



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

Meeting: Joint Work Session
 Date: November 20, 1987
 Day: Friday
 Time: 11:30 am to 6:00 pm
 Place: Lake House
 Blue Lake Park

- | | | |
|---------------|---|-------------------|
| 11:30 - 12:00 | Lunch | |
| 12:00 - 12:15 | I. Introductory remarks and Overview of session objectives | Cusma/
Waker |
| 12:15 - 12:25 | II. Introduction of mediator/facilitator
Outline of Role | Judge
Crookham |
| 12:25 - 12:45 | III. Explanation of Council & Executive powers and statutory base for differentiation of authority | Dan Cooper |
| 12:45 - 3:00 | IV. Discussion of specific items
(chart form, distributed in advance) | |
| | A. Appointments | |
| | B. Council Committees | |
| | C. Personnel | |
| | D. Legislation | |
| | E. Policy Setting | |
| | F. Council Agenda | |
| | G. Contracts | |
| | H. Budget | |
| | I. Others as identified by Council
(distributed in advance) | |
| 3:00 - 3:15 | Break | |
| 3:15 - 3:45 | V. Recap items/changes on which there is concensus, determine change or action to occur, identify person responsible for follow through, set progress report date and mechanism to implement (draft ordinance, write procedure, etc.) | |
| 3:45 - 4:15 | VI. Recap items/changes on which concensus was not reached, identify persons, determine further work/action to be accomplished, identify person responsible for follow through, set progress report date. | |

- 4:15 - 4:45 VII. Summation, final thoughts of participants
- 4:45 - 5:00 VIII. Determination regarding follow-up work session
 to review follow-up reports. Set date

Note: Agenda provides one hour of "slack"



METRO

2000 S. W. First Avenue
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November 16, 1987

The Honorable Rena Cusma
Executive Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma

Dear Ms. Cusma:

You have asked me whether the provisions of the Metro Code requiring approval by the Council Management Committee or the Council of certain contracts are a valid exercise of Council authority. In addition, you have asked me to give you a general outline of the Council's powers to engage in activities that are other than legislative functions in the areas of franchising, issuance of bonds or other activities.

I understand that the questions that you have asked me are relevant for a work session held by the members of the Council and yourself and members of the Executive Department on Friday, November 20, 1987. Because of the press of other business I have not had the opportunity to prepare a completed detailed legal opinion citing statutory references and case authority for the determinations I have made. This letter constitutes a summary of the conclusions I have reached. I expect that the final version of a legal opinion will be available for distribution either by November 20 or shortly thereafter.

In general, the questions of the division of powers between the Metro Council and the Metro Executive Officer must be considered solely on the basis of the statutory provisions of ORS ch. 268 as adopted by the Legislature and amended from time to time.

In reviewing the statutory provisions I believe that the sole power to contract on behalf of Metro has been granted to the Executive Officer. The Council retains only the power to contract for outside services directly related to its carrying out of its legislative functions or to adopt procedural requirements for the Executive Officer to follow in contracting. In addition, the Council as Metro's legislative body is the body that has full authority over Metro's budget. A legislative body in the exercise of its

The Honorable Rena Cusma
November 16, 1987
Page 2

budgetary powers can restrict an Executive Officer's action by requiring prior approval for the expenditure of funds as long as it operates consistent with Oregon's local budget law.

The Council Management Committee does not have any valid power it can exercise to approve a contract. The Council may through the budget process restrain the Executive Officer's authority to enter into contracts. However, once budgeted funds are available and the Executive Officer has followed whatever procedural requirements for contracting that are established by the Council or by state law, the Council does not have any further power to require that contracts be approved by it prior to being executed.

One exception to this general rule is the area of inter-governmental agreements. Because intergovernmental agreements in some circumstances can provide for Metro to accept additional powers or to delegate powers of Metro to another governmental body I believe that in some circumstances intergovernmental agreements may require Council approval as well as Executive Officer's authorization in order to be valid.

Areas that may be considered administrative actions under Oregon Law have been delegated to the Metro Council and not to the Metro Executive Officer. The power to issue bonds is an administrative and not a legislative function. However, ORS ch. 268 expressly authorizes the Council to issue bonds and does not grant similar powers to the Executive Officer. In contrast, the issuance of franchises or long-term commitments for operating solid waste facilities or receiving solid waste from the Metro region are legislative actions under Oregon Law. The provisions of ORS ch. 268 reflect this and expressly grant the power to make such decisions to the Metro Council.

