

MINUTES OF THE METRO COUNCIL MEETING

Thursday, April 3, 2003
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Susan McLain, Brian Newman, Carl Hosticka, Rod Monroe, Rex Burkholder, Rod Park

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Ray Phelps talked about letter from Metro and expressed his concern (a copy of the letter is included in the record). Councilors indicated that they would be reviewing this issue.

3. CONSENT AGENDA

3.1 Consideration of minutes of the March 27, 2003 Regular Council Meetings.

Motion:

Councilor Newman moved to adopt the meeting minutes of the March 27, 2003, Regular Metro Council meeting.

Vote:

Councilors Park, Hosticka, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion with Councilor Burkholder abstaining from the vote. The vote was 6 aye/ 0 nay/ 1 abstain, the motion passed.

4. ORDINANCES – FIRST READING

4.1 **Ordinance No. 03-1001**, For the Purpose of Adopting the Annual Budget for the Fiscal Year 2003-04, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency.

Council President Bragdon presented a power point presentation on his proposed 2003-04 Budget (a copy of which is found in the meeting record). He said the public hearings were April 3rd, 17th, 24th and May 1st at 6:00 p.m. evening meeting. He added that a calendar of the public hearings and work sessions was available for the public. He closed by thanking the staff for their efforts in putting the proposed budget together.

Council President Bragdon assigned Ordinance No. 03-1001 to the Council and opened a public hearing.

Casey Short, Chief Financial Officer, spoke to the debt management issue.

Mary McGaughey, Regional Parks and Greenspaces 381-2 NE Village Square Ave Gresham OR 97030 talked about the Parks Visitor Services – Operation Support (a copy of which is found in the meeting record). She spoke to a summary of work the gardeners had done since the parks came to Metro from Multnomah County. Field notes were included for the Council (a copy of these notes are found in the meeting record).

Rob DeGraff, Portland Business Alliance, 221 N 2nd #300 Portland OR 97209 supported the principles that were used to build the budget. He detailed some of those principles. He congratulated Council President Bragdon and Metro for their efforts.

Brian McCarten, Portland Oregon Visitors Association, 1000 SW Broadway Suite 2300 Portland, OR 97205 applauded Metro for their proposed budget. The need to manage costs within revenues was necessary in all walks of life. He looked forward to seeing the budget implemented as presented.

Council President Bragdon closed the public hearing and announced the next public hearing would be on April 17, 2003 at 2:00 p.m.

Councilors thanked Council President Bragdon and the Financial Planning staff for their efforts.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 03-998**, For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule by Transferring \$740,000 from Contingency in the MERC Operating Fund to Transfer of Resources (to the Convention Center Project Capital Fund); and Declaring an Emergency.

Motion:	Councilor Monroe moved to adopt Ordinance No. 03-998.
Seconded:	Councilor Park seconded the motion

Councilor Monroe reviewed the purpose of the ordinance, which was required to complete the expansion of the Convention Center. It was necessary to comply with budget law. Councilor Burkholder said one of the main reasons for the transfer had to do with an adjustment in the bond interest rates. Council President Bragdon supported this ordinance as well.

Council President Bragdon opened a public hearing. No one came forward. Council President Bragdon closed the public hearing.

Councilor Monroe closed by urging support. He noted the positives of the Oregon Convention Center and how it fit with the natural beauty of this city, the region and the state.

Vote:	Councilors Park, Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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5.2 **Ordinance No. 03-1000**, For the Purpose of Amending Metro Code Chapter 5.02 To Amend Disposal Charges and System Fees.

Motion:	Councilor Park moved to adopt Ordinance No. 03-1000.
Seconded:	Councilor McLain seconded the motion

Councilor Park spoke to what this ordinance did; increasing the tip fee, reducing the disposal component, and increasing the regional system fee, which was closer to the unit cost. Council President Bragdon talked about what they were trying to address through the proposed ordinance.

