

## MINUTES OF THE METRO COUNCIL/EXECUTIVE OFFICER INFORMAL MEETING

Tuesday, March 26, 2002  
Council Annex

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

Councilors Absent: Rod Monroe (excused), Susan McLain (excused)

Others Present: Mike Burton, Jeff Alden, Jeff Condit

Presiding Officer Hosticka convened the Council/Executive Officer Informal Meeting at 2:06 p.m.

### 1. UPCOMING LEGISLATION

Jeff Stone, Legislative Policy Officer, overviewed upcoming legislation for the March 28, 2002 Metro Council meeting which included excise tax parks funding and transportation funding issues. Councilor Atherton spoke to the legislative luncheon last Friday and asked about the session. Mr. Stone thought the interaction between the Republicans and Democrats was good. He thought it was important to make them aware of regional issues.

Councilor Atherton asked about the formulation of an urban agenda. He thought it would be extremely useful. Mr. Stone suggested that this agenda be worked on with PACWEST and the full council. Councilor Atherton encouraged early conversation about this issue. Councilor Bragdon said it was on the Governmental Affairs Committee work plan for June 2002.

Presiding Officer Hosticka spoke to land use issues and the need to engage in this discussion with the legislature. Councilor Park spoke to the ballot measures that were moving through about land use. Presiding Officer Hosticka talked about property tax revolts in the 70s and what happened. Councilor Park said the bottom line issue was protection of farmland or expansion into the farmland. Presiding Officer Hosticka expressed concern about the land use system being dismantled. Councilor Atherton concurred with Councilor Park. He felt that it was timely for this agency to craft an urban agenda. Cities needed to be livable. He felt that Metro had the respect to bring this forward. Mike Burton, Executive Officer, said they were trying to marginalize the land use laws. He talked about Metro's history, protection of forest and farmland, and how to invest in our cities. He encouraged Metro to have a legislative agenda.

### 2. TRANSITION ADVISORY TASK FORCE REPORT AND RECOMMENDATION WORK SESSION

Presiding Officer Hosticka welcomed Task Force members, Mr. Jeff Alden and Mr. Jeff Condit.

Jeff Condit, Transition Advisory Task Force Chair, said he felt that most councilors understood general recommendations (a copy of which is found in the meeting record). He urged getting things done as quickly as possible so there was some certainty about January 6, 2003.

Presiding Officer Hosticka passed out a possible timeline (a copy of which may be found in the meeting record). He noted that most of the implementation would be done by ordinance. He asked Mr. Cooper about would be required to implement the changes in terms of the Metro Code?

Mr. Condit spoke to the need to change the Code in light of the change in structure and reviewed some of the specifics. Dan Cooper, General Counsel, agreed that there needed to be an ordinance establishing the Chief Operating Officer's (COO) duties and responsibilities. The ordinance had been prepared consistent with the Task Force's recommendation. The ordinance describing the Attorney's duties would need to be amended. He suggested that if a change was going to happen annually, the Council should have a resolution drafted to support this. If the change was permanent he recommended an ordinance be drafted.

Presiding Officer Hosticka asked about adoption of rules for the conduct of the Council? Mr. Cooper said the Council adopted resolutions for this purpose, the Council generally followed Roberts Rules of Order. Resolutions describe responsibilities of committees and the order of business for the Council. Presiding Officer Hosticka said he was referring to how the Council would relate to the Council President. Mr. Cooper said they needed an ordinance to clean up any inconsistencies.

Presiding Officer Hosticka asked if any councilor had any disagreement with the ordinance timeline. It followed the outline of the Task Force recommendations. He spoke to the first group of recommendations that had to do with the Council President. Councilor Park commented that it seemed premature. Mr. Condit said the reason they recommended that the structure be put in place before January was because there was uncertainty in the agency. He noted that adoption of an ordinance did not preclude changing it. Councilor Bragdon said he agreed with Councilor Park. There was house keeping that could be done. He felt it would be hard to proceed in recruitment for a COO when you don't know who the Council will be.

Mr. Condit said their recommendation on recruitment of the COO was contingent upon knowing who the Council would be, particularly the Council President. The committee felt very strongly that it was best to have a COO on board as close to January 6, 2003 as possible. But more importantly it was best to have those councilors who would be serving in January 2003 be part of the selection process. The purpose of enacting the ordinance now was to give certainty as to what the system would be like on January 6, 2003.

Mr. Burton said he thought the COO's duties could be developed. He noted that the RFP and clarified that this was to get a firm on board for recruitment. He suggested that a job description would need to be developed for a firm to be able to recruit for the position.

