

# MINUTES OF THE METRO COUNCIL MEETING

Thursday, September 25, 2008  
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Robert Liberty, Rod Park, Carl Hosticka, Carlotta Collette

Councilors Absent: Rex Burkholder (excused)

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

## 1. INTRODUCTIONS

Rex Ettlín, Oregon Zoo Conservation Services, said the Zoo Animal Presenters (ZAP) and Urban and Nature Overnight (UNO) programs' received an American Zoo and Aquarium (AZA) diversity award. Pam Hathaway and Cynthia Varone were the teen mates present at the meeting. Ms. Hathaway explained the programs. Mr. Ettlín said Ms. Varone had been a teen mate who became a staff person at the Zoo. Ms. Varone talked about her experience in the program. Council President Bragdon said the 2009 AZA Convention would be taking place in Portland on September 12, 2009. Mr. Ettlín described the two publications he provided to Council. Councilor Harrington asked about the publications and how a member of the public could obtain them. Mr. Ettlín responded to her question. Councilor Collette noted the number of people the Zoo had served through this program.

## 2. CITIZEN COMMUNICATIONS

Ray Phelps, Allied Waste Services, 10295 SW Ridder Wilsonville, Oregon 97070 said the Wilsonville Chamber of Commerce had endorsed the Oregon Zoo Ballot Measure. Second, as a personal observation he had taken his family to see the new baby elephant. He found the facility to be exemplary as far as cleanliness. He also had a wonderful experience with the Zoo employees. Councilor Collette said they had an all staff meeting at the Zoo and she had met an employee who was responsible for cleaning up. He was very proud of what he did.

## 3. CONSENT AGENDA

3.1 Consideration of minutes of the September 18, 2008 Regular Council Meeting.

Motion:

Councilor Harrington moved to adopt the meeting minutes of the September 18, 2008 Regular Metro Council.

Vote:

Councilors Harrington, Liberty, Park, Collette, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 ayes, the motion passed.

## 5. ORDINANCES – SECOND READING

5.1 **Ordinance No. 08-1191**, For the Purpose of Approving the Transfer Station Franchise Renewal Application For Waste Management of Oregon, Inc. Authorizing the Chief Operating Officer to Issue a Renewed Franchise For Forest Grove Transfer Station.

Motion:	Councilor Harrington moved to adopt Ordinance No. 08-1191.
Seconded:	Councilor Collette seconded the motion.

Councilor Harrington said passage of this ordinance would approve a franchise for Forest Grove Transfer station until 2013. She further detailed of the Forest Grove Transfer Station and noted that the station had fulfilled all of its requirements for renewal. The Chief Operating Officer (COO) recommended adoption of this ordinance. Council President Bragdon said that if it was the will of the Council to have amendments for one transfer station, he suggested making the language uniform for all of the ordinances. If they were to have a substantive amendment today, those ordinances would roll to October 2<sup>nd</sup> for final consideration. Councilor Park talked about the previous meeting's testimony from the public and a response to those concerns about where the material would end up. Scott Robinson, Deputy COO, said the concerns that were raised about Riverbend were addressed in the memo (a copy of which is included in the record). He said dry waste did go to Riverbend from this transfer station. Councilor Park said he was trying to reassure the general public that Metro was taking their responsibilities seriously on the issuance of this license and the eventual disposal at Riverbend.

Councilor Liberty noted his concerns with item 11.2 of the proposed franchise agreements in the first four ordinances, 08-1191, 08-1192, 08-1193, and 08-1194. His concern was that there was a reopener clause that if there had been a modification of policy, the agreement could be reopened in response to action by the Council. The clause seemed so open ended. He had asked for some suggested language from the legal department. He felt the proposed language Mr. Phelps had proposed was much too narrow. He had talked with two of Metro's attorneys on the constraints there might be on modification of the contracts. He had an idea of language to limit the scope. He invited Mr. Dan Cooper to suggest language. Dan Cooper, Metro Attorney, said the Metro Code currently contains language that reserved the right to the Council to legislate on matters in the public interest that may affect the franchise. The staff in preparing this language understood that the Council might be revisiting some items in the future regarding the Regional Solid Waste Management Plan. The Metro Attorney's Office advised staff that if the Council was intending to think about some things in the future, it was advisable to put the franchisee on explicit notice in the franchise document that the Council was going to reserve its right to adopt future policies that would effect solid waste industry as a whole which would have to be adopted at the higher policy level. Then the Council would, by separate ordinance, specifically apply those policies to a franchisee if it chose to do so in a particular manner. This was why the structure of this section 11 with the a) saying Council would adopt the uniform policy and then in the b) section, the Council would decide whether or not and how to apply that policy directly to the particular franchisee. That was language they recommended was to make sure that the Council maintained as much flexibility as possible. However, even with the language in the current exhibit and the language that was in the Metro Code, there were limits on Council's ability to legislative act to defeat the property right that the franchisee may be getting by having the franchise granted to them. He provided some examples.

