

MINUTES OF THE METRO COUNCIL MEETING

Thursday, August 1, 2002
Metro Council Chamber

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

Councilors Absent: Rex Burkholder (excused)

Presiding Officer Hosticka convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. EXECUTIVE OFFICER COMMUNICATIONS

RECOMMENDATIONS ON TASK 2 OF URBAN GROWTH BOUNDARY PERIODIC REVIEW

Mike Burton, Executive Officer, said this was the second time he has had to recommend a major Urban Growth Boundary amendment and to present a growth management report and the first time to this Council (a copy the Growth Management of the Metropolitan Region is included in the meeting record). This was not about numbers but about form. He was here again today because we still had what he considered to be an inadequate method of having to plan in the region and in this state. Our state land use laws had served us well in the past. They formulated a value system for us that were of extreme usefulness in value to the people in the state. But at this point in our history he believed that we were unable to meet the overall concept that we had as a region when we adopted the Charter for a metropolitan area and that was to do long range thoughtful design of an urban area. He would be doing two things today; one was to try to meet the requirements of law that the State gave to us. He would be explaining what he was recommending being brought in and why and what has not and why. He said they would be going into detail at Community Planning Committee next Tuesday. He would further recommend suggestions on where we want this region to go. Why do people keep moving here and staying here? It was the place itself, the green structure, the air and water quality and the way we use land. He cited an article in the Oregon Business Magazine on where do we go from here. He said Phil Ramero, Dean of the University of Oregon's Lundquist College of Business and the former chief economist for a California governor commented on investment of Oregon dollars to ensure an healthy economy. Mr. Ramero made two points, one, was we needed to have a richer higher education system and two, an attractive location where successful people will want to live. Mr. Burton said his second round of recommendations had to do with being able to find employment land that gave them the opportunity to discuss the overall ability for this region to maintain both of its extremely valuable current economies. These economies included agricultural and horticulture as well as the intensive new economy that brought people into the area and provided jobs for them. Both were competing for the same soil. He thought they could deal with those

questions if they could engage both the local jurisdictions and the governments in the counties surrounding Metro.

The base question: state law required that they had a 20-year land supply of residential property available within the boundary based on projected population. He explained further population estimates and that we were short on residential property. Over a 20-year period they could anticipate 700,000 people moving into the statistical area that included Clark County. They estimated the 500,000 would be within our jurisdictional boundary. He gave an overview of what land the state allowed to satisfy the residential needs over the 20-year period of time. He said the total need was about 17,000 acres with the constraints of that acreage. The design for the future would be different than in the past. We wanted to protect the natural areas, which had not always been done in the past. He talked about the employment land. There was no state law requirement to provide for that land. We have a need of 5700 of industrial land and a surplus of 760 commercial acres. There had been a tendency to convert industrial into commercial land. We were short industrial lands in the region. He could find 2200 acres of that land but the rest would be on agriculture or horticulture land. He was not willing to recommend utilizing that land. He reviewed the report, which included the need for residential land, industrial land and protection of existing natural resources. We also needed to study the larger area. A way to protect the existing farmland may be better if you had it inside the Urban Growth Boundary (UGB) rather than outside. He suggested looking at urban reserves to plan for future needs and protecting important lands. He reviewed the state goals for decision making. He suggested possible policy changes, which could include regulations or incentives.

He said the benchmarks provided for 74 indicators. He spoke to the technical analyses including the Urban Growth Report, land outside the boundary, current policies and how they apply inside the boundary. The residential land need analysis was 220,800 dwelling units. He talked about redevelopment, infill, and the employment land need analyses. He suggested a conversation on conversion of industrial to commercial land, was it appropriate. An overall strategy needed to be in place. There was a need for larger lot industrial areas.

He said they had looked at 2040 policies including centers, demand and supply of employment land as well as conversion of land. He talked about which lands should be brought into the Urban Growth Boundary including Damascus, the Gresham, Oregon City, Wilsonville, Sherwood, Tigard/Beaverton/King City, Hillsboro, and Bethany area. He then talked about areas that were excluded such as Stafford Basin.

He suggested studying urban reserve areas for long term planning, urban expansion, which included protection of some of those areas and long term funding. He reminded Council to keep in mind their main responsibility was to the public itself. He talked about balance and reconstruction of what we currently have. He handed out "It takes a Team to Move the UGB" which included Metro's team for the UGB Periodic Review.