Mike Hogle, Director of Solid Waste and Recycling and Doug Anderson, Solid Waste and Recycling Department Division Manager, provided more details of the ordinance (a copy of their materials is included in the meeting record). Mr. Hogle also responded to comments made by the public at the last two public hearings. Councilor Burkholder asked about the reserve levels. Mr. Hogle responded that they were trying to minimize the move. It would slow down our ability to get to our reserve level. Councilor McLain summarized the goals of the Rate Review Committee. Councilor Newman asked about the unit cost and the change historically. Mr. Anderson responded by talking about trends in tonnage, contract negotiations and local transfer stations. Councilor Newman asked about the local transfer stations and disposal costs. Mr. Anderson responded that they didn't audit those books or set the rates but did have the right to look at the books. Their costs differed from Metro's costs. Councilor McLain said it was important to know that in 1997 and 1998 Metro had the whole market. She detailed the history of the regional cost. Councilor Newman summarized the cost and price changes. Councilor Park asked about the value of the Metro transfer stations. Mr. Hogle said this was not intended to divert waste to our facilities. Mr. Anderson talked about a procedural issue on the ordinance and suggested deleting section 4 of the ordinance. Marv Fjordbeck, Senior Assistant Metro Attorney, explained the deletion.

Council President Bragdon opened a public hearing.

Terry Waddell, Government Affairs, Waste Management, 7227 NE 55th Portland OR 97218 summarized a letter from Dean Kampfer, Community and Municipal Market Manager (a copy of which is found in the meeting record). Councilor McLain talked about costs and asked Ms. Waddell to explain those costs in reference to the letter. The difference had to do with a regional transfer station versus local transfer station. Ms. Waddell responded to her question.

Ralph and Vince Gilbert, ECR, PO Bo 20096, Portland, OR 97294 said they would like to see the tip fee raised to \$1.50 rather than \$1.00 and the regional system fee be raised from \$1.57 to \$2.00. Vince Gilbert spoke in support of both Ralph Gilbert's comments and Ray Phelps' earlier comments.

Ryan Wurgler, Waste Connections, Inc, 12820 NE Marx, Portland OR 97230 shared his concerns about this ordinance. He felt this would create market instability and was unfair to industry. He talked about the regional system fee in the proposed budget. Councilor Newman asked Mr. Wurgler why they didn't raise their tip fee. Mr. Wurgler responded to his question. Council President Bragdon followed-up on Councilor Newman's question. Mr. Wurgler said they would have to absorb the cost increase and go out and find additional tonnage. It may have the effect of pulling more tons away from Metro. Councilor McLain asked if they wanted all the rates to be the same. Mr. Wurgler said no.

Dave White, Oregon Refuse and Recycling Association, 1739 NW 156th Ave Beaverton OR 97006, talked about the increase in fees. He brought this issue to the Tri-County Council. They agreed that it was okay with them if the regional system fee was the same. He talked about the history of tonnage going to local facilities. It was important for the impact on recycling that the facilities not have to raise their tip fee above Metro's tip fee. Councilor Park talked about past agreements. Mr. White suggested revisions in the credit program.

Jeff Keathley and Robert Noble, 1700 NE 162nd R-7 Portland OR 97230 said they were independent contractors in the solid waste business. Mr. Keathley suggested not voting on this ordinance today. There were not many areas to cut costs. Most companies had incurred increased costs. Let the taxation be fair across the board. He said he worked in all three counties. Mr. Noble said he owned a hauling company. They were tied to their gate rate. He expressed his frustrations about doing business in solid waste. He suggested putting a Metro employee in every scale house to verify what the facilities were collecting.

Mike Huyake, Willamette Resources Inc, 10295 Ridder Rd, Wilsonville OR, 97070 said WRI had kept their rates consistent with Metro's rates. It had been difficult. This ordinance would force them to push their rates above the Metro rate and explained why. He was concerned about their transfer station and MERF passing on those increases. Councilor Newman asked about subsidizing Metro facilities. Mr. Huyake responded to his question. Councilor Park asked about Mr. Huyake's subsidizing statement. Mr. Huyake clarified his remarks. Councilor Park said those that used the Metro facilities were being subsidized.

Council President Bragdon closed the public hearing.

Councilor McLain said anytime you have a rate setting process there will always be refinement because we were all dealing with a different perspective as to what it cost to run a business. She believed that the Rate Review Committee had a thorough conversation about this issue and explained the details of that conversation. She felt this change was reasonable but only with the understanding that we return to the overall unit costs and have a conversation about this issue. Councilor Monroe said our facilities were subsidizing the private facilities. He was sympathetic to Mr. Huyake's comments. A move toward equity made sense.