If Council chose to exercise policy making in the future, Metro Attorney's Office would need to advise Council as to whether or not Council was crossing a line and knew the policy risks. With the language that was currently in the exhibit, there was still a question as to where was that line and how well was it ultimately drawn. Without knowing more about what policies Council would chose to make, it was hard to say whether any particular policy choice would be invalid or not. He had heard the question of household hazardous waste and self haul might be two of the areas Council would consider new policy adoption. In those areas, they might let Council know it was a perfectly safe thing to do. They didn't see any diminution of the business interest that the franchisee had here. It was purely within regulatory authority.

There were other things that Council might think about requiring the franchisee to do particularly in the later years of the franchise that would require some major investment of capital that the franchisee would have no possibility of recouping that investment during the term of the franchise and dependent upon whether or not the Council was willing to extend the term to make that an investment that they knew they could get pay back on, it may not be a valid thing for Council to do. That was the general sense of the legal context that Mr. Cooper could advise Council they were in. Mr. Cooper said they could prepare amendments at Council's request. Councilor Liberty said one of the things that were confusing to him was that the franchisee had a property interest in the contract but the contract was defined by its terms. The terms had this clause that allowed Council to redo the terms based on a change in policy that applied to class. It would be pretty easy to draft something that applied to one facility. He asked did the franchisee really have any leverage. Mr. Cooper responded that by calling it a franchise itself and having the Code language we have which sets up a franchising system, the courts were going to bring into consideration a body of law that was developed overtime for municipal franchises and how they were interpreted. He wanted Council to know that there may be limits to the Council's authority. Councilor Liberty asked if there was some sort of judicial doctrine about how much you can modify the contract that affects the value of that interest. Mr. Cooper responded, yes. He advised Council to maintain as much flexibility as they could because that may be what the Council wanted but there were limitations to that. It was not an absolute authority, once granted, to take it all away. Mr. Cooper said they would like to write it as most favorable to begin with to give Council as much flexibility as possible within those limits.

Councilor Hosticka said he was still wondering if the language in 11.2 gave Council additional power. Mr. Cooper responded that having this language in the exhibit helped the Council if it chooses to exercise the power. It was more likely to succeed in litigation and having the courts say they clearly reserved this power to the extent that they had it and they would give them a broader ruling on what they think their power were then if you simply rely on the Code language which could be construed to be narrower than this power that was reserved in the proposed language.

Council President Bragdon asked about possible amendments. Mr. Cooper said they prepared a set of possible amendments. If any Councilor wanted to bring those forward they could. Councilor Hosticka said if the franchisee saw that some change had been made that they no longer wished to honor, what was their requirement for getting out of the franchise under this existing language? Mr. Cooper said Forest Grove Transfer Station have a right to cease operations in 90 days prior to the long term closure of the facility. They must notify Metro. They must then comply with the closure protocol. The other three franchises had 30 days to give notice of closure. Councilor Liberty talked about the proposed amendments.

Motion to amend:	Councilor Liberty moved to amend Ordinance No. 08-1191 with the language in Option 3 (a copy of which is included in the meeting record). Council President Bragdon suggested a friendly amendment which was accepted by the maker of the motion and the seconder.
Seconded:	Councilor Hosticka seconded the motion.

Councilor Liberty explained the proposed amendment. Council President Bragdon proposed a friendly amendment to use the word consideration rather than adoption. He felt it presumed action by the Council. Councilor Harrington asked about options for item B (as included in the memo from the Office of Metro Attorney). Mr. Cooper further explained the options in the memo. Council President Bragdon said he would be supporting the amendment but had reservations about the whole process. He further detailed the amendment. He recommended that the other three ordinances include identical language.

Vote to amend: Councilors Park, Collette, Harrington, Liberty, Hosticka and Council President

Bragdon voted in support of the motion. The vote was 6 ayes, the motion passed.
---

Council President Bragdon opened a public hearing on Ordinance No. 08-1191. No one came forward. Council President Bragdon closed the public hearing. Councilor Hosticka asked if this was a substantive amendment. Mr. Cooper said this was not a material revision to the ordinance.

