290,000. He noted a letter he had received recently from Brad Davis Properties (a copy of the letter is included in the meeting record). He said that the letter established value, which totaled about \$1.4 million. He noted three comparable sales documents. He said there had been a reduction in the fair market value of his property. He reviewed several sections on the findings of fact. He shared his vision of

his comprehensive plan for his land. He said Metro had used wrong assumptions in its assessments. He urged Council to fulfill the request of the Oregon public.

Council President Bragdon closed the public hearing.

Councilor Park said he had talked with Mr. Miracle prior to this Council meeting and wanted to note this for the record.

Councilor Liberty talked about the history of the property. He asked about the zoning at the time he purchased the property. Mr. Miracle said he was not ready to develop the property so he did not apply for one-acre properties zoning. Councilor Liberty talked about the ordinance and each section of the ordinance. Mr. Bobbitt responded to his comment. Mr. Miracle added that he had a bona fide offer for his property. This offer established that he had a loss in value.

Councilor Burkholder asked if they were in a judicial hearing. Dick Benner, Metro Senior Attorney, responded that it was a not a judicial or quasi-judicial proceeding. Council had chosen to hold a hearing. He summarized what Mr. Bobbitt was talking about. Council did interpret a statute. Councilor Hosticka asked about the dates and what was the operative date that Council needed to be considering. Mr. Benner responded that Mr. Bobbitt was reading part of Measure 37. He summarized what Mr. Bobbitt was claiming in terms of dates. Mr. Benner summarized Metro's interpretation of the measure and the analysis. Mr. Bobbitt reviewed a portion of Measure 37 and his thoughts about what the claims process was. Councilor Park talked about the State's acknowledgement of the ordinance. Mr. Benner concurred with Councilor Park's remarks. He said what they were talking about here was whether there had been a reduction in value. The market perception of what Council did, showed there was an increase in value. Mr. Bobbitt agreed with that analysis. The evidence that they submitted when the market took this into account was that there was a reduction in value. Councilor Park talked about if the property was removed from the Urban Growth Boundary (UGB).

Councilor Liberty asked additional questions about the date of enforcement. Had the attorney general provided any information? Mr. Benner said the attorney general's summary was similar to Metro's interpretation.

Motion:	Councilor Burkholder moved to adopt Resolution No. 06-3706.
Seconded:	Councilor Liberty seconded the motion

Councilor Burkholder said they had heard similar claims. He felt comfortable that our action had not reduced the value of the property. Therefore, the claim did not stand. He supported the resolution. Councilor Hosticka echoed Councilor Burkholder's comments. He felt our legal counsel provided good guidance. He supported the COO's recommendation. Council President Bragdon concurred with the COO's recommendation.

Councilor Park said he would be supporting the resolution and explained their responsibilities concerning the claim. He also noted that the 20-acre lot minimum was a temporary action. He concurred with Metro's legal advice. Councilor Liberty provided his comments and supported the staff report and resolution.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Newman, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, talked about an article from the Gresham Outlook about Jim Caudell's action at Blue Lake Park where he saved a person's life. He commended Mr. Caudell for his action. He felt his actions were laudable. Councilor Park also appreciated Mr. Caudell's actions and asked about the citizen he saved. Mr. Jordan said he would follow up.

7. COUNCILOR COMMUNICATION

Councilor Newman updated the Council on the Oregon Zoo Master Plan.

Councilor Burkholder updated the Council on investigating the use of bio diesel for our vehicles. This was part of our on going sustainability efforts. Second, he attended the Columbia River Crossing meeting yesterday and shared what was happening.

Councilor Newman asked Council if Metro wanted to partner with Reconnecting American to convene focus groups on the aging population and transportation. Councilor McLain said she felt there were unique issues in the region that would be important to include in the conversation. Councilor Hosticka said he felt it was a good idea. It was an important subject when they come to looking at the next Urban Growth Report. It would be good to collect all the information. Councilor Liberty added his comments about Reconnecting America.

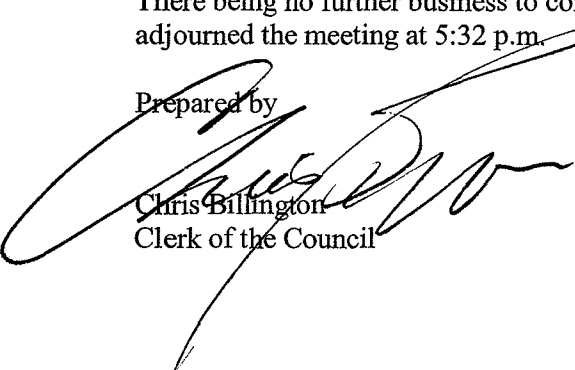
Councilor Park said he was working on a resolution on open spaces bond measure and refinement policies about how they dealt with the agricultural areas. He was hopeful that this would be on the September 7th Council agenda. Council President Bragdon supported placing the resolution on the agenda.

Council President Bragdon said Warren Iliff had died last week. Under his tenure the Zoo came under this agency's umbrella.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 5:32 p.m.

Prepared by



Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF AUGUST 17, 2006

Item	Topic	Doc Date	Document Description	Doc. Number
6.4	Amended Exhibit A	8/16/06	To: Metro Council From: Karol Ford, Human Resources Department Re: Amended Exhibit A to Resolution No. 06-3721	081706c-01
3.0	Power Point Presentation	8/16/06	To: Metro Council From: Scott Berry Re: Reasons to Invest in Ethanol power point	081706c-02
6.1	Testimony	8/17/06	To: Metro Council From: Jeanne Roy Re: Testimony on Resolution No. 06-3722	081706c-03
6.6	Letter and attachments	7/28/06	To: Roger Miracle From: Brad Davis, Brad Davis Properties Re: Measure 37 claim information	081706c-04
6.4	Diversity packet	8/17/06	To: Metro Council From: Baruti Artharee, Regional Director Office of Diversity Re: Providence Health System	081706c-05
2.0	Letter	8/17/06	To: Metro Council From: Curtis Sommer, League of West Linn Neighborhoods Re: Comments from the League on a vision statement for the West Linn Triangl	081706c-06