Jeff Alden, Transition Advisory Task Force Vice Chair, said in their discussion there were a number of things that could be taken care of before they knew who would be the Council President and the new Council. They could be recruiting for the "long list" before the council was in place. The earlier that this gets done the less likely they would have to have an interim COO.

Presiding Officer Hosticka suggested going through the list and identifying which ones they could deal with now and which ones needed to be postponed. He stated that if this was to truly be a discussion about what Metro ought to be, the general role and authorities of the Council, the COO, and the Council President, he thought they should go forward before they knew who the names were going to be. He thought they would get a better structure if they were looking at what they thought was the best structure regardless of personalities. It would be his preference to make these decisions as soon as possible if appropriate. Councilor Park asked where the timeline came from? Who was proposing it? Presiding Officer Hosticka said he was proposing it. Councilor Park reiterated that the thought the timeline was too jammed but asked what items the Transition Committee thought should be accomplished first? Was the list in the order of importance? Mr. Condit said they were in the order of how the report was written. The area of the COO was the most important, then the roles and authority of the Council President, the budget process funding issues, and then the council standing committee structure.

Presiding Officer Hosticka said the standing committee structure was one of the things they could deal with after they knew who the Council President was going to be. He suggested that the Attorney ordinance was routine. Mr. Condit said he thought that it was routine, the only thing that changed was his

title. The one thing they didn't talk about, there was probably a move to have Mr. Cooper officially appointed as the Metro Attorney. Mr. Burton spoke to the history of the title of Metro Attorney versus General Counsel. Mr. Cooper said the hire/fire authority was inconsistent with the charter language. He explained further what inconsistencies existed and what would need to be changed.

Mr. Condit suggested that all of these modifications could happen at once. If that was not possible, he suggested taking the COO ordinance first and then come back to the rest.

Presiding Officer Hosticka asked for agreement about the clean up on the Metro Attorney language. He suggested doing this as soon as possible by ordinance. Councilor Park asked about the implementation dates, he assumed it would be January 6, 2003. Councilor Bragdon clarified that they would need to pass the ordinance 90 days prior to January 6<sup>th</sup>. Councilor Park talked about the timelines of this year and the Urban Growth Boundary decisions upcoming in the Fall and suggested that as long as these ordinances were passed by September he didn't think consideration of the ordinances had to be done right now.

Presiding Officer Hosticka said some of this had to do with uncertainty, people would like to have as much certainty as soon as possible so they don't fret for the next nine months between now and January.

Mr. Condit said, legally, you could wait up until 90 days before January 6, 2003 before official implementation. He noted the concerns about increasing uncertainty in the staff and you wouldn't be able to recruit for a COO. That was why they had recommended getting going as soon as possible.

Councilor Bragdon said most of the uncertainty had to do with the election and not knowing who was going to be on the Council. That was a fact of life for people who work for public agencies. They couldn't change that.

Mr. Alden said lets forget about the uncertainty of staff for a moment. The relative certainty of someone who was going to be applying for this COO job was probably a more critical issue. He would not want to apply for this job if it was going to be a weak city manager model of COO as opposed to what the committee proposed which was a strong manager proposal. Any council could change the duties at any time but there was going to be a fair amount of continuity on this council regardless of what happens in May and November. His guess was that to the extent that there would be new councilors there would be a fair amount of deference to those who have served previously on Council with respect to structural issues like the amount of power that was given to a manager. The most critical part was getting the best candidates for the COO position. The sooner you can get a definition of the position the earlier you would get people interested in it whether a final decision could be made or not.

Mr. Burton added that if they were trying to find agreement to going forward, he felt it would be in everyone's interest regardless of who was going to be here in January. The weight of what the Council had done in a very thoughtful process would prevail.

Mr. Condit said he thought that there was some concern about the power structure. There was some concern about micromanaging on the part of the Council and concern about how authority would flow downward and general uncertainty about whom would be around and who would be working for who? He thought it was more than just who was going to be elected in May. There was concern on the part of staff about the structure. Councilor Burkholder said he didn't have a large concern about the timing. He suggested spreading out the timeline for the COO ordinance particularly since this would have a major impact on the agency. He spoke to the budget timeline and the necessity for amendment. He thought getting started on the hiring process was important so they did need to establish what the duties of the job were. The actual selection may take beyond January 2003.

Presiding Officer Hosticka summarized that having a first reading was not a problem but the amount of time for consideration of the COO ordinance needed to be extended. Councilor Burkholder said yes, he noted also the problems with quorum during this time before the primaries. He wanted to make sure they had enough time so everyone could participate.