Councilor Park said he appreciated Mr. Burton's recommendation and his adherence to Council policy. He said it supported the 2040 Growth Concept and centers. It pointed out a strong coordination between Mr. Burton's staff, Council and Council staff. He acknowledged the needs of the land to be included, the need for protection, the ability to get around the region, the centers, the partnerships with cities and counties, jobs, the need for balance and trade-offs. He agreed with Mr. Burton's recommendations about having an economic strategy, doing long term planning, and protecting natural habitat. We needed to continue to look at keeping this region special. He thanked staff for their efforts.

Councilor Atherton spoke to the region’s need, carrying capacity and the need to eliminate the 20-year land supply state law. Councilor McLain thanked Mr. Burton and staff. She made a commitment to travel the area and look at the recommended properties. She said the two major issues were employment land, trumping EFU land and the sub-regional issue as well as finite trade-offs. She talked about regional tax base sharing and the need for that discussion. She suggested guidance from the State on urban reserves. It was important that we remember that they were talking about people, we needed to put it on a personal level. Councilor Bragdon said this all starts with the next 4 months. It was all about having this as a good place to live. This was a time of change and uncertainty. He reminded people why we were here, for safe and stable neighborhoods, openspaces, and a willingness to work together. Presiding Officer Hosticka said the team owners were the people of the region.

Mr. Burton concluded by saying that he would be listening to our team owners. This was a tremendous opportunity to do what we could potentially do. He encouraged that the Council asked the local jurisdictions to talk with the Council about their plans for the area.

Councilor Park talked about the process in the next couple of months. He said next Tuesday; August 6th Mr. Burton would be going over the report more thoroughly. In August/September the Council would be reviewing the recommendations and touring the areas. In October there would be a series of listening posts around the region to listen to the public. They would be at 6:00 p.m. with open houses at 5:00 p.m. to view maps. He added that they would also be holding public hearings at Community Planning Committee. They would have a recommendation to Council by November 15th and Council would be reviewing the recommendations in late November and December. Presiding Officer Hosticka said they were hopeful to complete their work by December 5th. Mr. Burton noted that Metropolitan Policy Advisory Committee (MPAC) would also play a key role in this decision process.

4. CONSENT AGENDA

4.1 Consideration of minutes of the July 25, 2002 Regular Council Meeting.

Motion	Councilor Bragdon moved to adopt the meeting minutes of the July 25, 2002, Regular Council meeting
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Vote:	Councilors Bragdon, Atherton, Monroe, Park, McLain and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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5. ORDINANCES – SECOND READING

5.1 **Ordinance No. 02-956**, Amending the FY 2002-03 Budget and Appropriations Schedule by Recognizing \$28,039 in Additional Grant Funds and Increasing Appropriations in the General Revenue Bond Fund for the Council Chambers Camera Project; and Declaring an Emergency.

Motion	Councilor Bragdon moved to adopt Ordinance No. 02-956.
Seconded:	Councilor Monroe seconded the motion

Councilor Bragdon explained that this ordinance would allow for the chamber to be outfitted with cameras. He explained further the amendment to the budget to recognize receipt of the grant.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-956. No one came forward. Presiding Officer Hosticka closed the public hearing.

Councilor Bragdon urged an aye vote.

Vote:	Councilors Park, McLain, Bragdon, Monroe and Presiding Officer Hosticka voted aye. The vote was 5 aye, the motion passed with Councilor Atherton absent from the vote.
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5.2 **Ordinance No. 02-960**, For the Purpose of Amending Metro Code Chapter 2.19 to Modify the Term Limitation Provisions Applicable to Metro Advisory Committee and to Enlarge the Membership of the Solid Waste Advisory Committee.

Motion	Councilor McLain moved to adopt Ordinance No. 02-960.
Seconded:	Councilor Bragdon seconded the motion

Councilor McLain said there were two portions to this ordinance, the first was to amend the term limits of advisory committees. She explained further the reason for this portion of the ordinance. The second part of the ordinance change was specific to the Solid Waste Advisory Committee (SWAC). They would be adding a Vancouver member. She urged support.

Presiding Officer Hosticka opened a public hearing on Ordinance No. 02-960. No one came forward. Presiding Officer Hosticka closed the public hearing.

Vote:	Councilors McLain, Bragdon, Atherton, Monroe, Park and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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6. RESOLUTIONS

6.1 **Resolution No. 02-3213A**, For the Purpose of Formalizing Budget Assumption Guidelines for Departmental Use in Preparing the Fiscal Year 2003-2004 Budget, and Directing the Executive Officer and/or Council President to Advise Council of Any Substantive Changes in the Assumptions Prior to the Submission of the Budget to Council for Public Review.