The question of how appointments are to be made to boards, commissions, advisory committees is one that is frequently in dispute between executive and legislative departments in forms of government where there is a very clear separation of powers. The provisions of ORS ch. 268 are almost silent on this issue. Richard Botteri, in a formal opinion addressed to you dated August 14, 1987, dealt extensively with this question. I believe that Mr. Botteri's conclusions are basically correct. When an appointment is to be made to a body that has been created by joint action of the Metro Council and the Metro

The Honorable Rena Cusma
November 16, 1987
Page 3

Executive Officer, i.e., anything that has required legislative action of the Metro Council or has been approved through an intergovernmental agreement authorized by the Metro Council and the Metro Executive Officer then the proper procedure for an appointment would be for the Metro Executive Officer to appoint and the Council to confirm. It is possible for a legislative body to require appointments to be made from a limited base of potentially eligible appointees.

Appointments to bodies that are purely advisory to the Council may be made solely by the Council as long as the creation of these bodies does not require any executive action. Likewise, the Executive Officer may make appointments to bodies purely advisory to the Executive Officer without Council confirmation as long as legislative action of the Council is not required to create these bodies. The sole exception to these general rules is ORS 268.170 which requires the Council to appoint members of local government governing bodies to advise it.

I expect my detailed analysis to be completed shortly and hope the above summary is useful to you and members of the Council in your discussions on November 20. I will, of course, be available at that time to answer any questions.

Yours very truly,



Daniel B. Cooper
General Counsel

gl
8533C/519

cc: Richard Waker

JOINT WORK SESSION

Friday, November 20

Lake House
Blue Lake Park

11:30 am to 6:00 pm

Rena Cusma
Dick Engstrom
Dan Cooper
Don Rocks
Tuck Wilson
Ray Phelps
Andy Cotugno
Vickie Rocker
Rich Owings
Kay Rich
Katie Dowdall

Judge Charles Crookham
Senator Glenn Otto
John Houser

Don Carlson
Ray Barker
Marie Nelson

Mike Ragsdale
Richard Waker
Jim Gardner
no - Corky Kirkpatrick
Tom DeJardin
George Van Bergen
Sharron Kelley
Mike Bonner
Tanya Collier
no - Larry Cooper
David Knowles
Gary Hansen

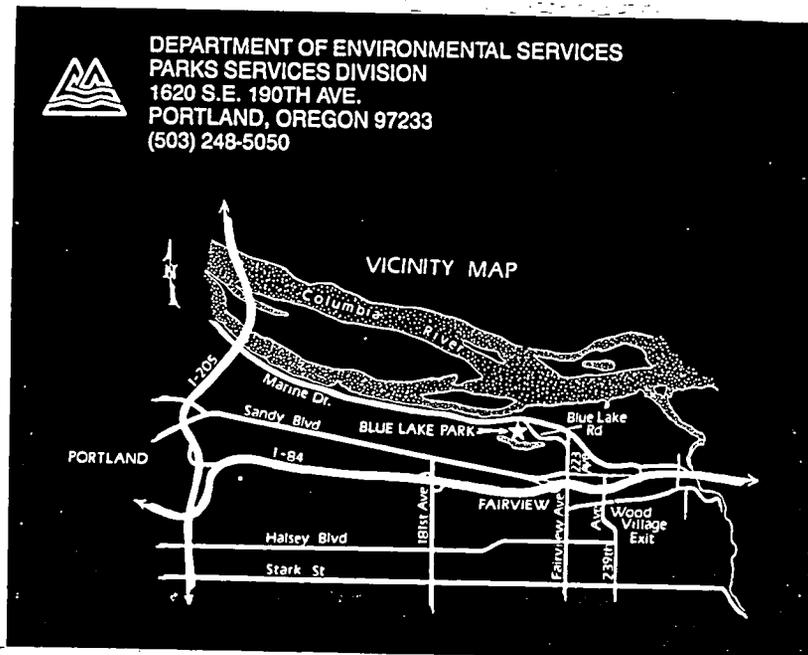
Joint Work Session

Friday, November 20

11:30 am to 6:00 pm

Lake House
Blue Lake

Take Wood Village Exit
turn left over ramp
go up to Sandy Blvd. (deadends)
Take a left then go to stop sign (Marrow Shell Station on corner)
make a right turn on to 223rd Avenue
follow 223rd Avenue to Blue Lake Park
take a left into Blue Lake Park and go approximately 2 city blocks
take a left at a little sign that says LAKE HOUSE PARKING