Council President Bragdon said he had reservation on voting on all four of the franchises. He felt all of the applicants were highly performing companies. They had complied with everything and had a good record. They had complied entirely with the system. He had no beef with the applicants. He had reservations about the system. He felt that we had set up a system which inherently had a bias toward existing participants. He had a philosophical concern about erecting barriers to entry and denying the ability for new entrance to innovate and compete for customers and have that form of regulation without having the other form of regulation which would go along with it which was some rate regulation to go along with the fact that something needed to substitute for the forces of competition. He provided specifics of his concerns about rate setting. Councilor Harrington talked about her reservations. She was supportive of the agreements as they stand today.

Vote:

Councilors Park, Collette, Harrington, Liberty, Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Council President Bragdon voting no.
--

5.2 **Ordinance No. 08-1192**, For the Purpose of Approving the Transfer Station Franchise Renewal Application of Waste Management of Oregon, Inc. Authorizing the Chief Operating Officer to Issue a Renewed Franchise For Troutdale Transfer Station.

Motion:	Councilor Park moved to adopt Ordinance No. 08-1192.
Seconded:	Councilor Harrington seconded the motion.

Councilor Park introduced the ordinance which was similar to the first ordinance. There had been no notice of violation. He talked about the increase in the waste cap.

Motion to amend:	Councilor Liberty moved to amend Ordinance No. 08-1192 with the language in Option 3. Council Bragdon suggested a friendly amendment which was accepted by the maker of the motion and the seconder.
Seconded:	Councilor Hosticka seconded the motion.

Vote to amend:

Councilors Park, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 ayes, the motion passed.
--

Council President Bragdon opened a public hearing on Ordinance No. 08-1192. No one came forward. Council President Bragdon closed the public hearing. Councilor Park said he would be supportive of this ordinance. He talked about the system that Metro had currently in place.

Vote:

Councilors Park, Collette, Harrington, Liberty, Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Council President Bragdon voting no.
--

- 5.3 **Ordinance No. 08-1193**, For the Purpose of Approving the Transfer Station Franchise Renewal Application of Pride Recycling Company Authorizing the Chief Operating Officer to Issue a Renewed Franchise.

Motion:	Councilor Hosticka moved to adopt Ordinance No. 08-1193.
Seconded:	Councilor Harrington seconded the motion.

Councilor Hosticka introduced the ordinance and accepted a friendly amendment to accept similar language to the first two ordinances.

Council President Bragdon opened a public hearing on Ordinance No. 08-1193. No one came forward. Council President Bragdon closed the public hearing. He explained his no vote.

Vote:

Councilors Park, Collette, Harrington, Liberty, Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Council President Bragdon voting no.
--

- 5.4 **Ordinance No. 08-1194**, For the Purpose of Approving the Transfer Station Franchise Renewal Application of Willamette Resources, Inc., Authorizing the Chief Operating Officer to Issue a Renewed Franchise.

Motion:	Councilor Hosticka moved to adopt Ordinance No. 08-1194.
Seconded:	Councilor Harrington seconded the motion.

Councilor Hosticka introduced the ordinance and accepted a friendly amendment to accept similar language to the first two ordinances that had been adopted.

Council President Bragdon opened a public hearing on Ordinance No. 08-1194. Ray Phelps, Allied Waste Services, thanked the Council for the amendments and for approving the franchise. Council President Bragdon closed the public hearing.

Motion to amend:	Councilor Hosticka moved to amend Ordinance No. 08-1194 by striking the worked covered for 12.3 subsection C.
Seconded:	Councilor Liberty seconded the motion.

Councilor Hosticka explained his amendment. Mr. Robinson said staff was comfortable with this amendment for this facility.

Vote to amend:

Councilors Park, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 ayes, the motion passed.
--

Vote:

Councilors Park, Collette, Harrington, Liberty, Hosticka voted in support of the motion. The vote was 5 aye/1 nay, the motion passed with Council President Bragdon voting no.
--

- 5.5 **Ordinance No. 08-1195**, For the Purpose of Amending Metro Code Chapter 5.05 to Include Tualatin Valley Waste Recovery on the List of Designated Facilities.

Motion:	Councilor Harrington moved to adopt Ordinance No. 08-1195.
Seconded:	Councilor Collette seconded the motion.

Councilor Harrington said this ordinance would add Tualatin Valley Recovery as a designated facility to the Metro Code. She provided details of the facility. Councilor Liberty noted that the facility intended to meet the gold standard. He applauded their goal.

Council President Bragdon opened a public hearing on Ordinance No. 08-1195. No one came forward. Council President Bragdon closed the public hearing.

