

## METRO COUNCIL REGULAR MEETING MINUTES

June 4, 1998

2:00 PM

Council Chamber

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

Councilors Absent:

Presiding Officer Kvistad convened the Regular Council Meeting at 2:05 p.m.

### 1. INTRODUCTIONS

None

### 2. CITIZEN COMMUNICATIONS

None

### 3. EXECUTIVE OFFICER COMMUNICATIONS

None

### 4. AUDITOR COMMUNICATIONS

None

### 5. MPAC COMMUNICATIONS

None

### 6. CONSENT AGENDA

6.1 Consideration of Minutes for the May 28, 1998 Metro Council Regular Meeting.

**Motion:** **Councilor McFarland** moved to adopt the meeting minutes of May 28, 1998 Metro Council Regular Meeting.

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

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

### 7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 98-755**, Amending the Metro Code regarding the Office of Citizen Involvement Effective June 1998.

**Presiding Officer Kvistad** assigned Ordinance No. 98-755 to the Government Affairs Committee

7.2 **Ordinance No. 98-759**, Amending the FY 1997-98 budget and appropriations schedule by transferring \$8,000 from materials and services to personal services within the Office of the Auditor to complete a cash receipts audit; and declaring an emergency.

**Presiding Officer Kvistad** assigned Ordinance No. 98-759 to the Finance Committee.

## 8. ORDINANCES - SECOND READING

8.1 **Ordinance No. 98-730B**, For the Purpose of Amending Ordinance Nos. 96-647C and No. 97-715B, to amend Title 3 of the Urban Growth Management Functional Plan, and amend the Regional Framework Plan, appendix A, and adopt the Title 3 Model Ordinance and Water Quality and Flood Management Maps. (*PUBLIC HEARING, NO FINAL ACTION*)

**Motion:** **Councilor Naito** moved Ordinance No. 97-730.

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

**Discussion:** **Councilor Naito** commented that this matter had been a work in progress at Metro for some time. She thanked Councilors McLain, Morissette and McCaig and the Committee, and legal counsel Ken Helm for all of their hard work. She reported on the process and pointed out several points, including wetlands and notice and the committee's recommendations.

**Councilor Morissette** added that the notifications were to be as specific as reasonably possible, talking about the affected property owner's adjustments and setbacks, non-native vegetation and activities to be regulated on the enlarged buffer zone. He said that once notification had happened and the issues had been identified, there would be a public hearing at Metro Council in case any issues would need modification.

**Councilor Washington** asked Councilor Naito to explain who would be responsible for the regular review of the maps per the Ordinance, when and how that review would take place, and who would determine who would do it.

**Councilor Naito** asked Elaine Wilkerson to answer the question.

**Elaine Wilkerson**, Director of Growth Management Services, said the provisions of the Title required local adoption of the maps, whether used as a reference document or for determinations. To be used for determinations, the maps must be field verified. She explained that field verification required public involvement and review by all interested parties. The map would then be included in the periodic review process of a local jurisdiction, usually every 5-7 years. She explained the administration provision allowed correction of a map. She said it stipulated that if someone brought a correction, within 90 days the municipality must initiate their process to correct it. That process would also be included in the periodic review. There was a specific provision that said local jurisdictions must adopt changes to include missing wetlands.

**Presiding Officer Kvistad** opened a public hearing on Ordinance No. 98-730B.

**Mike Houck** Audobon Society of Portland and Coalition for a Livable Future, highlighted critical points he included in the information he handed out to Councilors. He pointed out concerns regarding the language in several places and suggested possible modifications. (A copy of the written testimony can be found in the permanent record of this meeting.) He suggested adding a subsection C which would deal with protected water features that were not wetlands.

**Beverly Bookin** Commercial Real Estate Economic Coalition Creek and Columbia Corridor Association and Homebuilder's Association said the work being done on this ordinance was commendable. She said they were pleased to see specific limitations in the provisions and the work Metro staff had been doing. She felt this was the best compromise all around.

**Abe Farcus** Director of Development for the Portland Development Commission, commended the extraordinary work done. He said they concurred with the language changes Steve Fifer submitted to clarify assistance for local jurisdictions preparing their own regulations but added the language did not include other similar area references

like the river district, south waterfront of the downtown area and the central east side, all of which were subject to similar plans for redevelopment.