Presiding Officer Hosticka asked if the Council thought that the role and authority of the Council President issues couldn't be resolved by this Council or before the May election? He asked, would you change your vote after the May election or defer it to your successor? Councilor Park said he thought it was a question of focus right now. To be fair, there were two individuals on the council right now who were focused elsewhere. He thought there were a lot of questions about some of these issues and they needed time to consider these.

Presiding Officer Hosticka said that was why he was trying to separate them. He asked which ones could be considered now and which ones did they need to take more time on? Councilor Burkholder said he thought they needed to prepare some draft ordinances. He believed that kind of work could get started. Presiding Officer Hosticka acknowledged Councilor Burkholder's suggestions and said they would proceed with having the ordinances drafted.

Councilor Park expressed concern about relationships with MERC and the Zoo. Mr. Burton said there were two different things, the Oregon Zoo was a department, MERC was different, he explained why. He thought that if you chose to change the relationship with MERC you would have to do this through a series of intergovernmental agreements. Mr. Condit said their intention was not to change the way MERC interacted with Metro. Mr. Cooper followed-up by explaining the current ordinance on MERC and the charter changes. There was necessity to do a bit of clean up otherwise they didn't have to do a lot of legislative work on the MERC issue. Presiding Officer Hosticka said they could change their relationship with MERC they could change it in a different setting than this. Mr. Cooper said yes, the council certainly had the opportunity but unless they wanted to make a policy shift in the MERC structure, they didn't need to take any action now. To implement what was recommended they would need to adopt an ordinance concerning the COO, the Metro Attorney and the Council President's authority. He spoke to the definition of confirmation.

Councilor Park asked for clarification about appointments and removals of Department heads? Mr. Cooper explained what the current structure was and the proposed changes. Presiding Officer Hosticka noted that appointment of department heads was separate from appointment of advisory committees. Mr. Condit explained the reason they recommended that advisory committees be confirmed by the Council. Presiding Officer Hosticka asked if they meant the internal committees of the Council as well? Mr. Condit said no. Two other points were about the COO having the ability to hire and fire was because that person would be working for the Council. When you have a separately elected executive, the confirmation authority was necessary to provide both sides with the feeling that they had input. The Council would have direct appointment authority over the COO now. He said that those on the committee, who had worked for a county government where the commissioners had to appoint or approve all of the department head hires or a city who had a city manager with that authority, felt that it was much more difficult if the department heads thought they could run to their favorite councilor and avoid employment opportunity. They thought that created a huge problem for the organization. The other comfort was that the charter retained the provision that empowers the Council to change the way that power works. By ordinance amendment the Council could decide to specifically appointment a particular director. He explained the reason why confirmation of director appointments was eliminated. He suggested focusing on the future structure not the current structure. He spoke to the committee's experience in these areas.

Councilor Park asked how those government agencies responded to the citizens and by having the change did that make them more responsive? Mr. Condit said he did not think there was a significant difference

in response to the citizens. He thought that having full time councilors was more important to responsiveness to citizens than the structure of the government was. Metro would have a full-time Council President who would be accessible to citizens as well as part time councilors. Councilor Park rephrased his question, was that city or county more responsive to citizens requests knowing the fact that the commission could then go to those department heads on a subject. Were they more responsive to being able to get something done or if you had directed everything to the COO and then down to the department heads were they more or less responsive? Mr. Condit said he did not think their proposed structure was intended to cut the council off from all of the rest of the staff. The important thing from an administrator's stand point was that you had a central person whose administering the government who had hire and fire authority and who could move the troops together in unison. He explained how councilor contact with individual department directors worked at the city level. Individual councilors or the major could call anyone but as a courtesy they had to let the city manager know. This was so the city manager could deal with making sure the issue got dealt with.

Mr. Burton said council had the power of the purse. If there had been a difficult time with a department responding back to council, those points can be made through the budget process. He spoke to the history of council requests. He felt this was a process not a policy question.

Mr. Alden said one thing they might think about when they were going through the process and actually analyzing what this change would mean was having one or more people from Washington County come in. The proposed structure was similar to Washington County. The practical answer to Councilor Park's question may have been experienced there so it could be dealt with other than on a theoretical level. It was an important issue. Councilor Park said he did not think the Council should be delving into anything below the department heads then you were getting into administrative interference. There was a certain amount of responsiveness that you got by being able to have that relationship without the COO. He felt this needed to be laid out very clearly so there was no misunderstanding of interfering with staff.

Presiding Officer Hosticka said they would flag that as an issue to discuss under the powers of the COO. Mr. Condit said it was not the committee's intention to propose that the COO as chief administrative officer cut off councilors from the flow information or contact with staff.