Vote:	Councilors Park, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 ayes the motion passed.
-------	---

5.6 **Ordinance No. 08-1197**, For the Purpose of Amending Metro Code Chapter 5.05 to Include Riverbend Landfill on the List of Designated Facilities.

Motion:	Councilor Harrington moved to adopt Ordinance No. 08-1197.
Seconded:	Councilor Collette seconded the motion.

Councilor Harrington introduced the ordinance. Today they were acting on listing the Riverbend Landfill as a designated facility. This would allow the facility to accept dry waste only.

Council President Bragdon opened a public hearing on Ordinance No. 08-1197.

Mike Coyle, Yamhill County Farmer, 16705 SW Sunrise Lane, McMinnville, OR 97128 said he participated in the committees and worked considerably on the landfill when it was first established. He said the Department of Environmental Quality (DEQ) representative had concerns about citing a landfill by a flood plain. He had grave concerns but was following federal requirements. He talked about the history of the landfill. Prior Councilor McFarland voted against Riverbend many years ago. The facility was in a flood plain. He suggested looking into the liner issue and the height issue. He urged caution.

Susan Meredith, Meredith Mitchell Vineyards, 14100 SW McCabe Chapel Rd. McMinnville, OR 97128 provided her comments in writing.

Eloise Butler, 12340 SW River Bend Rd McMinnville, OR 97128 said she lived next to the old landfill where there were no liners. It was farmland before the dump came. The gas releases from the new landfill were offensive. How can they keep putting garbage in a landfill right next to the old landfill? She talked about the history of the land. She noted deformed animals and fish in the area. There was physical garbage oozing out. She was concerned about irrigation and the water that was being used in the area. She also noted people who had died of cancer who lived near the landfill.

Helen Pritchett, 13550 SW Masonville Rd, McMinnville Oregon 97128 said in April 1997 they woke up with their house vibrating. It was the dump that was creating the vibration of their home. She was concerned about her well getting contaminated. It was a concern with many of her neighbors.

Brenna Bell, staff attorney for Willamette Riverkeeper, 1515 SE Water Ave Suite 102 Portland Oregon 97219 raised concerns about the water quality near the landfill. She said South Yamhill River was not meeting Oregon water standards. Metro, even though they were not legally required, had ethical and environmental responsibilities. Councilor Liberty said they had heard testimony last week about part of

the landfill being in the flood plain not in a flood way. What part of the facility was in a flood plain? She responded that Mr. McPhillips would be responding to the question. Councilor Liberty shared his concerns and then talked about the fact that they were considering a dry waste residual only.

Ramsey McPhillips, Think Clean Water Committee, 13000 SW McPhillips Rd., McMinnville, Oregon 97128 provided written testimony for the record. He talked about the Federal Emergency Management Agency (FEMA) map revision as requested by Waste Management. He said Metro was providing landfill in a flood plain. He urged Council to consider these legal considerations. Councilor Liberty asked about materials that had been found. Mr. McPhillips talked about the flood plain, the flood way and the FEMA remapping. Councilor Liberty asked about leaching. Mr. McPhillips said Metro was comingling its dry garbage with Astoria and Seaside who did not sort their garbage. He was putting Metro on notice that the landfill was not in compliance with federal and county laws. He had provided Council with a legal reason to pull away.

Adam Winston, Waste Management of Oregon, and George Durendack said they were here to address concerns. George Durendack, District Manager for the Riverbend Landfill, 7227 NE 55<sup>th</sup> Portland Oregon 97218 said they were in compliance with the flood plain and flood way with FEMA. They were working with FEMA to go through a process because of their desire to expand. The amount of flood storage will be greatly enhanced. With regard to buying property, they had purchased property in the area. They accepted waste from the Metro region.

Council President Bragdon asked if the new facility was in compliance with federal, state and local government regulations. Mr. George Durendack said to the best of his knowledge they were in compliance. He said this issue today was to accept dry waste. Yes, the dry waste was comingled.

Council President Bragdon closed the public hearing.