Motion to Amend:	Councilor Monroe moved to amend Ordinance No. 03-1000 to delete Section 4 of the ordinance.
Seconded:	Councilor Park seconded the motion.

Vote to Amend:	Councilors Park, Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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Councilors provided their closing remarks and expressed support for this ordinance as amended.

Vote on the Main Motion:	Councilors Park, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion, Councilor Hosticka voted no. The vote was 6 aye/1 nay, the motion passed.
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6. RESOLUTIONS

6.1 **Resolution No. 03-3312**, For the Purpose of Adopting the Hearings Officer's Proposed Order and Authorizing the Chief Operating Officer to Issue a Final Order Imposing a Monetary Fine and Revoking Non-System License No. N-033-00. Issued to A & R Environmental Services, LLC/ A. Noble, Inc.

Councilor McLain explained the reason for the resolution. They would be hearing from a hearings officer and the parties involved. She explained the process. Marv Fjordbeck, Senior

Assistant Metro Attorney, overviewed the issue and explained the procedures (a copy of which is included in the meeting record).

Robert Harris, Hearings Officer, gave an overview of his credentials and presented his findings (a copy which is found in the meeting packet).

Mr. Fjordbeck said the licensee had filed a document to submit additional evidence. He explained further the procedures to allow such evidence. This would be an appropriate time to hear from the licensee. He explained the Council's options after they had heard from the licensee.

Jeff Keathley said they had a tremendous amount of information to get through. He went over each one of their defenses. He felt it was important to educate the hearings officer on certain aspects of waste including hazardous materials versus hazardous waste. He explained the additional information that they wish to submit.

Council President Bragdon clarified the issue of additional information. Mr. Keathley said what was crucial to their defense was the City of Portland's contract. The additional evidence supported their argument. He talked about the good faith effort with the city. Council President Bragdon summarized the evidence to be added to the record, which was correspondence with the City of Portland. Mr. Fjordbeck asked why that information wasn't available at the time of the hearing. Councilor Newman asked for clarification, why did they wait so long to get those records. Mr. Noble responded that they had requested the information before the hearing. Council President Bragdon asked what the difference in outcome would be by adding this information? Mr. Noble responded that if the hearings officer had seen the correspondence then he would have come to a different conclusion.

Paul Garrahan, Assistant Metro Attorney, representing the Chief Operating Officer and the Solid Waste and Recycling Department, responded to the additional evidence request. This information was available at the City of Portland. The contract was part of the record. It was part of Metro's proof that most the waste was coming from the Metro region and being hauled to a non-Metro facility. Would a different result have occurred? He explained the provisions in the Metro Code. The exemption for paying the fees would not apply. This was a post-facto rationalization.

Councilor McLain said her understanding from the staff was that the evidence was in the record already. Mr. Garrahan clarified the evidence in the record. Mr. Harris said he reviewed the City of Portland contract. He talked about the exemption and the bid.

Councilor Park asked, within this record, was there any testimony as to why they would not receive the exemption. Mr. Garrahan said there was no request. Council President Bragdon explained the issue before Council, which was whether to include the new evidence. Councilor McLain asked if the new evidence available. Mr. Noble responded that they would be receiving it in the future. They had tried to get it this week. Council President Bragdon summarized the issue of future evidence. He asked Mr. Fjordbeck for clarification. Mr. Fjordbeck responded to Council President Bragdon's question. Councilor McLain said she needed the additional evidence but was not convinced that it would make a difference. Council President Bragdon asked Mr. Fjordbeck for further clarification. Mr. Keathley asked to respond, there was information that was submitted for the record.

Motion:	Councilor Newman moved to deny the additional evidence.
Seconded:	Councilor Monroe seconded the motion.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

Council President Bragdon explained the procedure. Mr. Keathley explained why the Council should not uphold the recommended order. He talked about asbestos collection and the issues surrounding this. Mr. Garrahan talked about asbestos waste and staff's interpretation. He spoke to asbestos clean up and the application in this case. He spoke to federal law and that Metro's interpretation of this issue was consistent with federal law. The licensee did not file any exceptions to the hearings officer report. Council President Bragdon asked Mr. Harris about documents referred to with the City of Portland. Mr. Harris said Councilor McLain was accurate in her summary of the parties' responsibilities. Mr. Noble acknowledged that Mr. Harris was right. They would have to pursue litigation with the City of Portland. Councilor Newman asked about revocation of the licensee's non-system license. Mr. Harris responded to his question. Mr. Garrahan said the hearings officer was correct. Metro Code provided that when the licensee failed to cure the violation, the Executive Officer was required to terminate the license. If they adopted the proposed order, Council action would terminate the license. They could still conduct their business and haul their waste. He explained further the issues around granting the non-system license. Mr. Fjordbeck said the non-system licensee did not bar the licensee from re-applying and explained what Metro would take into consideration when this occurred. Council President Bragdon explained the Council's three choices. Mr. Fjordbeck explained further the possible motions.