COUNCIL/ADMINISTRATION WORK SESSION

SITUATION

The legislative and executive branches share a common objective that the business of the agency be conducted in the most efficient and productive manner with appropriate checks and balances understood and in place. A combination of factors that impact the relationship between the Council and the Executive Officer that have occurred over the past six months provide further reason to jointly conduct a work session to improve and simplify the conduct of business.

The session will be attended by Council members, Executive Officer, Deputy Executive Officer, Department Heads, General Counsel, Executive Assistant, and Council staff.

A facilitator or moderator will be asked to take part to help focus the discussion and move the proceeding to consensus and decisions that reflect shared goals.

SHARED GOALS

1. Deliver high professional level of services and new "products."
2. Expedite the conduct of the public's business consistent with sound policy formation, thorough planning and appropriate legislative and administrative controls.
3. Build Metro's credibility as a positive, dependable, effective agency with the Legislature, state government, local government, the business community, interest groups and the general public.

DISCUSSION TOPICS AND ISSUES (EXAMPLES)

- Council subcommittee structure and intent. Relationship to Council decisions. Impact upon administration staff work and presentations.
- Policy formulation, Council organization and process. Form and timing of Executive Officer input/response.
- Budget process. Relation of process to establishment of policy. Timing of citizen input.
- Define departmental program objectives
- Identify duplicated efforts between Council and Executive
- Reduce duplication to improve staff efficiency and performance

- Clarify relationship of staff to Council
- Reach consensus on Council contracting process
- Define the decision-making process
- Make Council role truly possible on a part-time basis
- Define the difference between policy decisions and administration decisions as issues move toward the Council
- Workplans and PR efforts should identify coordination between Executive and Council --identify at what point the Council has role in the process and at what point the Executive has role and clarify roles.
- Develop recommendation for a funding base that includes a political strategy
- Identify short term and long term goals for assuming additional regional functions
- Establish regular and formal communications with various constituencies (local governments, land-use planners, legislature, etc)



METRO

AMN

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

November 17, 1987

Metro Councilors
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201

Dear Councilors:

Attached is the agenda and advance materials for our joint work session on November 20.

We look forward to a truly productive meeting that will have real and beneficial results.

To aid us in reaching that goal, we have invited Judge Charles Crookham to serve as facilitator/mediator for our deliberations. Senator Glenn Otto, Chair of the Task Force on Metropolitan Regional Government, has also been invited to sit in.

The session will be held at the Lake House at Blue Lake Park (map enclosed). Starting time is 11:30 am, Friday, November 20. A light lunch will be served. We plan to begin our business at noon.

The enclosed agenda has been prepared to aid in focusing our discussion. Additional discussion items that Councilors feel should be addressed may be communicated to the Presiding Officer or Council staff.

A summary of the proceedings will be produced and assignments made to be sure that appropriate follow-up action occurs.

We look forward to the work ahead and to an improved working relationship between Council and Administration.

Sincerely,

Rena Cusma
Executive Officer

Richard Waker
Presiding Officer

cc: Department Heads
Richard Engstrom
Donald Carlson
Daniel Cooper
Don Rocks

- Metro Council**
- Richard Waker
Presiding Officer
District 2
- Jim Gardner
Deputy Presiding Officer
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- Corky Kirkpatrick
District 4
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District 5
- George Van Bergen
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- Sharron Kelley
District 7
- Mike Bonner
District 8
- Tanya Collier
District 9
- Larry Cooper
District 10
- David Knowles
District 11
- Gary Hansen
District 12
- Executive Officer**
Rena Cusma

APPOINTMENTS

COUNCIL PRESENT ROLE

- may appoint to bodies advising Council
- staffed by Council staff
- confirm Executive's appointment to bodies advising Metro or acting on behalf of Metro