Motion	Councilor Bragdon moved to adopt Resolution No. 02-3213A.
Seconded:	Councilor McLain seconded the motion

Councilor Bragdon said this resolution formalized the collaborative approach to the budget. He spoke to the historical involvement of Metro staff, council and council staff. He said these would assist in assumptions and help direct staff in preparing the budget. If there was a need for changes in assumptions staff must come back to Council. He urged support. Presiding Officer Hosticka said most of the assumptions were the same as the current year. Councilor Bragdon said that was correct, there were some changes such as the question of Public Employees Retirement System (PERS) but most were similar to this year. Councilor Atherton commented on the Cost Of Living Adjustment (COLA). He could support the resolution as it stand but if we have new information that came to us in the next few month he suggested amending the assumptions to consider those issues. He would support the resolution.

Vote:	Councilors Bragdon, Atherton, Monroe, Park, McLain and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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Presiding Officer Hosticka asked Mr. Cooper to brief Council on the rules for the contested case proceeding. Dan Cooper, Metro Attorney, reviewed the rules.

6.2 **Resolution No. 02-3214**, For the Purpose of Approving a Final Order Imposing a Monetary Fine on Michael Reynolds, dba Workhorse Services Inc., for a violation of Section 7.01 of the Metro Code.

Motion	Councilor Atherton moved to adopt Resolution No. 02-3214.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton called upon Steve Kraten, Regional Environmental Management Enforcement Administrator, to review the background. Mr. Kraten presented background information on both violations. One of the functions of REM's Regulatory Affairs Division is to help assure that appropriate Metro fees are paid on all solid waste generated within the region. One way in which we monitor this is through periodic review of waste origin reports provided by designated facilities. During routine reviews of such reports from Lakeside Landfill, the Regulatory Affairs Division found that two of the landfill's customers repeatedly listed the same out-of-region addresses for every load they delivered, week after week. This indicated to us that either these companies were working on major demolition projects or they were providing false information.

Our Sheriff's Office detectives investigated and discovered that, in both cases, the waste had not originated from the addresses given. The detectives actually observed one of the suspects pick up a load of solid waste in Milwaukie, deliver it to Lakeside Landfill, and then certify on the reporting form that the load had originated in Nehalem. When confronted by the detectives, the suspects in both cases admitted to falsely listing out-of-region addresses in order to avoid paying Metro fees on waste that had actually been generated within the Metro boundary. As a result, the Executive Officer issued findings of violations and citations to both Michael Reynolds and Warren Biden for violating Section 7.01.020 of the Metro Code which requires users of the system to pay the Metro excise tax.

Pursuant to Metro Code Chapter 2.05, the respondents in these matters were given notice that they could contest the Executive Officer's findings of violation at a hearing before a Metro hearings officer. Each of these respondents requested a contested case hearing, and hearings were held, presided over by attorney Robert Harris, a Metro Hearings Officer. After those hearings, the hearings officer drafted Proposed Orders upholding the Executive Officer's findings of violation. Metro Code Section 2.05.035(b) provides that a hearings officer's Proposed Order shall be forwarded to the Council and considered by the Council at its next scheduled meeting, provided that meeting is at least two weeks after the deadline for filing exceptions. The Hearings Officer's Proposed Orders are therefore before you now for your consideration and neither of the parties have submitted written exceptions to those orders.

In addition, upon review of the hearings officer's Proposed Orders by REM staff and the Office of General Counsel, we noticed some typographical errors and that certain items were apparently inadvertently misidentified in the Proposed Orders. We are therefore now recommending that certain minor edits and clarifications be made to the Proposed Orders, and that you approve Final Orders that reflect those changes. Before you now are both clean copies of the recommended Final Orders and redlined versions of the hearing officer's Proposed Orders.

Robert Harris, Hearings Officer, spoke to his credentials, and then presented information related to the general procedure of the contested case hearing and the contents of the findings of fact and the proposed final order (a copy is included in the resolution). He talked briefly about mitigating circumstances and the proposed fine.

Councilor Atherton asked about the actual costs to taxpayers. Mr. Kraten said they kept track of the investigator's costs. Mr. Harris said, at the very least, he was aware of how many hours the agency staff put into this process. Councilor Atherton asked if they expected collection in this case? Mr. Kraten said Mr. Reynolds had made arrangements to make payments on his fine. Councilor Park asked for clarification on the fine and system fee. Mr. Kraten said the amount of tonnage was 61.182 tons. The regional system fee would \$790.51. Councilor Park said we were asking for \$1500 in fines. He talked further about what the actual fine was. He expressed concern about making sure the fines helped create avoidance of the behavior in the future. Mr. Kraten pointed out that the wording of the Code was such that the excise tax was written very differently than the section on system fees. He explained further the difference and why they couldn't charge for that portion in the violation. Councilor McLain asked about the assessed fine? Mr. Kraten talked about how the original fine was calculated. Presiding Officer Hosticka asked Mr. Cooper about modifications. Mr. Cooper said if they modified it downward they could do that today, if they wanted to modify it upward, they would have to notify the parties and allow for objection.

