

MINUTES OF THE METRO COUNCIL MEETING

February 28, 2002

Metro Council Chamber

Councilors Present: Carl Hosticka (Presiding Officer), Susan McLain, Rod Park, Bill Atherton, David Bragdon, Rod Monroe, Rex Burkholder

Councilors Absent:

Presiding Officer Hosticka convened the Regular Council Meeting at 2:07 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. SOUTH CORRIDOR STUDY BRIEFING

Councilor Burkholder suggested rescheduling this briefing.

4. CONSENT AGENDA

4.1 Consideration of minutes of the February 14, 2002 Regular Council Meeting.

Motion: **Councilor Bragdon** moved to adopt the meeting minutes of the February 14, 2002, Regular Council meeting.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

5. ORDINANCES - FIRST READING

5.1 **Ordinance No. 02-939**, For the Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenues for Metro's Regional Parks and Greenspaces Programs.

Presiding Officer Hosticka assigned Ordinance No. 02-939 to Natural Resources and Solid Waste & Recycling Committees.

6. ORDINANCES – SECOND READING

6.1 **Ordinance No. 02-933**, For the Purpose of Amending Metro Code Chapter 5.01 to Provide for the Regulation of Chipping or Grinding of Wood Waste at a Facility that is Otherwise Regulated by Metro.

Motion: **Councilor Atherton** moved to adopt Ordinance No. 02-933.

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

Councilor Atherton explained the ordinance was to address the issue and include a regulation for hog fuel. It had passed out of committee unanimously.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-933. No one came forward. Presiding Officer Hosticka closed the public hearing.

Councilor Atherton thanked the staff for their hard work.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

6.2 **Ordinance No. 02-934**, For the Purpose of Amending the FY 2001-02 Budget and Appropriations Schedule Transferring \$31,000 from Contingency to Operating Expenses in the Building Management Fund, and Declaring an Emergency.

Motion: **Councilor Bragdon** moved to adopt Ordinance No. 02-934.

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

Councilor Bragdon reviewed Ordinance No. 02-934 explaining the transfer was related to improved security measures such as a visitor management project and security cameras as well as enhancements for the hearing impaired in the chamber and Room 370. He recommended approval.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-934. No one came forward. Presiding Officer Hosticka closed the public hearing.

Councilor McLain asked if this was over a two-year period?

Councilor Bragdon responded that this was all in the current fiscal year. He closed by indicating that this was not an increase in the budget but a transfer from contingency fund to take care of operating expenses for MRC building.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

7. RESOLUTIONS

7.1 **Resolution No. 02-3146B**, For the Purpose of Encouraging the Procurement of Wood Products from Sustainable Sources and Promoting the Sustainable Forest Product Industry.

Motion: **Councilor Burkholder** moved to adopt Resolution No. 02-3146B.

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

Councilor Burkholder summarized the resolution and noted the reasons for supporting this resolution. The intent of the legislation was to promote a change in Metro's purchasing behavior to support and encourage the purchase and use of wood products from sustainable sources as well as being prepared in a sustainable manner. This resolution directed the Executive Officer to examine a procurement policy that would meet these goals and report back to Council within 180 days. He noted key issues of investigation including third party certification programs and

providing preference. He felt this was in line with Metro's history of promoting environmentally sensible and sustainable actions, he encouraged support.

Councilor Park asked for clarification on the term “certified”. Would it apply to the Oregon Forest Practices Act?

Councilor Burkholder spoke to the term certified well-managed versus sustainable managed and explained why this had been used in the resolution. Certification was a better phrase to use.

Councilor Park said the Oregon Forest Practices Act was implemented to satisfy a good portion of the Endangered Species Act. He was seeking assurances that certified well-managed meant what Oregon was already doing.

Steve Apotheker, ENACT Coordinator and REM Waste Reduction Planner, said the Oregon Forest Board had recently undertaken a study to look at how the practices that were currently being required comply with some of the certification programs. At Metro they would be working to develop criteria and a program that was consistent with the same goals that the private sector had already adopted.

Presiding Officer Hosticka restated the question. Did compliance with the Oregon Forest Practices Act mean that you were certified.

Councilor Park further clarified his question. He wanted to make sure that they were using the definition of a State program as being acceptable. Was Metro adopting something that would be in conflict with a State certified program?

Mr. Apotheker said he believed that the State and was undergoing the same process. The overall goal was the same; they wanted to build demand from well-managed forests.

Councilor Burkholder said there were some pieces of the Forest Practices Act that were not covered. He further clarified those areas.

Councilor Park said that the Auditor had been signaling to speak.