**James Dalton** was concerned about the identification process for notification. He felt all interested parties in the watershed and not just identified property owners should be included in the notification process. He wondered if it would be possible to include in the language issues regarding zoning changes and the comprehensive plan.

**Ken Helm**, Legal Counsel answered that it was already provided for under the existing proposed amendments Growth Management had brought before Council.

**Presiding Officer Kvistad** closed the public hearing.

**Motion:** **Councilor Naito** moved to substitute the B version of Ordinance No. 98-730.

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

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. The motion to substitute passed unanimously.

**Motion:** **Councilor Naito** moved to amend the B version of Ordinance No. 98-730 with Office of General Counsel's technical amendments, A through I. (These amendments can be found in the June 3, 1998 Ken Helm memo included in permanent record of this meeting.)

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

**Ken Helm** went through the technical amendments and explained what they would correct or clarify and the reasons they were needed. He answered Councilor questions to clarify certain points.

**Vote:** The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor Morissette voting no. (Councilor Morissette changed and clarified his vote at a later time in this meeting.)

**Councilor Naito** referred to Wilkerson June 3, 1998 memo identifying map changes. She said these were considered map errors.

**Motion:** **Councilor Naito** moved to amend the B version of Ordinance No. 98-730 to include Title 3 Map changes D(1) through D(4) reflected in the Wilkerson June 3, 1998 memo (a copy of which may be found in the permanent record of this meeting).

**Councilor Morissette** stated that his no vote would not mean he disagreed with the amendments, but that he had not had enough time to go over them because he had just received the memo.

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

**Vote:** The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed with Councilor Morissette voting no.

**Councilor Naito** asked Ken Helm to speak about the June 4 Schnitzer Investment letter (a copy of which may be found in the permanent record of this meeting).

**Ken Helm** commented that the letter suggested amending Title 3 language to specifically make clear certain areas of the region were taken off the Metro map and intentionally excluded from Title 3 regulation. She suggested staff go back and annotate existing maps to more fully explain the reasons those areas were taken off.

**Presiding Officer Kvistad** said if Council did not object this could be treated as a technical amendment to the maps and added as D(5).

**Councilor Naito** said an amendment was not needed, she was looking for agreement from Council that staff could go ahead and make the annotations.

**Councilor McCaig** said the other items had been before committee to be reviewed and this had not come until the last 24 hours. She said she was not comfortable amending this property in such a short time. It was not the same as technical amendments.

**Presiding Officer Kvistad** said it could be a stand alone amendment or send it back to committee.

**Motion:** **Councilor Morissette** moved to amend the B version of Ordinance No. 98-730 to include the Schnitzer annotation on the Title 3 map

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

**Councilor McLain** said she was not comfortable with the amendment as it had not been reviewed by the Growth Management Committee. She said she agreed with staff suggestion to make notations on the map, not change Title 3 text.

**Presiding Officer Kvistad** said his objective was to do it officially rather than administratively.

**Ken Helm, Legal Counsel** clarified the procedure. The annotations to the map would be prepared before final vote and be part of the record. He said Council could make a motion directing that the annotations be placed on the map before adoption by the Council.

**Councilor McCaig** said her understanding was that the compromise that had been reached was that this was an issue worth reviewing, not an issue to amend the ordinance.

**Councilor Naito** said Committee was only seeking some clarification of existing policy that certain properties intentionally be left off the map. She wanted annotations on the maps to state that the properties were considered carefully and left off on purpose. She felt annotation was the preferred method and no action was needed.

**Ken Helm, Legal Counsel** said they were verifying what was not on the map or why it was not there.

**Councilor Naito** said she thought everyone was agreeing and they could proceed just by directing staff or by motion.

**Presiding Officer Kvistad** said the motion was to direct staff to include annotations not to change language.

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

**Councilor Morissette** clarified an earlier mistake. He meant to vote for Amendment A and not for the package. He said he would have to change his vote to no on the package because he had objections to G and H.

**Presiding Officer Kvistad** said since that did not change the outcome, it was agreed to.

**Councilor Morissette** asked how many amendments there were because they had asked everyone to notify Council of last minute amendments.

**Presiding Officer Kvistad** said they had asked as a general courtesy for amendments to be brought forward early but any Councilor had the right to bring amendments to a work session.