Mr. Cooper said there were three specific tracks to give direction to the COO as to how the council wished to operate with the COO. He noted the draft ordinance and suggested that more detail could be included about the relationship between individual councilors, communication to department directors, flow of information, and the specific expectations. The second opportunity the Council would have was after that was done, there was a need for a job description which would then go out, be modeled on the ordinance that would have more detail in it. This was another place where council could enunciate their expectations for COO behaviors. Finally, performance measures could also be included in an employment contract for the COO on those communication issues that council might have.

Councilor Atherton said he had experience under both systems. It had been his experience that no matter what kind of system you have individuals can goof the system up. Mr. Condit said that was a reason why he shied away from defining the relationship between councilors and other staff. Much of this was a function of personalities on the council, the function of the personality of the person who was hired as COO and part of the relationship between the Council and the COO that would have to be worked out. He felt it was important the COO have hire/fire authority and that Council reach an agreement on how that works and that the COO is aware of this. Presiding Officer Hosticka said he thought that any COO who wanted to take on the Council over hiring and firing of a department head wouldn't be COO for very long. Mr. Condit said his experience with city managers, if they exercised too much authority or were perceived as exercising too much authority, they won't last long. Mr. Burton shared his experience about being asked to fire people and explained why that provision was in the ordinance. Mr. Condit shared how this was laid out in the Lake Oswego charter.

Mr. Burton said on page 2 of ICMA under sub L, it said work with the Metro Attorney. He asked what "work with" meant. Mr. Cooper said the model ordinance came from a city model ordinance where cities had such things as municipal courts and judges. Under Metro's current structure the only enforcement Metro had was when the Council directs the Metro Attorney to sue someone because they owe us money or an ordinance needs to be enforced. The COO had to go to the attorney to get legal services done. Mr. Burton asked if the COO could hire independent counsel? Mr. Condit said no, that was why this was specified in the ordinance and charter. Mr. Burton shared past history about being sued by the Council. The Metro Attorney should be an independent office. Mr. Condit said their intent was to put that in there and explained why.

Presiding Officer Hosticka asked if there were any problems with starting to draft the ordinances which include MCCI and MPAC reporting to the Council President and Council or was this in the same nature as the Metro Attorney situation where they were changing language? He felt these were routine. The two issues that had the biggest debate had to do with Council staff and duties and recruitment of the COO. He suggested a process where you first describe the powers of the COO. Could they start identifying a recruiting firm before they knew what the COO was going to do?

Mr. Condit said in order for the firm to respond to the RFP they would have to know what kind of an official they were recruiting for. He thought you could start the process of drafting the RFP but he felt it was would be hard to proceed without a job description.

Councilor Park asked in the Task Force's discussion, how much thought was given to hiring an interim COO knowing that that person would be there only six months to a year. There were people who specialized in that. This would allow the new council to take the time to get a new person on board. Until the Council President was in office, the COO appointment could not be made.

Mr. Condit said they had a lot of discussion on that issue. The most important thing was that the council that was there on January 6, 2003 be the body that appointed that person. If that meant you had to have an interim COO that would be their recommendation. That having been said, they recommended getting that person selected as quickly after January 6<sup>th</sup> as possible. The key thing was not to rush that process. The relationship between the Council, the Council President and the COO was critical to the success of this transition.

Presiding Officer Hosticka asked if they should wait until January 6, 2003 before they described what the duties of the COO would be? Mr. Condit said no, if you were to wait until after January 6<sup>th</sup> to adopt the ordinance and describe the duties, it would mean January 1, 2004 before someone was on board. He said recruitment would take at least six months and that was already having a job description decided upon. He urged making some of those decisions soon.

Councilor Park said does that not argue towards an interim COO? He spoke to the sequence concerning the decisions. He felt trying to get someone on board after the November elections was unrealistic. Mr. Condit said if this was the scenario, you might want to delay.

Mr. Cooper said it was important to recognize that the report was dated February 26, 2002, prior to the filing deadline for the primaries. At the time that the report was prepared the committee had reason to believe that the Council President race might be resolved in May. If that decision was not made until November, it would slow down the winnowing, interviewing and selection process for COO and they could expect to have an interim COO.

Councilor Park asked if there was a problem with not getting it done by the May election? Mr. Condit said no, he thought that if the council could get the structure decided upon by the May election they would be putting themselves in the best possible position.

Presiding Officer Hosticka asked what difference it made from this point of view. He said that Mr. Condit had said this Council was the one that had to decide what the structure was, not the personality or who the person was but what the structure was. It seemed to him that it was unlikely that any sitting member of this council was going to decide to delegate that decision to their opponent if they were unsuccessful in the election in May and then if that was the case, why not do it now?