Alexis Dow, Auditor, speaking as a private citizen, said there was two primary certification programs that were recognized in the industry and by the retail trade. She explained those certifications. She added that the industry itself had recently commissioned Nadar Engineering to do a comparison of the two major programs and see if they were effective. The results of the study should be released within the next three months.

Councilor Park said they used the term “certified well-managed forest”. He wanted clarification on the term.

Paul Garrahan, Assistant Counsel, said what this resolution did was to direct the Executive Officer and staff to conduct a study on the issue and in the end what "certified well-managed" meant would depend on what the recommendations from the study showed.

Councilor Bragdon commented that the applicability of the resolution was accurate. This would provide for additional certification. He felt this made Metro a responsible consumer and used Metro's market power in a positive way to achieve ends. He spoke to the concerns he had

expressed at committee including fiscal impact. Most of these concerns had been addressed in committee and were included as revisions in the resolution.

Councilor Park said he understood the concept but would be abstaining from the vote.

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

7.2 Resolution No. 02-3147, For the Purpose of Reallocating a Portion of the Multnomah County Local Share Funds from the Metro Open Spaces Bond.

Motion: **Councilor Atherton** moved to adopt Resolution No. 02-3147.

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

Councilor Atherton reviewed the resolution explaining the changes in allocations from the original Intergovernmental Agreement and why the resolution was before Council.

Councilor McLain said they had done a good job of looking at the project changes. She thought there had been really good staff work on this resolution.

Councilor Burkholder asked about communication from Multnomah County?

Heather Kent, Regional Parks and Greenspaces, said they had sent a letter to Multnomah County. They were required to consult with Multnomah County. They had notified the county but the county had made no formal comments.

Councilor Park said he would be voting for this resolution.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

7.3 Resolution No. 02-3155, For the Purpose of Appointing Donald Olson and Elizabeth Tucker and Reappointing Scott Seibert to the Metro Committee for Citizen Involvement (MCCI).

Motion: **Councilor Monroe** moved to adopt Resolution No. 02-3155.

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

Councilors Monroe said appointments were recommended by the Executive Officer. He felt these appointments were good and urged an aye vote.

Councilor Burkholder said he was glad they were appointing these three individuals. There were still some openings. He noted which positions were available.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

Councilor McLain asked if MCCI was going to present before the Metro Council. She suggested inviting them to come to a future Council meeting.

Councilor Burkholder said he would plan for this.

Presiding Officer Hosticka said they were working on a long-range strategic plan and thought MCCI could present this plan to the Council.

Councilor McLain suggested reviewing the plan before it was finalized.

7.4 Resolution No. 02-3166, For the Purpose of Approving Portland Regional Federal Transportation Priorities for FFY 2003 Appropriations.

Motion: **Councilor Monroe** moved to adopt Resolution No. 02-3166.

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

Councilor Monroe reviewed the reason for this resolution and noted some of the funding requests and continued support requests. He acknowledged that this resolution had been agreed to regionally and unanimously.

Councilor Burkholder said there was nothing in this resolution having to do with South Corridor and explained why.

Councilor Park said these projects were all very timely. He spoke to the Sauvie Island Bridge funding and noted the need to support the agricultural industry in that area. He felt this was a good project.

Councilor Monroe said they had added a paragraph in the position paper about the South Corridor Study. He urged support of the resolution.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

8. CONTRACT REVIEW BOARD

8.1 Resolution No. 02-3154, For the purpose of Exempting from Competitive Bidding Requirements and Authorizing Release of RFP 02-1005-ZOO for Soft Drink and Bottled Beverages at the Oregon Zoo.

Motion: **Councilor Monroe** moved to adopt Resolution No. 02-3154.

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

Councilor Monroe said the soft drink contract at the Zoo had expired. The Zoo wanted the flexibility to negotiate with responsive proposers such items as service, delivery, equipment and donations. He explained that this resolution gave them the best deal.

Councilor Bragdon said he had expressed concerns at the committee, he further explained those concerns. The Oregon Zoo had assured him that these issues would be addressed.

Councilor McLain said it was really important to not harm the goal of the facilities. She spoke to personal experience at her school. She suggested talking to other companies who had had these kinds of contracts.

Presiding Officer Hosticka asked if the Council would look at the contract once it came back, was it subject to Council approval?

Dan Cooper, General Counsel, responded to Presiding Officer Hosticka's question. He explained that this resolution and Code requirements did not require that the contract come back to Council but this could be added to the resolution if desired.

Councilor McLain shared further concerns about the image issue. She suggested a review before approving the contract.