Presiding Officer Hosticka asked if the party involved or their representative wished to offer any comments. No one came forward.

Councilor McLain suggested that they tighten up the differences between the first, second and third violation. At this time she accepted the Hearings Officer recommendation. Councilor Monroe said he felt the party was getting off easy. He agreed with Councilor Park but would support the current recommendation. Councilor Park said he felt they needed to take up this issue at the Solid Waste and Recycling Committee and further clarified the specifics of that discussion.

Vote:	Councilors Monroe, Park, McLain, Bragdon, Atherton and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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6.3 **Resolution No. 02-3215**, For the Purpose of Approving a Final Order Imposing a Monetary Fine on Warren Z. Biden, dba Westmont Properties for a violation of Section 7.01 of the Metro Code.

Motion	Councilor Atherton moved to adopt Resolution No. 02-3215.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton asked for background from Mr. Kraten and a review from Mr. Harris. Mr. Kraten said, the circumstances of this case, was identical to Reynolds case except for the recyclables. Mr. Harris concurred that the case was identical. Councilor McLain asked about the security amount requested. Mr. Kraten said they requested the security amount from both parties. In the case of Mr. Reynolds he said he had no money to pay. Mr. Kraten said he would have to check on what he was paying. Councilor McLain said she wanted to make sure that they had consistent rules on the fines and payment. Mr. Cooper added that there was some confusion on these cases. He talked about the illegal dumping cases and the requirement of security payment. He said the Code in these cases did not require a security payment. Councilor McLain suggested that they needed to look at both situations and update the Code for consistency. Mr. Cooper said they would be having a conversation at the Solid Waste and Recycling Committee. Presiding

Officer Hosticka asked why both of these cases were at Lakeside and was this unusual. Mr. Kraten said that they had an automated system at Lakeside. Councilor Atherton asked what the cost was of prosecuting this case. Mr. Kraten said he didn't have the specifics but said it would be the time of the investigators and the hearings officer. Mr. Harris said it was relatively easy to recommend the fine. Councilors Monroe clarified a point, these people were apprehended because they put down the same location each time. If they had been smarter would they have gotten away with it? Mr. Kraten said maybe for each period of time but they did spot checks. Councilor Monroe summarized that our system was not airtight.

Vote:	Councilors Park, McLain, Bragdon, Atherton, Monroe and Presiding Officer Hosticka voted aye. The vote was 6 aye, the motion passed.
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7. COUNCILOR COMMUNICATION

Councilor McLain thanked the Natural Resources members for coming to last night's public hearing. They would take up related issues on August 7th and at Council on August 8th.

Councilor Parks aid they would be look at the Executive Officer's recommendations at the Community Planning Committee next Tuesday. He suggested written testimony at this time if people wished to give their input. They would be announcing when the public hearings will be soon.

8. 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 AUGUST 1,
2002**

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
4.1	MINUTES	7/25/02	METRO COUNCIL MINUTES OF JULY 25, 2002 SUBMITTED FOR APPROVAL	080102C-01
3	METRO REPORT	AUGUST 2002	GROWTH MANAGEMENT OF THE METROPOLITAN REGION, EXECUTIVE OFFICER RECOMMENDATION TO COUNCIL	080102C-02
3	UGB PERIOD REVIEW TEAM	2002	METRO REGIONAL GOVERNMENT "IT TAKES A TEAM TO MOVE THE UGB" TEAM ROSTER	080102C-03
3	DATES FOR LISTENING POSTS MEMO	8/1/02	URBAN GROWTH BOUNDARY LISTENING POSTS IN OCTOBER 2002 FROM CHAIR PARK, COMMUNITY PLANNING TO METRO COUNCIL	080102C-04
6.2 & 6.3	COUNCIL PROCESS MEMO	8/1/02	COUNCIL PROCESS FOR CONSIDERATION OF RESOLUTIONS NO. 02-3214 & 3215	080102C-05
6.2	LETTER	7/26/02	LETTER FROM CHRIS BILLINGTON, CLERK OF THE COUNCIL TO MICHAEL REYNOLDS CONCERNING COUNCIL CONSIDERATION OF RESOLUTION NO. 02-3214	080102C-06
6.3	LETTER	7/26/02	LETTER FROM CHRIS BILLINGTON, CLERK OF THE COUNCIL TO WARREN BIDEN CONCERNING COUNCIL CONSIDERATION OF RESOLUTION NO. 02-3215	080102C-07