**Councilor McCaig** rebutted Councilor Morissette. She said she understood they had agreed to a limited number of amendments for this meeting. The motion he just made on the Schnitzer property was not discussed at that meeting and was in fact a new amendment today.

**Councilor Morissette** said his amendment could also have been sent back to Committee.

**Councilor McCaig** said her objection was that Councilor Morissette's amendment had altered the Title 3 in a manner which most of the people following the proceedings knew nothing about.

**Councilor Naito** felt her amendment offered a bit of clarification.

**Ken Helm** spoke to Naito Amendment #1. He said he developed the language at Councilor Naito's request. He said Houck's proposal was to amend the definition of Title 3 wetland to include the statement "Title 3 wetlands do not include artificially created and managed storm water and water quality treatment facilities which solely serve a water quality function". He said their conclusion was there was no substantive difference but it added a concept that was probably implied the first time.

**Councilor McCaig** said she would appreciate it if Rosemary Furfey could join Ms. Wilkerson because this was discussed at the WRPAC Committee Meeting.

**Presiding Officer Kvistad** reminded that there was not a motion before Council at this time.

**Motion:** **Councilor Naito** moved the Naito Amendment #1 which stated Title 3 Wetlands - wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps. Title 3 wetlands do not include artificially created and managed water quality or stormwater and water quality treatment, detention facilities.

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

**Rosemary Furfey** said the terminology used at WRPAC was "constructed wetlands". She recommended that be used instead of "artificially created".

**Councilor McLain** asked for a definition of "constructed".

**Councilor Naito** withdrew her amendment.

**Elaine Wilkerson** said it included any structure or drainage way that was designed, constructed and maintained to collect and filter, retain and detain surface water runoff during and after a storm event for the purpose of water quality improvement.

**Rosemary Furfey** recommended replacing "artificially" with "constructed".

**Councilor McLain** suggested Councilor Naito replace the word in her motion.

**Motion:** **Councilor McLain** moved the amendment with the word "artificially" replacing "constructed".

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

**Discussion:** None.

**Vote:** The vote was 5 aye/ 2 nay/ 0 abstain. The motion passed as presented with Councilor McCaig and Presiding Officer Kvistad voting no.

**Councilor McLain** brought up a letter from the City of Hillsboro regarding the issue of Title 3 conflict with Title 1 in the Functional Plan on density. Their issue was that the mixed use areas should have been taken out as far as requirements for Title 3. She asked Council to consider having a transmittal letter indicating the Council understood the competing values in Title 1 and Title 3 and there was a resolution on the books indicating Council did not, for the sake of density, want them to apply Title 3 to important water quality, water features, or stream corridors. She felt this allowed the jurisdictions to look at the competing Titles in the Functional Plan and explain their need for not complying or using a different way to handle the requirements. She reminded Council that this was just one of 6 Titles that worked together. Her other issue was notification. She pledged she would look at future budgets and other ways to find out what was the best public notice for support of the local jurisdictions.

She said it was her understanding that public testimony would be taken on the 18th. She asked if there was a need for them, where would the technical amendments appear.

**Councilor Naito** said the technical amendments had been adopted today and there were no additional matters that she was aware of.

**Councilor McLain** understood that anytime there was an amendment, technical or otherwise, that changed an ordinance that there had to be a 2 week waiting period before you could vote on it to allow for review by the public.

**Presiding Officer Kvistad** answered that nonsubstantive technical amendments did not require the item to be held over. A substantive change would need a minimum of 1 week for outreach.

**Councilor McLain** said she would like to check that with legal staff.

**Ken Helm** deferred until Dan Cooper returned.

**Presiding Officer Kvistad** assured Councilor McLain that this was the way it operated but would wait for legal counsel to return. He said they would ask Mr. Cooper upon his return.

**Councilor McLain** asked Council if this issue was done with unless legal counsel found a problem that needed attention and was told this had been the general discussion and final action would be on June 18th.

**David Cooper** returned and responded to Councilor McLain's question that there was a one week time delay after a substantial material amendment. It could not be vote on today due to changes. The Council could vote on it anytime at least a week after this meeting.

**Councilor Naito** commented that the public was routinely informed of public decisions by governmental bodies and if Metro could enhance that through workshops or other notification, Council would be happy to assist the local governments in doing that. She said a celebration at Willamette Park was slated for Monday June 22 at 10 am on Title 3 to thank all the participants for their work on this and the public was welcome.