Kathy Kiaunis, Oregon Zoo Deputy Director, explained the provisions of the resolution. The gift portion of this would be negotiated with the winning soda vendor, it would be tasteful and similar to other donors.

Councilor McLain expressed concerns about donation recognition and asked if they were going after a large donation? Was the Zoo looking for the vendor to build something?

Ms. Kiaunis said the vendor would get recognition just like any other donor did.

Councilor McLain cautioned that this was where they could have potential risk for image and perception of the Zoo.

Councilor Burkholder expressed concern about the term "prominently acknowledged".

Councilor Bragdon agreed that there was some leeway in the document, which was intentional to give the staff some negotiating room. The intent of his remarks was similar to Councilors McLain and Burkholder, he wanted to get on the record their concerns about garish advertisement. The staff was in agreement with those concerns.

Councilor McLain noted the list of potential promotion and marketing prospects, which included billboards. She shared further concerns.

Councilor Atherton asked Ms. Kiaunis about how long the contract was for?

Ms. Kiaunis said they were hoping to issue a five-year contract.

Presiding Officer Hosticka asked about a formal review and what it would entail.

Mr. Cooper said they could amend the resolution to include a formal review. He explained the difference between informal and formal reviews. The Code did not provide for informal reviews but they happened.

Motion to

Amend: **Councilor Bragdon** moved to amend the resolution to allow the Council final review of the contract.

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

Mr. Cooper explained that this was a resolution, there were no requirements limiting the Council's ability to amend this and take final action today.

Councilor Bragdon explained his amendment and said it formalized the Council's opportunity to review the contract.

Councilor Monroe asked Ms. Kiaunis if this would present any kind of problem in terms of the Zoo's ability to negotiate and get the best contract.

Ms. Kiaunis said it might cause a delay. Her larger concern relating to the amendment was that she was unsure how well the contract would spell out the Councilors' concerns.

Councilor McLain explained that if these issues were not tied down in the contract that was more worrisome than anything else was. Most donors would want to know what kind of signage would occur. This was the kind of thing the Council wanted to see in the contract. The Council wanted to know what substantial signage meant.

Councilor Park spoke against the amendment, explaining this was one of the areas where Council was crossing into what they were paying staff to do. Council had given good direction, given staff an outline of what the Council wanted to occur. He would think that during the course of this negotiation if staff thought that something was sensitive, they would bring it back to the Executive Officer and he would bring it to Council if he thought it was crossing the line.

Councilor Atherton asked Mr. Cooper about the RFP and benefits extended to the vendor.

Mr. Cooper responded that the current authorization allowed the Zoo Director to set special admissions and provided for management flexibility. There was no requirement for those particular benefits to come back to the Council outside the contract. Some of those benefits would be extended by the Oregon Zoo Foundation because they were the one who was selling the membership. He spoke to standard marketing practices at the Zoo that the Council had already authorized.

Presiding Officer Hosticka said he would be voting in favor of the amendment and explained why. He felt it was worth an extra review.

Councilor Bragdon said the Oregon Zoo was such an asset. The experience that individuals had there needed to be a high quality one. This would allow the Council a final review before the entered into a contract of this size and duration.

Vote to

Amend: The vote was 6 aye/ 1 nay/ 0 abstain, the amendment passed with Councilor Park voting no.

Vote on the

Main Motion: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

8.2 Resolution No. 02-3158A, For the Purpose of Exempting From Competitive Bidding Requirements and Authorizing Release of RFP 02-1004-ZOO for PBX Replacement at the Oregon Zoo.

Motion: **Councilor Monroe** moved to adopt Resolution No. 02-3158A.

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

Councilor Monroe said the PBX system was sorely out of date, both hardware and software needed replacement. This RFP allowed for replacement of the system.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

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

**EXECUTIVE SESSION, HELD PURSUANT TO ORS 192.660(1)(h), TO
CONSULT WITH LEGAL COUNSEL CONCERNING THE LEGAL
RIGHTS AND DUTIES OF A PUBLIC BODY WITH REGARD TO
CURRENT LITIGATION.**

Time Began: 3:22

Members Present: Nancy Chase, Charlie Ciecko, Heather Kent, members of the media, Mike Burton, council staff, Dan Cooper

Time Ended: 4:05

9.1 **Resolution No. 02-3159**, For the Purpose of Authorizing the Executive Officer to Purchase the Taber Property as an Addition to Howell Territorial Park.

Motion: **Councilor McLain** moved to adopt Resolution No. 02-3159.

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

Councilor McLain explained the resolution and the site benefits. This was an outstanding site for Metro. It fit well with the previous purchase in the area and with Howell Territorial Park. She recommended purchase.