FUTURE ROLE

- may appoint to bodies advising Council
- staffed by Council staff
- confirm Executive's appointment to bodies advising Metro or acting on behalf of Metro

EXECUTIVE OFFICER PRESENT ROLE

- may appoint to bodies advising Executive without confirmation
- appoints to bodies advising or acting on behalf of Metro
- obtains Council confirmation

FUTURE ROLE

- may appoint to bodies advising Executive without confirmation
- appoints to bodies advising or acting on behalf of Metro
- obtains Council confirmation

PERSONNEL

COUNCIL PRESENT ROLE

- sets detailed personnel procedures
- approves new positions, pay classes, etc.

FUTURE ROLE

- set broad personnel policy and procedures by ordinance
- confirms appointed staff (except exempt positions)

EXECUTIVE OFFICER PRESENT ROLE

- appoints, hires, fires (except Council staff)
- resolves grievances, contested cases

FUTURE ROLE

- sets details of personnel rules and administers

LEGISLATION

COUNCIL PAST ROLE

- proposes, either by individual member or committee
- adopts legislation; must be in ordinance form

FUTURE ROLE

- proposes, either by individual member or committee
- adopts, subject to veto, Council
needs 8 votes to "override" Executive veto

EXECUTIVE OFFICER PAST ROLE

- proposes

FUTURE ROLE

- proposes
(has 5 days to veto unacceptable ordinance)

COUNCIL COMMITTEES

COUNCIL PRESENT ROLE

- establishes committees with charge
- committees set own agenda
- committees instruct both Council and Administrative staff
- committees delegated to perform administrative functions; ie, contract approval, convention center design, etc.

FUTURE ROLE

- establishes committees with charge
- refers legislative matters to committees, as appropriate
- committees weigh, formulate recommendations on items referred
- staff by Council staff
- may request Executive to provide information and or briefing

EXECUTIVE OFFICER PRESENT ROLE

- sends staff to committees
- staff responds to committees' instructions

FUTURE ROLE

- briefs committees upon request as appropriate
- Executive may request to make presentation to committee

BUDGET

COUNCIL PRESENT ROLE

- adopts and amends
- Council determines level of control

FUTURE ROLE

- adopts and amends
- Council determines level of control
(Question-What is appropriate level of control?)
(Question-citizen input and timing?)

EXECUTIVE OFFICER PRESENT ROLE

- submits Executive Budget
- proposes changes
- keeps accounting records

FUTURE ROLE

- submits Executive budget
- proposes changes
- keeps accounting records

POLICY SETTING

COUNCIL PRESENT ROLE

- makes agency policy statements in various forms and documents, formally and informally
- makes administrative policy in various forms and documents

FUTURE ROLE

- expresses agency policy decisions through adoption of ordinances

EXECUTIVE OFFICER PRESENT ROLE

- sets agency policy in planning and other documents, formally and informally
- makes administrative policy in various forms and documents

FUTURE ROLE

- sets administrative policy by Executive Order to implement ordinances

COUNCIL AGENDA

COUNCIL PRESENT ROLE

- Presiding Officer sets agenda, determines order in which items are heard, sets public hearings
- power to deny or remove items from agenda unclear

FUTURE ROLE

- Presiding Officer sets agenda, determines order in which items are heard, sets public hearings
- accepts items for agenda at Executive Officer request

EXECUTIVE OFFICER PRESENT ROLE

- prepares administration items for agenda
- authority to place items on agenda over objection of Presiding Officer unclear

FUTURE ROLE

- prepares administration items for agenda
- authority to place items on agenda

CONTRACTS

COUNCIL PRESENT ROLE

- establishes procedures
- acts as Contract Review Board
- approves contracts over \$10,000 (Management Committee)
over \$50,000, Council

FUTURE ROLE

- establishes procedures
- acts as Contract Review Board
- contract approval not required

EXECUTIVE OFFICER PRESENT ROLE

- follows Council procedures
- approves contracts \$2,500 - \$10,000

FUTURE ROLE

- follows Council procedures
- approves all contracts
- power to delegate contract approval to Department Heads
for contracts \$ _____ and under