Motion:	Councilor Park moved to adopt Resolution No. 03-3312.
Seconded:	Councilor Burkholder seconded the motion

Councilor Park talked about the fine and the loss of the regional system fee. He assumed the defendant would go back and try and collect this from the City of Portland. Mr. Garrahan talked about the normal fines. Councilor McLain talked about the Council's responsibilities at this point. She would be supporting this motion. Councilor Newman added that they were not unsympathetic to their case. He encouraged them to pursue reimbursement of their fees with the City of Portland.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe, Newman and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.

7. COUNCILOR COMMUNICATION

There were none.

8. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 5:37 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF APRIL 3, 2003

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
3	MINUTES	3/27/03	METRO COUNCIL MINUTES OF MARCH 27, 2003 SUBMITTED FOR APPROVAL	040303C-01
4	BUDGET	FY 2003-04	TO: METRO COUNCIL FROM: DAVID BRAGDON, COUNCIL PRESIDENT AND FINANCIAL PLANNING STAFF RE: PROPOSED BUDGET AND NOTEBOOKS FOR FY 2003-04 VOLUME 1 & 2	040303C-02
5.2	LETTER	3/28/03	TO: METRO COUNCIL FROM: JOHN LUCINI, SP RECYCLING CORP RE: ORDINANCE No. 03-1000	040303C-03
4	TALKING POINTS	4/3/03	TO: METRO COUNCIL FROM: DAVID BRAGDON, COUNCIL PRESIDENT RE: PROPOSED FY 03-4 BUDGET TALKING POINTS	040303C-04
5.2	ORD No 03-1000	4/3/03	REVISED VERSION OF ORDINANCE No. 03-1000, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO AMEND DISPOSAL CHARGES AND SYSTEM FEES	040303C-05
4	SUMMARY	4/3/03	TO: METRO COUNCIL FROM: COUNCIL PRESIDENT BRAGDON RE: PROPOSED FY 2003-04 BUDGET PRESENTATION SUMMARY	040303C-06
6.1	PROCEDURES	4/3/03	TO: METRO COUNCIL FROM: MARV FJORDBECK, SENIOR ASSISTANT METRO ATTORNEY RE: PROCEDURES FOR FINAL ORDER HEARING	040303C-07
5.2	MAP	3/31/2003	TO: METRO COUNCIL FROM: SOLID WASTE AND RECYCLING COMMITTEE RE: MAP OF POSTED TIP FEES FOR PUTRESCIBLE WASTE	040303C-08
5.2	RATE SHEET	4/2/03	TO: METRO COUNCIL FROM: SOLID WASTE AND RECYCLING DEPT. RE: POSTED TIP FEES	040303C-09
5.2	OVERVIEW	NO DATE	TO: METRO COUNCIL FROM: SOLID WASTE AND RECYCLING DEPT. RE: OVERVIEW OF ORD. No 03-1000 AMENDING SOLID WASTE RATE FOR FY 03-04	040303C-10
4	COMMENTS FROM MARY MCGAUGHEY	NO DATE	TO: METRO COUNCIL FROM: MARY MCGAUGHEY RE: PARKS VISITOR SERVICES – OPERATIONS SUPPORT	040303C-11

2	LETTER	3/26/03	TO: MIKE HUYCKE, WILLAMETTE RESOURCES FROM: MARIA ROBERTS, BUDGET AND FINANCE ADMINISTRATOR FOR SOLID WASTE AND RECYCLING DEPARTMENT RE: SOLID WASTE ISSUES	040303C-12
5.2	LETTER	MARCH 31, 2003	TO: METRO COUNCIL FROM: DEAN KAMPFER, WASTE MANAGEMENT RE: ORD No 03-1000	040303C-13