Councilor Burkholder said, given the current rejection of the master plan for Howell Territorial Park, he thought it appropriate to have a discussion about the wisdom of purchasing this piece of property. It appeared that they might not be able to develop the park in the way that would meet the needs of the region's citizens with Multnomah County's current position on this site.

Councilor McLain said there were two elements to be considered, first, did the Council feel that the purchase in 1996 was a worthwhile purchase for future opportunity for a regional park? She felt that this purchase fit the bond measure guidelines. Did this property meet those criteria? She said she felt that it did. Second, the Council needed to look at the political and short-term/long-term planning filter. She felt there was future opportunity for the park. If it became obvious that they would not realize a regional park in the future, they could sell this property as well as the property purchased in 1996. She suggested legal staff provide detail on how they could do this.

Mr. Cooper said this issue of what if property was acquired with openspaces funds and in the future a determination was made that it was no longer appropriate to continue to use it for that same purpose, what could happen then, was actually explicitly addressed in all of the local share agreements Metro had entered into with each of the local park providers that got local share money. If the determination was made that the property would better be put to some other use and was no longer appropriate to be used for the open space purpose, then the government that owned it, whether it was Metro or a local park provider, could obtain an appraisal, determine what the fair market value was, and transfer it to another governmental purpose or sell it as surplus property under Oregon law provided that the fair market value was deposited into the fund from which the money was spent and then put to the openspaces purpose.

Councilor Park said Councilor Burkholder brought up a good point, he found it troublesome that they had asked Multnomah County for an official position on this and so far the county had declined. Metro was acting on their behalf in purchasing this property after they had declined allowing a regional park to go in on this property. He understood they had a short timeline to respond. He was struggling with what was best for the citizens of the region.

Councilor McLain said this was addressed in committee. She understood they needed to consult with Multnomah County on this issue but the Council was the actor in this issue as far as the role of managing these parks. Multnomah County did not have to take a position, they were not required to take a position. Metro was acting as the caretaker and manager. Metro was given the purchasing power for that local share and they had to do what they believed was good for the general public.

Councilor Park said his comment was what Multnomah County should do and what they could do was two different issues. He felt there were mixed signals.

Councilor Monroe said he would be supporting this resolution. If they didn't purchase he was concerned that a private owner would purchase the property possibly for a "hobby farm mansion" which would be next to the historical site and would not be conducive to that historic site. He spoke to Metro's options. This was prime land and the value would not be diminished in the future. He felt the open space was protected and that this acquisition strengthened the possibility of having a viable useful park site in the future.

Councilor Bragdon said this was an unusual purchase. Typically when the local share projects had come forward they had come forward with enthusiastic support of the host jurisdiction as well as partnership on planning. He felt this hadn't occurred with this site. He asked about the timeframe with the right of first refusal?

Ms. Kent responded that they had a short timeframe on right for first refusal.

Councilor Park asked what the designation was of the land?

Mr. Ciecko said they had already extended once to complete their due diligence. Metro's time was very short at this point, between two and three weeks to exercise the option. The owner's attorney suggested completing this as soon as possible and explained why.

Presiding Officer Hosticka said he felt the motivation of Multnomah County was irrelevant to his decision although he interpreted their response as a non-approval. His decision was based on whether or not acquisition of this parcel would be good public policy in terms of preserving that area along with the adjacent area as open space that would be available for public use now and into the future. He believed this was the case regardless of the disposition of the property in the short term. He thought preserving it for open space was a good thing to do.

Councilor Park asked what the land use type was on this property.

Ms. Kent said it was EFU land but there was a house on the site currently.

Councilor Park asked, if that was a legally developable home site, did they still have to show the income in this particular spot or if it was EFU was it automatically grand-fathered in?

Mr. Cooper said there was an existing house, tearing it down to put in a bigger house was perfectly legal.

Councilor McLain urged support. This would allow for purchase of property right next to Howell Territorial Park. She summarized the staff report and noted benefits.

Vote: The vote was 5 aye/ 2 nay/ 0 abstain, and the motion passed with Councilors Park and Burkholder voting no.

9.2 **Resolution No. 02-3162**, For the Purpose of Authorizing the Executive Officer to Purchase the Sho International Property in the Willamette Narrows Section of the Willamette River Greenway Target Area.

Motion: **Councilor Atherton** moved to adopt Resolution No. 02-3162.

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

Councilor Atherton said this purchase was for about 30 acres. It was adjacent to State of Oregon property. It exceeded the minimum acreage goals and this was why it was before Council today. However, it completed valuable connections and created a parcel size suitable for a regional park or natural area. It was a Tier 1 acquisition level and filled the goals of the refinement plan.