Councilor Liberty asked if staff had visited the facility. Roy Brower said they had visited the facility at least three times in the last five years. He had not visited the surrounding properties. Councilor Liberty asked if Metro had liability for authorizing the receipt of the dry waste residual. Mr. Cooper said landfills that were part D landfills in compliance with federal law that were lined were not subject to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) laws where you have joint liability for anyone who had responsibility for the release of hazardous waste. The only way that Mr. Cooper could see that Metro would have liability for allowing dry waste to go to a landfill was if Metro knowing allowed hazardous waste with that dry waste. He didn't think Council had liability to send dry waste to this facility. Councilor Liberty asked about the flood plain and flood way issues and if they had seen the documents. Mr. Robinson said they had not seen the documents. He reminded the Council that what the multi-process. They thought the information needed further exploration. Councilor Collette said she shared Councilor Liberty's concerns. Mr. Robinson invited Audrey Obrien and Tim Spenser from DEQ to answer questions. Mr. Spenser said they just received the information this afternoon. They had been looking through their historic files but had found nothing. The information may be in their archives. In 1993, DEQ required Riverbend to reevaluate changes in the watershed. In 1994 Riverbend Landfill responded with a new study of the flood plain. There was now a new reassessment of the floodplain. Councilor Collette asked if DEQ did a flood plain review. Mr. Spenser responded that they didn't have the resources. They would ask the landfill owner and FEMA to provide the information.

Councilor Harrington explained what this ordinance did which was to add this facility as a designated facility. If the facility was found in violation could Metro deny the license? Mr. Cooper said yes. Mr. Spenser said the expansion area was part of the flood plain.

Council President Bragdon asked if there was an allegation of noncompliance, what did Metro go through to investigate this allegation. Mr. Robinson and Mr. Brower responded to his question. They had written Yamhill County and Riverbend a letter but they never received a reply. Councilor Hosticka said this ordinance would add Riverbend to the list of designated facility. Mr. Cooper explained the process. Councilor Hosticka asked if they needed to act on this, this week. Mr. Cooper said there was no legal requirement to act on this ordinance today. Councilor Hosticka said he would be interested in getting information about the flood plain.

Motion to postpone:	Councilor Hosticka moved to postpone Ordinance No. 08-1197.
Seconded:	Councilor Liberty seconded the motion.

Councilor Harrington agreed, she thanked Council staff and DEQ for making themselves available. Councilor Liberty felt this was an appropriate action. The issue about floodplain impacts needed to be answered.

Vote to Postpone:

Councilors Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 5 ayes, the motion passed with Councilors Park and Burkholder absent from the vote.
---

#### **6. CHIEF OPERATING OFFICER COMMUNICATION**

Michael Jordan, COO, said the Sustainability Director, Jim Desmond was awarded the 2008 Distinguished Service Award by the Oregon Recreations and Parks Association. He said they had been in search for two director positions. They were hopeful to make a decision on the Human Resources director this week and October 8<sup>th</sup> would be doing final interviews for the Communications Director. He announced that December 9<sup>th</sup> was the holiday party at the Oregon Zoo.

#### **7. COUNCILOR COMMUNICATION**

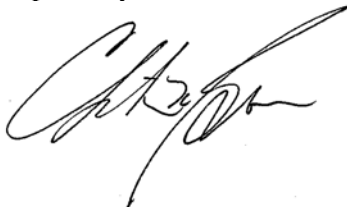
Councilor Collette said she had had the opportunity for the first vine cutting at the Oregon Zoo. She also updated Council on the High Capacity Transit study.

Councilor Liberty talked about the Troy Russ presentation last night. There was interest in bringing him back.

#### **8. ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:20 p.m.

Prepared by,



Chris Billington  
Clerk of the Council



**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF  
SEPTEMBER 25, 2008**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
3.1	Minutes	9/18/08	Metro Council Meeting Minutes of September 18, 2008	092508c-01
4.1 through 4.6	Memos	9/24/08	To: Metro Council From: Scott Robinson, Deputy CFO, Re: responses to Councilor questions about transfer station franchises	092508c-02
4.1 through 4.6	Memo	9/24/08	To: Metro Council From: Michelle Bellia, Assistant Attorney Re: Metro Solid Waste Facility Franchise Section 11.2 Alternate language	092508c-03
4.6	Testimony	9/25/08	To: Metro Council From: Susan Meredith Re: Ordinance No. 08-1197	092508c-04
4.6	Memo	9/25/08	To: Metro Council From: Ramsey McPhillips Re: Metro Proposed Ordinance No. 08-1197 to include Riverbend Landfill on the List of Designated Facilities	092508c-05
2.0	Conservation Projects	2007-08	To: Metro Council From: Oregon Zoo Re: Oregon Zoo Conservation A Year in Review 2007-08	092508c-06
2.0	Education Projects	2007-08	To: Metro Council From: Oregon Zoo Re: Oregon Zoo Education A Year in Review 2007-08	092508c-07
6.0	Update	9/25/08	To: Metro Council From: Councilor Collette Re: High Capacity Transit System Plan Next Steps Update	092508c-08