**Presiding Officer Kvistad** said he had been concerned about property rights and takings when this process had begun. He congratulated the committee, the business community and the coalitions for all their hard work. He said the document added a lot of protections and took care of many of his substantive concerns.

**Councilor Morissette** said he still had Title 3 concerns and believed the property right issues had not been properly dealt with among others.

**Presiding Officer Kvistad** continued this item to the meeting on June 18th.

## **9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.**

9.1 **Resolution No. 98-2655**, For the Purpose of Authorizing the Executive Officer to Acquire Rights to Construct and Maintain a Trail in the Existing Railroad Corridor Located in the OMSI to Springwater Corridor of the Willamette River Greenway Target Area.

**Presiding Officer Kvistad** opened a public hearing on Resolution No. 98-2655.

**Charles Ciecko**, Regional Parks and Greenspaces Director, gave a brief overview of the coming discussion. He said acquisition of OMSI to Springwater property closed with PGE just over a month ago for \$350,000. He said this had been an important step in the reality of a pedestrian trail as envisioned in the Regional Trails Plan. He explained the rail rights that remained on the property. He said he was excited to come before Council to talk about a proposed agreement that would clear the way for the construction of the entire trail. He said he wanted to acknowledge Amy Chestnut for her hard work and sensitivity to the needs and desires of the landowners.

**Jim Desmond**, Regional Parks and Greenspaces, said the transaction had 3 pieces. The business terms would be discussed in Executive Session. He said the OPRR had executed an Agreement of Relinquishment and Release and Conveyance of Easement, Right-of-Way and Real Property that morning which meant basically that Mr. Samuels relinquished his railroad right-of-way in this 3.09 mile corridor for all but 17' x 60' strip on which to run his train. It consented to construction of the trail and provided crossings to the Oak Bottom area. He said the track would have to be moved and Mr. Samuels had asked to be reimbursed by Metro for that because it was an extraordinary expense. He said the third piece was that the Union Pacific Railroad had the right to consent to the entire transaction. He said they had worked closely with Portland Parks and finalized the precise design of the trail with Mr. Samuels. He reminded Council of the extensive public support that had already been shown for the project.

**Margaret Branson** 625 SE Manchester Pl., Portland, Sellwood area, said she enthusiastically supported Resolution 98-2655 and was excited about completing one more link in the 40 mile land loop and its tributaries. She felt it would greatly enhance the quality of life for visitors who used the trail and could be a popular alternative transportation route to downtown.

**Dick Samuels**, owner and President of Oregon Pacific Railroad, related a number of problems and liabilities that had come along with owning the piece of property. He said he was happy to be a part of this project and working with the park department.

**Councilor McCaig** asked for a timeline and completion date for moving the rail.

**Dick Samuels** said the agreement called for it to be completely moved and ready by April 30 of 1999. He said they would be moving the track, in phases during the upcoming Sam Track operating season and then would work full time to get it moved and ready by April.

**Presiding Officer Kvistad** called an Executive Session held pursuant to ORS 19.2660(1)(e). Deliberations with persons designated to negotiate real property transactions.

**Presiding Officer Kvistad** closed the Executive Session and reminded those present that what went on in Executive Session was not to be reported or leave the room.

**Motion:** **Councilor McFarland** moved adoption of Resolution 98-2655.

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

**Discussion:** **Councilor McFarland** urged passage of this Resolution.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain. Resolution 98-2655 passed unanimously.

## 10. COUNCILOR COMMUNICATION

**Councilor Washington** presented Presiding Officer Kvistad with the award for the Council that he and other Councilors had received last week from Tri-Met in recognition of their leadership and progressive commute options.

**Presiding Officer Kvistad** thanked him and announced that Ordinance 98-730B was now 730C as amended. He said on June 16th at 6 PM at Brentwood Darlington Community Center was the public hearing on filling the seat that would be vacated by Councilor Naito.

**Jeff Stone** reminded that at least 3 Councilors needed to be present at the public hearing for replacement.

**Councilor Morissette** said he would not be able to make that meeting. He asked Councilor McCaig if she would be chairing the prison meeting and was told she would.

## 11. ADJOURN

There being no other business before the Council, Presiding Officer Kvistad adjourned the meeting at 4:33 PM.

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Prepared by,

Chris Billington  
Clerk of the Council