Councilor Bragdon said this site was a critical piece, a missing link. He asked, other than the target area acreage issue, was it in conformity with Resolution No. 01-3106?

Jim Desmond, Regional Parks and Greenspaces, responded yes.

Councilor Burkholder asked about the easement that the golf course held, was that for irrigation purposes and what were the conditions of the easement?

Ms. Chase responded there was a maintenance path that allowed truck access to irrigation.

Councilor Burkholder asked who was responsible for maintenance of the easement?

Ms. Chase said the golf course current maintained the easement but once Metro became an owner that would be an issue they would work on with the golf course.

Councilor Burkholder said there were issues with erosion in the area. He said this was one of the gems of the region.

Councilor Park supported this purchase. The thirty acres leveraged another 200 acres and provided linkage.

Councilor McLain said acquiring this property would enhance Willamette River restoration and water quality issues that Metro supported.

Councilor Atherton closed by adding that the Nature Conservancy owned the island.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

9. COUNCILOR COMMUNICATION

Presiding Officer Hosticka said last night MPAC considered a proposed methodology on sub-regional analysis that had been submitted to them in a memo dated February 21st from Andy Cotugno. The motion was passed 11/6 (a copy of the motion and vote were included in the meeting record). He thought the motion gave Metro permission but didn't give direction and it also indicated that the sub-regional issue was highly contentious.

Councilor McLain said MPAC gave them advise but not a mandate. The majority wanted the question asked but they wanted more conversation about sub-regional in general and as a concept as well as the methodology. To be the most effective in asking for that formal question at the State level to get on their April agenda, what was needed out of this Council on March 7th?

Mr. Cooper said they had been working with the Presiding Officer on a draft resolution that would authorize the filing of a request for a declaratory ruling with the Commission to asked the specific questions and incorporate the methodology that was reviewed by MPAC into that so they get a formal petition for the Commission to deal with. That would then trigger the opportunity for the Commission to either agree to answer the questions or do something else which might include rule making. They had had some responsible reaction from the department itself who was now recognizing what issues might be coming its way. The draft resolution will be available prior to the Council meeting next week for council review.

Councilor McLain asked if they would be discussing this at the Community Planning Committee next Tuesday?

Councilor Park said it was on the agenda. He clarified the proposed resolution.

Presiding Officer Hosticka noted that two members of Council would be in Washington DC next Thursday when considering this resolution. He suggested those members indicate any concerns before going to Washington DC and then set up some process for communication during the Council meeting.

Councilor Monroe said he favored moving forward with this concept but would not be available by phone.

Councilor Park suggested talking about the exception process since it was broached at MPAC. MTAC, MPAC and Community Planning Committee would be discussing it.

Presiding Officer Hosticka said specifically it was options on how to proceed regarding Table 1 numbers and request for exceptions from Table 1 numbers.

Councilor McLain said the resolution dealing with exceptions that the Council had just passed never talked about this item being pulled out of that exception process. There were two or three possibilities of how to handle it, two of them seemed to take the Functional Plan and carry it out, one of them seemed to say that Metro was understanding that they were not meeting that goal anywhere. She thought it was a bigger deal than what was presented at MPAC. She suggested additional conversation about this at Community Planning and that they really understand what they were doing. To her it was setting a precedent even to suggest that they would pull back from a Functional Plan requirement in such as way that they were saying that they were not going to follow through with their own goals.

Presiding Officer Hosticka said this would be discussed at Community Planning next week.

Councilor Park said this would be looked at least two times, at Community Planning next week, then at MPAC and then back to Community Planning again. The discussion will be about the two options laid out by Legal Counsel. He thought the final report would be a celebration of success. They would be hitting about 99% of the capacity for housing and 107% for job capacity. He thought this was something to celebrate.

11. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 4:40 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF FEBRUARY 28,
2002

TOPIC	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
COMMITTEE REPORT	2/28/02	RESOLUTION NO. 02-3159 COMMITTEE REPORT FROM MICHAEL MORRISSEY TO METRO COUNCIL	022802c-01
COMMITTEE REPORT	2/26/02	RESOLUTION NO. 02-3147 FROM MICHAEL MORRISSEY TO METRO COUNCIL	022802c-02
MEMO ON SUB- REGIONAL ANALYSIS	2/28/02	MEMO FROM SUZANNE MYERS HAROLD, MPAC COORDINATOR TO METRO COUNCIL CONCERNIG MPAC ACTION ON PROPOSED METHODOLOGY FOR SUB- REGIONAL ANALYSIS	022802C-03