Councilor Park said he had bigger fish to fry right now, not necessarily his own race but the direction this agency was going to go. If this was not absolutely necessary to have done at this particular time, he had other things he was more concerned about. Councilor Bragdon agreed with Councilor Park on that, it was not a matter of people who were here, it was a matter of if there were new people coming to the Council, having their ownership of this process was very important.

Mr. Alden raised a legal issue. The voters decided that there would be a change in structure, implemented and in place by January 6, 2003. That meant that this council had to decide those issues. If someone replaced a current member on the council, they would not legally have the opportunity to sit and talk about this issue and vote on it until a time after which this was supposed to be done. So why shouldn't the Council do it now. Mr. Condit said it was important to point out that this ordinance was not cast in stone. If something happens, the ordinance could be changed. He thought the Council could proceed on some of the processes. Mr. Burton said Mr. Alden was right. The voters already spoke. It was the particulars that were difficult, he appreciated the fact that councilors wanted to include any new councilor who was coming in. He spoke to changes over the years, he thought that there would probably be changes in the future. He spoke to the need to begin the recruitment process, draft the job description, get the recruitment firm in place.

Mr. Condit said they also recommended that there be some checkpoints after the ordinance went into effect to make sure it was working properly. It ought not to be a huge difficulty to adopt something, they should expect some changes. He thought one of the reason for having the committee was to suggest the package to the Council.

Councilor Park said the work that had been done was good. He noted that the voters had also said that it would be the new council who puts this in place. On January 6, 2003, whoever was here would be the actual ones voting on this the first time, appointment and confirmation of the COO would occur with the new council and Council President.

Mr. Condit said you could put the ordinance structure in place right now. Their recommendation was to do as much as you could with the unknowns.

Councilor Burkholder said he would like to have discussions about the timing of this ordinance and process. He felt they should move forward in terms of the recruitment. They needed time to discuss substance such as how relevant would a councilor be under this current system. Were they wasting taxpayer dollars by paying councilors part-time. How do you ensure the councilors were being used well and that they stayed relevant. The question was, until May 21<sup>st</sup>, did they have time to consider these issues?

Presiding Officer Hosticka said if you look at the workload of the year, right now they were in the middle of the budget. So from the primaries until the UGB decisions, council would have sometime to look at these ordinances. He suggested these items be drafted to the extent they can, circulated and referred to

committee. He thought having another informal in early June to talk about these ordinances was a good idea to discuss the role of the councilor.

Mr. Burton said it was important to comment on this discussion. He said Metro's main goal was to plan ahead. They had a unique opportunity to set up a system that allowed Metro to proceed as a regional government. He noted the need to decide how MCCI and MPAC were staffed and the impacted budget decisions.

Presiding Officer Hosticka said he wanted to get a sense of the timing. He suggested getting the ordinances drafted. He asked Mr. Condit if he could come back in June.

Mr. Condit said he would be available by phone to discuss any of these issues.

Mr. Burton expressed his appreciation of all of the Task Force's work. Presiding Officer Hosticka said he felt they had identified the hot issues that would take more time. He also expressed his appreciation as well. Councilor Park thanked the Task Force. He felt the discussion was important to have and clarity was important to have as well.

Mr. Alden said one of the problems was what being responsive meant. If you wanted to be responsive as an agency, what did that mean?

Councilor Park said in today's world, it was up to the Presiding Officer to rein him in. He assumed it would be up to the COO to do the same thing if any one of the councilors got too far afield.

Mr. Alden said the committee felt that it had been one of the most enjoyable committees they had ever served on. It was a good group of people.

Mr. Condit said they had a lot of the same discussions that the Council would be faced with in the future.

### **3. EXECUTIVE OFFICER COMMUNICATION**

There were none.

### **4. COUNCILOR COMMUNICATIONS**

There were none.

There being no further business to come before the Metro Council, Presiding Officer Hosticka adjourned the meeting at 3:40 p.m.

Prepared by

Chris Billington  
Clerk of the Council



ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 26, 2002

ITEM #	TOPIC	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER
II	TASK FORCE TRANSITION REPORT & RECOMMENDATION	02/25/02	TRANSITION ADVISORY TASK FORCE RECOMMENDATIONS TO METRO COUNCIL CONCERNING 2003 TRANSITION	032602CE-01
II	TAFT TIMELINE	NO DATE	TAFT RECOMMENDATION SUMMARY AND POSSIBLE TIMELINE PRESENTED TO COUNCIL BY PRESIDING OFFICER HOSTICKA	032602CE-02